

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2017-002577

Charles Eugene Carpenter,

APPELLANT,

v.

State of South Carolina,
South Carolina Department of Corrections

RESPONDENT.

MOTION TO DISMISS APPEAL AND TO HOLD TIME LIMITS IN ABEYANCE

The State moves to dismiss Appellant's appeal because Appellant has failed to show that the issues raised below could not have been raised in a timely post-conviction relief (PCR) application.¹ The State is further requesting that this Court hold the time period for the filing of the Initial Brief of Respondent and Designation of Matter in abeyance pending the resolution of this motion and Appellant's Petition to have this matter consolidated and heard in the original jurisdiction of the supreme court. The basis for this motion is explained below.

I.

Appellant pleaded guilty to drug offenses in 1990 and is currently in the custody of the South Carolina Department of Corrections. He has filed numerous collateral challenges to his

¹ This motion is filed only on behalf of the State of South Carolina.

sentences and convictions in both state and federal courts. A detailed procedural history is covered in his most recent action, a Petition for Writ of Habeas Corpus filed in the Richland County Court of Common Pleas. See Exhibit A. That action was dismissed on October 2, 2017. Appellant has filed a notice of appeal with this Court and is challenging the lower court's order finding, among other things, that Appellant was procedurally barred from maintaining the action at the circuit court as a habeas petition. Appellant then filed the following items with the supreme court on December 20, 2017: (1) Complaint in the Original Jurisdiction, (2) Petition for Certification of Appeal to this Court and Consolidation with Original Jurisdiction Proceeding, and (3) Petition for Original Jurisdiction and Writ of Habeas Corpus. On December 28, 2017, this Court requested a written explanation as to why the lower court's determination that the issues could have been raised in a timely filed PCR application does not require dismissal. Appellant responded by memorandum filed on January 9, 2018.

II.

The State moves to dismiss this appeal because Appellant has failed to show that there is an arguable basis that the lower court's decision was improper. Rule 203(d)(1)(B)(vi), SCACR, provides that if the lower court dismisses a habeas corpus petition because the issues could have been raised in a timely PCR application, then the appellant must provide an explanation to show "there is an arguable basis for asserting that the determination by the lower court was improper." Appellant failed to do that here.² The memorandum submitted is insufficient for this appeal to move forward. Below, Appellant raised two issues against the State: 1) Judge Cottingham was without jurisdiction to impose the consecutive sentence, and 2) Appellant's sentence had expired.

² The lower court found that Appellant was procedurally barred from raising these claims in a Petition for Writ of Habeas Corpus and that they must have been raised in a timely PCR application. See Exhibit A, p. 9-10.

These allegations are not only within the purview of PCR but are specifically enumerated in the statute. See S.C. Code Ann. § 17-27-20(A) (“Any person who has been convicted of, or sentenced for, a crime and who claims: (2) That the court was without jurisdiction to impose the sentence . . . 5) That his sentence has expired . . .”). The statute further notes that PCR applications are the *exclusive* avenue for relief when challenging the validity of a conviction or sentence. S.C. Code Ann. § 17-27-20(B).

In the memorandum, Appellant merely directs the Court to the Order Denying Motions to Dismiss. That order denied the State’s motion to dismiss pursuant to Rule 12(b), SCRCR, finding, in the light most favorable to Appellant, that he had pled a cognizable claim and could move past the motion to dismiss stage and to an evidentiary hearing to present evidence and prove that his allegations were appropriately before the circuit court as a Petition for Habeas Corpus. Appellant fails to even address this Court’s inquiry into why these allegations are not appropriately filed in a PCR application. Appellant even characterizes his issues as challenges to the supposedly illegal sentence and that he is being held after his supposed release date. See Memorandum In Response to Rule 203(d)(1)(B)(vi), SCAR Inquiry, p. 3. Appellant confuses the Order Denying Motions to Dismiss as a final ruling on the merits of the case. The State seeks to have this appeal dismissed because Appellant has failed to provide this Court with any legal or factual basis as to why the lower court’s ruling that the issues could have been raised in a timely PCR application was improper.

III.

The State also asks this Court to hold the time limits to file its Initial Brief of Respondent and Designation of Matter in abeyance pending the resolution of this motion and the supreme court’s decision on whether to consolidate this action and the Petition for Writ of Habeas Corpus

and whether to certify this appeal in that court's original jurisdiction. Appellant also seems to have requested the same. See Memorandum In Response to Rule 203(d)(1)(B)(vi), SCAR Inquiry, p. 5.

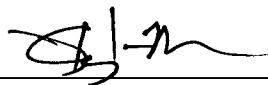
CONCLUSION

The State respectfully requests that this Court dismiss Appellant's appeal. In addition, the State requests that this Court hold the time period for the filing of the Initial Brief of Respondent and Designation of Matter in abeyance pending the resolution of this motion and of Appellant's Petition to have this matter consolidated and heard in the original jurisdiction of the supreme court.

Respectfully submitted,

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April 10, 2018

STATE OF SOUTH CAROLINA
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South Carolina Department of Corrections

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Motion to Dismiss Appeal and to Hold Time Limit in Abeyance**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

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This 11th day of April, 2018



Carmen Nord
Legal Assistant



ALAN WILSON
ATTORNEY GENERAL

April 11, 2018

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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SC Court of Appeals

RE: Charles Carpenter v. State of South Carolina
Appellate Case No. 2017-002577
Lower Court Case No. 2016-CP-40-06916

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the **Motion to Dismiss Appeal and to Hold Time Limit in Abeyance** in the above mentioned case.

Sincerely,

J. Clayton Mitchell
Assistant Attorney General
SC Bar No. 101443

JCM/can

cc: The Honorable Daniel E. Shearouse
Desa Ballard, Esquire
Harvey M. Watson III, Esquire
Damon Christian Wlodarczyk, Esquire