

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM PICKENS COUNTY

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2015-000211

THE STATE,..... APPELLANT,

v.

FREDERICK SCOTT PFEIFFER,RESPONDENT.

Unpublished Opinion 2018-UP-130, filed March 28, 2018

Petition for Rehearing

On March 28, 2018, this Court issued an opinion in which it affirmed the decision of the circuit court. State v. Pfeiffer, Unpub. Op. No. 2018-UP-130 (S.C. Ct. App. filed March 28, 2018). The decision affirms the circuit court's conclusion that it had jurisdiction over the new issue raised in Respondent's untimely 2nd "Motion to Reconsider". Appellant respectfully petitions for rehearing per Rule 221, SCACR because this Court overlooks that Respondent's 2nd motion did not seek relief on the order granting his 1st motion.

This Court's opinion cites its prior opinion in Collins Music Co. v. IGT, 353 S.C. 559, 564, 579 S.E.2d 524, 526 (Ct. App. 2002): "(explaining successive post-trial

motions are permitted in civil cases if the successive motion seeks "relief on issues coming to light as a result of an order following an initial post-trial motion that alters or amends the judgment)". State v. Pfeiffer, Unpub. Op. No. 2018-UP-130 (S.C. Ct. App. filed March 28, 2018). Collins Music is a civil case regarding the applicability Rule 59, SCRCP. The case at hand is a criminal case regarding the applicability of Rule 29(a), SCRCrimP. The civil and criminal post-trial rules are worded practically identical as it relates to jurisdiction.¹

Simply put, "ten (10) days after the imposition of sentence", the circuit court lacks "jurisdiction of the action" except "for the purpose of hearing and disposing of the motion." Rule 29(a), SCRCrimP. The relevant dates are as follows:

1. 09/18/13, Respondent sentenced. R. p. 16.
2. 09/30/13, Respondent's 1st "Motion to Reconsider." R. p. 14.
3. 10/08/13, Order granting Respondent's 1st "Motion to Reconsider." R. p. 5-7.
4. 10/17/13, Respondent's 2nd "Motion to Reconsider." R. p. 15.

Respondent's 2nd "Motion to Reconsider" was twenty-nine (29) days after Respondent's sentencing – far beyond the ten (10) days required for the circuit judge to "retain jurisdiction" "of the motion" per Rule 29(a), SCRCrimP.

As explained by this Court, the only way for the circuit court to have jurisdiction over a 2nd post-trial motion would be if that 2nd motion sought "relief on issues coming to light as a result of an order following an initial post-trial motion that alters or amends the judgment." Collins Music Co. v. IGT, 353 S.C. 559, 564, 579 S.E.2d 524, 526 (Ct. App. 2002). Meaning, the 2nd motion is timely only if there

¹ Rule 59(f), SCRCP, provides:

"[A]nd the trial judge shall retain jurisdiction of the action for the purpose of hearing and disposing of such motion if not heard and disposed during the term."

Rule 29(a), SCRCrimP., provides:

"[A]nd the circuit judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term."

was a problem with the actual order as to the issue(s) raised in the 1st motion.

The sole issue in the 1st “Motion to Reconsider” was an alleged inconsistency with Respondent’s sentencing as interpreted by SCDC, i.e. “*that there are inconsistencies between the sentences handed down by the Court with what is reflected within the Sentencing Sheets...*” R. p. 14. Whereas Respondent’s 2nd “Motion to Reconsider” raised for the first-time a completely new and wholly unrelated issue and is therefore untimely and invalid. Respondent’s 2nd motion was essentially a *new information has come to light* type claim regarding the sentence of the co-defendant, who Respondent argued was the “ring-leader kingpin of the conspiracy”, and thought the comparative sentences were unfair. R. p. 15. Respondent did not and could not have raised the co-defendant sentence disparity issue within ten (10) days of Respondent’s sentencing [September 18] because “the codefendant's sentence was not known to Defendant until October 8, 2013.” R. p. 11.

If Respondent truly thought the co-defendant’s sentence was relevant after-discovered evidence then he could have sought the application of Rule 29(b) SCRCrimP. (as opposed to Rule 29(a)). However, Rule 29(b) SCRCrimP. cannot be used to alter a sentence – the only relief afforded under Rule 29(b) is a new trial. Respondent never sought a new trial; instead he sought a sentence reduction by filing an untimely motion raising a new issue that the circuit court no longer had jurisdiction to address. The circuit court erred as a matter of law thinking it had jurisdiction over the new issue raised in Respondent’s untimely 2nd “Motion to Reconsider”.

WHEREFORE, because the circuit court erred as a matter of law when it granted relief on a new issue raised (29) days after sentencing, Appellant requests this Court grant the Petition for Rehearing and rehear the case as the circuit court lacked the jurisdiction to do so per Rule 29(a), SCRCrimP.


Respectfully submitted,

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Columbia, South Carolina

April 12, 2018.

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Appeal from Pickens County
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Appellate Case No. 2015-000211

THE STATE,

Appellant,

vs.

FREDERICK SCOTT PFEIFFER,

Respondent.

PROOF OF SERVICE

I certify that I have served the: *Petition for Rehearing* by depositing a copy in the United States Mail; postage prepaid, on April 12, 2018, addressed to his attorneys of record:


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ALAN WILSON
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April 12, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. FREDERICK SCOTT PFEIFFER,
Appellate Case No. 2015-000211

Dear Ms. Kitchings:

Enclosed for filing in the above matter are the following:

- (1) Original plus six (6) copies of the Petition for Rehearing.
- (2) Proof of Service of the above items to Respondent's attorneys of record.

cc: Mr. William G. Yarborough, III
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Sincerely,

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