

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

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JUN 18 2018

J. C. Nicholson, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2015-001576

State of South Carolina..... Respondent/Petitioner,

v.

Venancio Diaz Perez Petitioner/Respondent.


PETITION FOR REHEARING

Venancio Diaz Perez, pursuant to Rule 221(a), SCACR, requests rehearing of this matter in order to resolve the admissibility of Minor 2's testimony at his re-trial. The Court of Appeals, affirming the trial court, held that Minor 2's testimony was admissible under Rule 404(b), SCRE and State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009). (R. p. 653). While this Court unanimously decided to reverse Perez's conviction, the majority of this Court declined to address the admission of Minor 2's testimony. State v. Perez, Op. No. 27810 (S.C. Sup. Ct. filed June 6, 2018) (Shearouse Adv.Sh. No. 23 at 9-20). Accordingly, the trial court's and the Court of Appeals' erroneous ruling to admit Minor 2's testimony is now the law of the case. See Prince v. Beaufort Memorial Hosp., 392 S.C. 599, 709 S.E.2d 122 (Ct. App. 2011) (Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form.).

Minor 2's testimony consists of highly prejudicial propensity evidence that the State declined to pursue charges over. (Perez Principal Brief pp. 2-3). Its admission will be as just as prejudicial to the defense in Perez's re-trial as it was at his original trial. Accord Perez, supra at 19 ("The dangers of permitting the liberal admission of such prior bad acts are readily apparent.") (Hearn, J., concurring). If this Court wishes to ensure that Perez receives a fair re-trial, then the issue of Minor 2's testimony must be addressed in its opinion. See Rule 220(b), SCACR ("...every point distinctly stated in the case which is necessary to the decision of the appeal...must be stated in writing..."). The issue of Minor 2's testimony and the reversal of Wallace advanced by the concurrence are necessary to the decision of this appeal, and thus must be addressed in this opinion.

Wherefore, Perez requests that this Court rehear this matter as requested above and issue any other or further relief it deems just and proper.

Dated: 6/15/18



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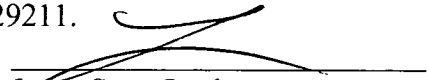
v.

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CERTIFICATE OF SERVICE

The undersigned certifies that the Petition for Rehearing was placed in the U.S. Mail, first class, postage prepaid on the date below to Amie L. Clifford, Special Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211.

Dated: 6/15/18


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