

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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SEP 17 2018

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
D. Craig Brown, Circuit Court Judge

S.C. SUPREME COURT

STEPHEN C. STANKO, #6022,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent

Appellate Case No. 2018-001623
Lower Court Case No. 2008-CP-22-1466.

MOTION TO DISMISS NOTICE OF APPEAL

Petitioner has filed notice of appeal regarding a circuit court order compelling Petitioner's production of documents in discovery. Respondent moves to dismiss the notice of appeal served and filed Friday, September 7, 2018. The taking of an appeal is not appropriate at this stage in the litigation. In support of its motion, Respondent would respectfully show unto this Court:

I.

This is a capital post-conviction relief on limited remand by prior Order of this Court. *Stanko v. State*, App. Case No. 2017-000211, S.C. Sup. Ct. Order dated Dec. 14, 2017 (ordering hearing "to determine if petitioner was prejudiced by [his initial post-conviction relief counsel] attorneys' lack of qualifications" pursuant to S.C. Code Ann. § 17-27-160(B) and *Robertson v.*

State, 418 S.C. 505, 795 S.E.2d 29 (2016)). This Court has ordered the prejudice hearing to occur by December 7, 2018. *Stanko v. State*, App. Case No. 2017-000211, S.C. Sup. Ct. Order dated Jul. 11, 2018. An Amended Consent Scheduling Order filed in Georgetown County on Jul. 18, 2018, set the hearing to begin by November 28, 2018. (Exhibit A).

This case is presently in the discovery stage. Petitioner has filed a notice of appeal from the circuit court's order granting Respondent's motion to compel documents pursuant to Rule 26(b)(1), SCRCF.

II.

Respondent moves before this Court for dismissal of the notice of appeal, as the order compelling discovery is not subject to interlocutory appeal. Appeal may be taken "from any final judgment, appealable order or decision." Rule 201(a), SCACR; *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). An interlocutory appeal is permitted only when the interlocutory order involves the merits or affects a substantial right. S.C. Code Ann. § 14-3-330 (1)-(2); Rule 72, SCRCF, note 1 (rule "designed to reduce appeals from interlocutory or intermediate orders in an action").

"[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right." *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008); *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005) ("an order denying or compelling pretrial discovery is not directly appealable since it is an intermediate or interlocutory decision"); *but see Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 576 n.9, 813 S.E.2d 292, 309 n.9 (Ct. App. 2018), *reh'g denied* (May 2, 2018) (granting interlocutory appeal for order denying motion to compel deposition because the order

had a sufficient nexus to appeal of order denying motion to compel arbitration in the same action). Even where this Court has granted a writ of certiorari to review a lower court's discovery order, it has dismissed the initial notice of appeal "as interlocutory and not immediately appealable." *Oncology and Hematology Assoc. of S.C., LLC, v. S.C. DHEC*, 387 S.C. 380, 381, n.1, 692, S.E.2d 920, 921, n.1 (2010) (finding breadth of discovery ordered by administrative law court an exceptional circumstance warranting grant of writ of certiorari and directing that discovery in that case be more narrowly tailored).

III.

WHEREFORE, Respondent submits the motion to dismiss the appeal must be granted as an order compelling discovery is not subject to interlocutory appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

CAROLINE SCRANTOM
Assistant Attorney General

BY:


CAROLINE SCRANTOM

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September 17, 2018

ATTORNEYS FOR RESPONDENT

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Stephen C. Stanko, #6022,

Applicant,

v.

State of South Carolina,

Respondents.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 2008-CP-22-1446
) (On remand from Appellate
) Case No. 2017-000211)

) **Amended Scheduling Order**

_____)
This capital post-conviction relief (PCR) action is on remand for the purposes of holding a hearing to determine whether Applicant was prejudiced by initial PCR counsel's lack of statutory qualifications for representation (the prejudice hearing). *Stanko v. State*, App. Case No. 2017-000211, S.C. Sup. Ct. Order dated Dec. 14, 2017.


Following a status conference held by the undersigned on June 28, 2018, in Florence County, at which undersigned counsel were present on behalf of the relevant parties, this Court Orders, with consent of the parties, the following timetable for this action's completion:

- 1) Applicant shall make its final disclosure of expert witnesses to Respondent by October 1, 2018, and make those witnesses available for deposition;
- 2) Respondent shall make its final disclosure of expert witnesses by October 31, 2018, and make those witnesses available for deposition;
- 3) The deadline for completion and submission of all discovery sought by the parties or otherwise ordered for production in this action is to occur on or before October 29, 2018; and
- 4) The prejudice hearing in this matter shall begin November 28, 2018, at Florence County Judicial Center.

FILED
 GEORGETOWN COUNTY, SC
 2018 JUL 18 AM 10:33
 ALMA Y. WHITE
 CLERK OF COURT

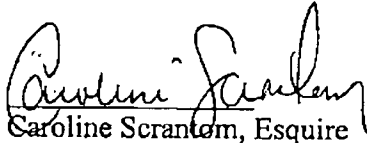
This Order should not be modified except upon motion to and order by the undersigned.

AND IT IS SO ORDERED.

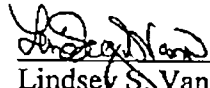

D. Craig Brown
Presiding Judge

July 16, 2018
Florence, South Carolina

SUBMITTED:


Caroline Scramton, Esquire
Office of the S.C. Attorney General
P.O. Box 11549
Columbia, SC 29211
cscramtom@scag.gov

--- WITH CONSENT: ---


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PROOF OF SERVICE

I, Caroline Scrantom, certify that I have served Respondent's *Motion to Dismiss Notice of Appeal* on counsel for Petitioner by depositing one copy of same in the United States mail, postage prepaid, to counsel for Petitioner, addressed as follows:

Lindsey S. Vann
Justice 360
900 Elmwood Ave., Ste. 200
Columbia, SC 29201

Henry Morris Anderson, Jr.
Anderson Law Firm, P.A.
265 W. Evans St.
Florence, SC 29501

This 17th day of September, 2018.


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ATTORNEY FOR RESPONDENT