

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE
COURT OF COMMON PLEAS
ROBIN B. STILWELL, PRESIDING JUDGE

Appellate Case No; 2016-001479

Wilfredo Salas,

Petitioner,

Vs.

State of South Carolina,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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JUN 01 2018

S.C. SUPREME COURT

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Statement of the Grounds on Appeal

(1) Whether the Court of Appeals committed error when the Court found the lower Court did not abuse its discretion and commit error of Law, when the Lower Court found Petitioner's Motion to vacate void Judgment Pursuant to Rule 60(b) and Motion for Summary Judgment Pursuant to South Carolina Rules of Civil Procedure lack Merits?

(2) Whether the Court of Appeals committed error when the Court found the lower Court did not abuse its discretion and commit error of law when the lower Court found Petitioner's Motion to vacate Judgment and Motion for Summary Judgment should be dismissed because he failed to comply with the South Carolina Rules of Civil Procedure?

STATEMENT OF THE CASE

The petitioner plead guilty in Greenville County August 8, 2011, to Lewd Act on a minor. See Fn1. The petitioner Received a maximum sentence of fifteen years of imprisonment. (2011-GS-23-6255). Scott D. Robinson, Esquire represented the petitioner. On August 17, 2011, Counsel filed a "timely post-trial motion" to "Reconsider the sentence". See Appendix page 121, 129. As to this date no "order" has been issued adjudicating this motion on the merit. See Appendix pg 123, 132.

On May 17, 2012, Petitioner filed a Post-Conviction Relief Application. See Appendix Pg 24-32. The State made its return on August 31, 2012. See Appendix Pg 33-38. An evidentiary hearing into the matter was convened on October 23, 2013, at the Greenville County Court House. The Honorable Edward W. Miller issued an order dated January 7, 2014, filed January 8, 2014, dismissing the PCR with prejudice. (See Appendix Pg. 106-113.)

On October 10, 2015, the Petitioner filed a Rule 60(b)(4) and (5) of SCRPC motion alleging his PCR judgment in 2012-CP-23-3341 case were void and should no longer have prospective application and no longer should be equitable because the Court of Common Pleas were without jurisdiction due to Petitioner's timely filed post-trial motion still pending during the time PCR court issued its Order (See Appendix Pg. 116-123).

On June 23, 2016, Petitioner filed Motion For Summary Judgment pursuant to Rule 56(C), SCRPC. Court denied Petitioner's Motion to Vacate Judgment pursuant to Rule 60(b)(4) and (5) and Motion for Summary Judgment pursuant to Rule 56(C), finding:

(1) Petitioner failed to comply with South Carolina Rules of Civil Procedure and (2) Lack of merit. (See Appendix Pg. 135)

Fn1: Petitioner was originally charged with CSC (criminal sexual conduct) with a minor less than ten years of age. The State agreed to reduce the charge to Lewd Act on a Minor.

However, after the lower Court issued its order denying Petitioner's motions, the Respondent in several emails addressed to judge Gravely admits there is an outstanding post-trial motion pending, but never the less, effected the court's jurisdiction because his counsel filed it under his original warrant number and not the indictment number in which he plead to. (See Attachment (a) (Patrick Schmeckpeper emails addressed to judge Gravely.)

The Court of Appeals denied Petitioner's writ for Certiorari in Order issued Feb. 12, 2018. Petitioner filed petition for rehearing and Court of Appeals issued Order denying rehearing on May 2, 2018.

ARGUEMENT

(1) Court of Appeals committed error when Court found Lower Court did not abuse its discretion and commit error of law, when Lower Court found Petitioner's motion to vacate-void judgment pursuant to Rule 60(b) and Summary Judgment motion pursuant to SCRCP lacked merit.

Petitioner asserts Court of Appeals erred when Court found Lower Court did not commit error of law and abused its discretion when they found Petitioner motions should be dismissed because they lacked merit. (See Appendix Pg. 135.) In the instant case, Petitioner's guilty plea counsel filed a timely post-trial motion pursuant to Rule 29(a), SCRCP. (See Fn1. Petitioner retained attorney to represent him on post-conviction (See Appendix Pg. 106, where John G. Reckenbeil represented Petitioner). The PCR Court issued an order denying PCR application during a time in which he had a timely post-trial motion pending in Court of General Sessions. See Appendix Pg.s 121-106.

Petitioner asserts PCR Court Judgment in 2012-CP-23-3341 is a nullity and void ab initio as a matter of law and should not have prospective application and no longer be equitable, because the court could not exercise its authority because Court lacked jurisdiction pursuant to SCRCP Rule 71.1(b). "Time and Form of Application" (PCR Application) cannot be made while an appeal from conviction or sentence is pending or during the time in which an appeal may be perfected. See Al-Shabass, 527 SE 2d 747 (SC 2000)(Applicant may not bring PCR action while a direct appeal is pending. Rule 71.1(b), the focus usually is upon alleged errors made by trial or plea counsel).

Fn1: Petitioner's guilty plea counsel filed post-trial motion to reconsider sentence under his original arrest warrant number I-479542 See Appendix Pg. 121, and were properly before the court.

Rule 203(2), SCACR. It's clear Petitioner's PCR application was filed during which time an appeal could be perfected. Therefore, Court of Appeals erred when it found Lower Court did not commit error.

(2) Court of Appeals committed error when Court found Lower Court did not abuse its discretion and commit error of Law when Lower Court found Petitioner's motion to vacate judgment and motion for summary judgment should be dismissed because he failed to comply with South Carolina Rules of Civil Procedure.

In the instant case Petitioner sent copies of his motion to the opposing counsel and properly signed them according to the Rules of Court. **See** SCRC. **See Fn2.** Therefore, Court of Appeals and Lower Court erred and Order should be Reversed.

fn2 Lower Court does not identify which Rule petitioner failed to comply with.

CONCLUSION

Therefore, for the above-mentioned reasons, I am respectfully asking that this Court grant Writ of Certorari and appoint counsel.

Respectfully Submitted,

Wilfredo Salas

Wilfredo Salas, 347611 (SCDC)

This Day of May, 2018.

SWORN or affirmed to and Subscribed

before Me this 25 day of May, 2018.

My Commission Expires

Jan 27, 2025

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
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ROBIN B. STILWELL, PRESIDING JUDGE

case no. 2016-001479

Wilfredo Salas,

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Respondent.

CERTIFICATE OF SERVICE

I, Wilfredo Salas, hereby certify that I did serve Petitioner's Writ of Certiorari and Appendix on:

Attorney General Office
Attn: Patrick Schmeckpeper, Esquire
Post Office Box 11549
Columbia, SC 29211

by depositing a copy in the US Mail, postage prepaid, this Day of May, 2018.

Wilfredo Salas

Wilfredo Salas, 347611 (SCDC)

SWORN or affirmed to and subscribed

before me this 25 day of May, 2018

MY commission Expires:

Jan 27, 2025