

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL FROM GREENVILLE  
COURT OF COMMON PLEAS

ROBIN B. STILWELL, PRESIDING JUDGE

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Case No; 2016-001479

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**RECEIVED**

MAY 31 2018

SC Court of Appeals

Wilfredo Salas,

Petitioner,

Vs.

State of South Carolina,

Respondent.

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PETITION FOR WRIT OF CERTIORARI

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Attorney General Office  
Patrick L. Schmeckpeper, AGG  
Post Office Box 11549  
Columbia, S.C 29211.

Wilfredo Salas, c347611  
Ker. Corr. Inst. Mag. B-49  
4848 Goldmine Hwy.  
Kershaw, S.C 29067.

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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 Fnl. 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 Courthouse. 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)

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Fnl: 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 Gravelly 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 Gravelly.)

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.

#### ARGUMENT

(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 SCRCF 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), SCRCrimP. (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 SCRCF 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).

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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 motions to the opposing counsel and properly signed them according to the Rules of Court. See SCRCP. See Fn2

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

case no. 2016-001479

Wilfredo Salas,

Petitioner,

Vs.

State of South Carolina,

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

Attachment (a)

**Patrick Schmeckpeper**

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**From:** Patrick Schmeckpeper  
**Sent:** Monday, August 29, 2016 5:16 PM  
**To:** 'Gravely, Perry H.'  
**Subject:** RE: Wilfredo Salas (2015-CP-23-0985)

**Follow Up Flag:** Worldox

Judge Gravely,

Just a quick update – Mr. Salas has recently filed a second appeal from his previous PCR raising the same issue he is raising in his successive application. I'm going to wait until that is resolved to submit anything further in this case unless you would prefer otherwise.

Thanks,

Patrick Schmeckpeper  
Assistant Attorney General – PCR Division  
South Carolina Attorney General's Office  
(803) 734-3737

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**From:** Patrick Schmeckpeper  
**Sent:** Monday, August 22, 2016 9:14 AM  
**To:** 'Gravely, Perry H.'  
**Subject:** RE: Wilfredo Salas (2015-CP-23-0985)

Nothing further on my end – I'll go ahead and get everything sent out today to give Mr. Salas plenty of time to respond.

Thanks again, and sorry for the mix-up,

Patrick Schmeckpeper  
Assistant Attorney General – PCR Division  
South Carolina Attorney General's Office  
(803) 734-3737

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**From:** Gravely, Perry H. [<mailto:pgravelyj@sccourts.org>]  
**Sent:** Friday, August 19, 2016 5:47 PM  
**To:** Patrick Schmeckpeper  
**Subject:** RE: Wilfredo Salas (2015-CP-23-0985)

I guess that's ok. Your thoughts?

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**From:** Patrick Schmeckpeper [<mailto:PSchmeckpeper@scag.gov>]  
**Sent:** Tuesday, August 16, 2016 11:19 AM  
**To:** Gravely, Perry H. Law Clerk (Michelle Jones); Gravely, Perry H.  
**Subject:** RE: Wilfredo Salas (2015-CP-23-0985)

Michelle,

Thanks — from what I can tell, it looks like Mr. Salas was originally facing criminal sexual conduct, 1<sup>st</sup> degree (warrant number I-479542). That charge was dismissed, and the charge of lewd act on a minor was directly presented (Mr. Salas waived presentment to the grand jury). After speaking with the record department over at the clerk's office, I believe Mr. Salas' trial attorney, Scott Robinson, filed the motion to reconsider under the warrant number that had been dismissed rather than the GS number that Mr. Salas actually pled guilty to. As a result, it was never ruled on. My understanding is that because the motion to reconsider was not pending on the charge he actually pled to, it doesn't affect the court's jurisdiction to rule on this PCR application (or to have ruled on his previous application). That being said, I'd appreciate the opportunity to draft an amended return and motion to dismiss and conditional order of dismissal, just to make sure the record is clear and to give Mr. Salas a formal opportunity to respond. I'll be sure to include the relevant documents.

Sorry again for the confusion. I'll mail a copy of this email chain to Mr. Salas to avoid any ex parte communications.

Patrick Schmeckpeper  
Assistant Attorney General – PCR Division  
South Carolina Attorney General's Office  
(803) 734-3737

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**From:** Gravely, Perry H. Law Clerk (Michelle Jones) [<mailto:pgravelylc@scccourts.org>]  
**Sent:** Tuesday, August 16, 2016 10:45 AM  
**To:** Patrick Schmeckpeper; Gravely, Perry H.  
**Subject:** RE: Wilfredo Salas (2015-CP-23-0985)

Mr. Schmeckpeper,

I have pulled the proposed order and made a note to hold it until further we receive further information from you.

Michelle

M. Michelle Jones  
Law Clerk to the Honorable Perry H. Gravely  
Thirteenth Judicial Circuit  
P.O. Box 219  
Pickens, SC 29671  
Pickens Phone: (864) 898-5790  
Greenville Phone: (864) 167-8385

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**From:** Patrick Schmeckpeper [<mailto:PSchmeckpeper@scag.gov>]  
**Sent:** Tuesday, August 16, 2016 10:28 AM  
**To:** Gravely, Perry H.; Gravely, Perry H. Law Clerk (Michelle Jones)  
**Subject:** Wilfredo Salas (2015-CP-23-0985)

Judge Gravely,

Sorry to bother you — I recently sent a group of final orders to your office and just caught one of Karen's notes concerning Wilfredo Salas (2015-CP-23-0985). It looks like there might have been an outstanding motion to reconsider his sentence that was never ruled on. Would you mind holding off signing Mr. Salas' order while I check with the clerk's office and try to confirm that? He's currently on his second post-conviction relief application, so this may implicate his first application, as well.

Thanks, and I apologize for the confusion,

Patrick Schmeckpeper  
Assistant Attorney General – PCR Division  
South Carolina Attorney General's Office  
(803) 734-3737

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Honorable Daniel E. Shearouse  
Clerk of the Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**RECEIVED**

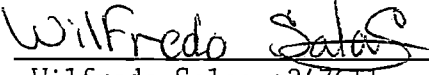
MAY 31 2018

SC Court of Appeals

Dear Mr. Shearouse:

Please find enclosed a copy of petitioner's Writ For Certiorari  
and Appendix I am filing. thank you.

Respectfully Submitted,

  
\_\_\_\_\_  
Wilfredo Salas, c347611

May 15, 2018.