

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Honorable Perry H. Gravely, Circuit Judge

Case No. 2015-CP-23-04747

JOSE ALBERTO MALDONADO, Pro - Se, # 312648,

APPELLANT,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR ABEYANCE

South Carolina Attorney General  
Alan Wilson

1000 Assembly Street  
Post Office Box 11459  
Columbia, South Carolina 29211

South Carolina Kershaw Department  
Of Corrections

Jose Alberto Maldonado, # 321648  
Appellant, Pro - Se

Kershaw Correction Institution  
Magnolia (B), Room, # 63  
4848 Goldmine Highway  
Kershaw South Carolina 29067

OCT 04 2017

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SC Court of Appeals

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SC SUPREME COURT

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**STATEMENT OF THE ARGUMENT PRESENTED**

Authomatically stay the time limits for perfecting the Appeal until the Order Granting Applicant's Rule 59(e), In Support, to Rules, Rule 59(b) and 60 (b), (SCRCP). The (attachments: F-1, & F-2), a void Order?

STATEMENT OF THE CASE

Appellant moves this Honorable Court of Appeals, to allow Appellant the case held in abeyance, until he heard upon a recently filed Motion of Order Granting Applicant's Rule 59(e), In Support of Rules, Rule 59(b), and 60(b), (SCRCP)(doc. 7), filed on: September 13, 2017 within the Court of Common Pleas, and also Appellant filed an amendment of Rule 59(f), SCRCP, Motion and (PCR. Act.), application, (doc. 8), issue dated on September 15, 2017. In which the "JUDGMENT IN A CIVIL CASE was made." When the judge's failure to sign the JUDGMENT together with such Order. See the Applicant's Amendment, and the Motion, (attachments), below this Petition.

This Rule 59(e), SCRCP, Motion is not already ruled on, under the Applicant's Ordered, that conviction and sentenced are vacated and the case is require to be remanded to the Greenville County Court of the General Sessions for new trial. Then Appellant would wish to amend the Order of Motion 59(f), to the (records), before this Honorable Court of Appeals, sending the Appellant's thirty (30) days of deadline, under the Rule 208(a)(1), SCACR. After the Notice of Appeal enter with this Court. And this Petition for abeyance as follows:

## ARGUMENT

Authomatically stay the time limits for perfecting the Appeal until the Order Granting Applicant's Rule 59(e), In Support, to Rules, Rule 59(b) and 60 (b), (SCRCP). The (attachments: F-1, & F-2), a void Order?

The Appellant is hereby, advised that the time limits under the filed Motion of Rule 59(e) SCRCP, within ten (10) days of the date of such Motion has been entered with the Greenville's Clerk of Court on August 14, 2017, this court ruled the motion a "fully consideration said Motion," and when this court has reviewed that filed and there does not appear to be any additional evidence to support an amendment to the "Order", previously filed in this matter. This court failed to provided any relevant information to Applicant/or to give adequate time in perfecting the Motion of Rule 59(e), SCRCP, and then denied said motion. See, the Motion of Rule 59(e), SCRCP.

Within ten (10) days and to file an "Ordered Amendment," the Motion of Rule 59(f) SCRCP. the Appellant issue and filed to Greenville County's Clerk of Court, on September 15th, 2017. See, the (attachments) below this Petition: The Motions.

The fact that Appellant is not an attorney does not relieve of the "responsibility to perfect the filed Motion of Rule 59(e), argue dated August 14, 2017." That PCR. Action, judge has the authority to notify the Applicant to "Perfect the Motion" for any "misunderstood statements, or misspelling written" at the time the PCR. Action judge reviewed the Motion. See, the filed Motion of Rule 59(e), filed to the court is total defective, the (PCR. Act-

ion) judge, did not make any specific findings of facts and conclusion of law as to rejected the court, Applicant's (PCR. Action, application), see the Ordered of Rule 59(f), (SCRCP)(R. p.7; fn.2) (doc.7)(Citing, Marlar v. State, 375 S.C. 407, at 409, 653 S.E.2d 266, 267 (2007) see also (R. p, 14)(doc. 7). Appellant, is hereby perfecting the Motion of Rule 59(e), SCRCP, and now enter in this Court of Appeals the copy "Motion from the original" have being file with the Greenville County's clerk of court. And this, Court have the right to review the argument in this action to the Greenville County's Circuit Court. See the "Perfect Motion of Rule 59(e) SCRCP, have been (attached), in comparison to the "Motion of Rule 59(e), when such court already ruled. Therein, is evidence the (PCR. Action), judge did not returned the Motion by Appellant perfected the Motion." And attached the full judgment Order signed together.

## I. GENERAL PRINCIPLES

Thus, any discussion of the rights of the Post-Conviction Relief Action, application judge must begin with the well-established principle that an Applicant/or Appellant, whether already the court prejudiced the Motion of Rule 59(e), SCRCF, and now merely stay the limits for perfecting the Motion of Rule 59(e), with the pending Applicant's Ordered to the PCR. Action, application judge. Therein, this Honorable Court of Appeals Rule as follows:

1. 'But of course if after the jurisdiction of this Honorable Court attaches, a question arises which ought first to be submitted to the judge, leave to do so may be granted by this Court upon Applicant's "Ordered Amendment", the Motion of Rule 59(f), (SCRCF), by way of analogy to the prescribed practice in the evidence.'

2. See Supra, this Court held in the Case of Epps v. Bryan, 219 S.C. 309, 65 S.E.2d 113 (1951), that an order issued by the Circuit Court, after an appeal had been taken an abeyance from a previous orders, was void by a like token, this Court hold that any proceedings, relative to the Order of August 24, 2017, entered with the Clerk of Court on September 1, 2017, after the notice intent to Appeal, Final Order of Dismissal, PCR. Action judge signed on 18th, July 2017, Clerk of Court received on July 21th, 2017, See the Motion of Rule 59(e), SCRCF, (Attached: Q-3).

3. That, the Order from Honorable Perry H. Gravely presiding judge, August 24, 2017, were void Cost v. Florence Printing Co., 237 S.C. 655, 118 S.E.2d 696

(1961); Rylee v. Marett, 121 S.C. 113 S.E 843  
(1922).

Since the jurisdiction is proper of this Hon: Court of Appeals, to the exclusion of the Circuit Court does not attached until the filing of the "Return and Motion to Dismiss, on March 8, 2017, and Conditiona Order of dismissal filed on March 13, 2017," before an appeal is perfected as require by Rule 240(b)(e), SCACR. S.C. Code Ann. § 17-23-110; State v. Aldret, 333 S.C. 307, 312, 509 S.E.2d 811, 813 (1999)(citing, State v. Williams, 303 S.C. 410, 401 S.E.2d 168 (1991). "A contemporaneous objections is required to preserve an issue for appellate review." It is within the power of the Circuit Court to dismiss an appeal by determining and declaring that this Court has been abandoned, or the right of appeal waived, by failure to take the steps required by law to perfect appeal. And

4. The Motion of Rule 59(e), SCRCP, now it has been perfected and the case as presented on the Motion, before Judge Perry H. Gravely was such as to entitle Applicant to the Order of withdraw. When Respondent had faile to prepare his case with exceptions and serve them on the opposite as Applicant within, the statute, clause, 44-53-375(C)(2)(b), 17-27-40, and § 17-27-70. See the filed Ordered, (R. Pp. 22-23)(doc. 7), from September 13, 2017, (citing, section 17-27-70(a), Mandates of Rule 12(a) SCRCP. J. Clayton Mitchell assistant attorney general had failed to avail himself of the remedy provided by the (PCR. Act), application's proceeding. Which is as follows:

See, at U.S. Ct. App. 4th Cir. Rule 12(d). Rhines v. Weber, 544 U.S. 269, 125 S.Ct. 1528, 1530 161 S.E.2d 440 (2005); Metters v. Mims, 370 S.C. 529, 533, 635 S.E.2d 640, 643 (Ct. App. 2006) (when reviewing the grant Rule 59(e) SCRPC, of the Order Applicant's Rule 59(e), In Support, to Rules, Rule 59(b), & 60(b), (SCRPC), Motion. This Honorable Court of Appeals applies the same standard which governs the Circuit Court under Rule 56(c), SCRPC: Summary judgment is proper when there is no a genuine issue as to any material fact and that the moving party is entitle to a judgment as a matter of law.

South Carolina is well-settled that until an order is entered by the Clerk of Court, the Post - Conviction Relief Action, application, court judge retains control of the case. See Upchurch v. Upchurch, 367 S.C. 16, 22-23, 624 S.E.2d 646 (2006); Bowman v. Richland Mem'l Hosp. 335 S.C. 88, 91, 515 S.E.2d 259, 260 (Ct. App. 1999) ("an Order is not final until it is written and entered by the Clerk of Court, the judge retains discretion to change his mind and his ruling accordingly."); Rule 58(a)(1), (SCRPC); Seroskin v. Seroskin, 381 S.C. 306, 315, 316, 672 S.E.2d 589, 594 (Ct. App. 2009).

Therefore, the oral ruling from the bench was not binding upon the Judgment In A Civil Action Case, against a Jose Alberto Maldonado, see the filed Motion Order Granting Applicant's Rule 59(e), In Support of Rules, Rule 59(b), and 60(b), (SCRPC)(Doc.7)'s (attached: F-2), i.e., Ford v. State Ethics Comm'n, 244 S.C. 642, 545 S.E.2d 821, 823 (2001)(citing, Rule 58, SCRPC).

Further, this Honorable Court of Appeals held an abeyance such Order, from September 1, 2017, and Granting Applicant's Ordered under Rule 59(f), SCRPC, because the "oral ruling from the beanch Order was void and that court "properly withdraw its own order."

See, First Unition National Bank of South Carolina v. Hitman, Inc. 306 S.C. 327, 411 S.E.2d 618 (Ct. App. 1991), aff'd 308 S.C. 421, 418 S.E.2d 545 (1992). See, id., in Bayne v. Bass, 302 S.C. 208, 394 S.E.2d 726 (Ct. App. 1990) (citing, Metts v. Mims, 535, 635 S.E.2d at 643. This court stated as follows:

Until the paper has been delivered by the judge to the Clerk of Court, to be filed by him as an Order in the Case, see the (attached: F-2) it is subject to the control of the judge, and may by him be "withdraw at any time before such delivery..."

'A judgment is the final determination in the matter of one Jose Alberto Maldonado in an action' "while the written instrument purporting to be the judge in a cause remains in the possession of the judge who is to pronounce it is on no effect, instead (attached: F-2)."

\* \* \* 'Even if as contended by Applicant the (PCR. Act.), application judge granted an oral order to Respondent such pronouncement "is not a final ruling on the merits nor is it binding, see the (attached: F-2) on the Applicant until it has been reduced to writing signed by the judge and delivered for recordation in the record.'"

The Judgment In A Civil Case, at the Respondent's mistake, to introduce the wrong case No. 2015-CP-23-04757 had not been signed, and must be in writing and until such time the judge may modify, within the Applicant's right "Post-Conviction Relief Act. Application Case No.2015-CP-23-04747", amend or rescind such an oral order. See also in, Tant v. South Carolina Dep't of Correction, 408 S.C. 334, 343-44, 759 S.E.2d 398, at 403 (1014)("in a situation such as the one on appeal, due process requires the judge's oral pronouncement control over a conflicting written 'Judgment In A Civil Case' signed together with the Order and filed with the Clerk of Court"). See the Ordered's

(attachments: F-1, and F-2).

"The time for taking any step or proceeding in the preparation and perfecting of appeal from the Greenville County Circuit Court of Common Pleas to the Court of Appeals, as prescribed by law," may be extended by the judge who heard the cause, or by any one of the justice of the Court of Appeals, the time for this Hon: Court of Appeals to decide and ruling the case, to return back in the Court of Common Pleas. Under Rule 203(b)(1), (SCACR)(Citing, Rule 52(a)(b), SCRCF, when appellant made not later than 10 days, after received of written notice of entry of judgment, September 8, 2017, Taylor v. James F. Byrnes Academy Inc., 290 S.C. 261 266, 349 S.E.2d 888, at, 890 (Ct. App. 1986). The filed Motion of Amendment (doc.8), had been amended to the findings, of the Order's judgment to the "General Sessions Court"; when the judgment from the Court of Common pleas, should be null and void.<sup>Fh.1.</sup> Rule 54(c)(d), SCRCF.

The Notice of such Ordered to the opposite party, Attorney Generals's office, entered with the Clerk of Court in time. Except the time of given this "Notice of Appeal to the opposite party, and now enter with the Greenville County's Court too."

Rather then, the Order Granting Applicant's Rule 59(e), In Support, to Rules, Rule 59(b), & 60(b), (SCRCF), filed (doc.7) on September 13, 2017, and Applicant's Amendment of Rule 59(f), SCRCF, filed (doc. 8) issue dated September 15, 2017. Now have been submitted inside to this Honorable Court of Appeals by reviewing the findings of fact. And Should be Grant Appellant's Petition for Abeyance.

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1. [p]rovided, that whenever a motion for a new trial upon the judge's minutes shall have been made and the decision thereon not be both heard and filed at the term at which the trial is had, then "notice of intention to appeal either from the judgment or the Order Granting a refusal of a new trial shall be given to the opposite party or his attorney within 10 days after receipt of written notice that such Order has been Granted or Rendered." [Emphasis ours]. See id., at 266, 349 S.E.2d 888, at 890 (Ct. App. 1986).

CONCLUSION

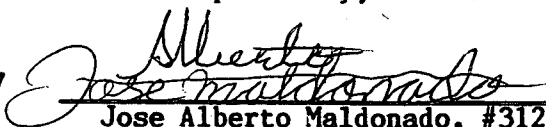
IT IS THEREFORE ORDERED, Granting that the Motion of Rule 59(e), SCRCF, and withdraw the order, and in the Alternative to Make More Definite and Certain are granted, with leave of the Applicant, or "Appellant" to amend their Rule 59(f), SCRCF, filed within ten (10) days, pursuant to the Rule 59(g), SCRCF. Of the date of this Order Appellant received on September 8, 2017.

Based upon the aforementioned case law, the final effective date of the Post-Conviction Relief Action, Application judge's order is ineffect upon the date the order was entered by the clerk of court on September 1, 2017 not when the order was signed.

The Order was not binding on the Applicant's Judgment In A Civil Action Case 2015-CP-23-04747. And this is a Petition for Abeyance should be grant,) until he is heard upon a recently filed Applicant's Motions. See the (Attachments), below this Petition.

Respectfully, Submitted

Done this 4th day of October, 2017

  
\_\_\_\_\_  
Jose Alberto Maldonado, #312648  
Pro - Se, Appellant,

Kershaw Corr. Inst. MB/Room, #63  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Perry H. Gravely, Circuit Judge

Case No. 2015-CP-23-04747

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SC Court of Appeals

JOSE ALBERTO MALDONADO, # 312648, Pro - Se,

APPELLANT,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned Appellant pro - se, hereby certify on today's date he mailed a copy of the PETITION FOR ABEYANCE, and also the NOTICE OF APPEAL. To Respondent, addressed as follows: AG's Office Alan Wilson, 1000 Assembly Street, P.O. Box 11459 Columbia South Carolina 29211. And the File Original two Copies as follows:

The Honorable Jenny Kitchings  
Clerk of Court, S.C. Court of Appeals

Honorable Paul B. Wikensimer  
Clerk of Court

Post Office Box 11629  
Columbia, South Carolina 29211

305 East North Street  
Greenville, South Carolina 29601

Further, Appellant said and Certify

This 12 day of October, 2017.

SWORN TO and SUBSCRIBED Before Me

This 1 day of October, 2017

Notary PUBLIC for SOUTH CAROLINA

My COMMISSION Expires: Jan 27, 2025

Respectfull, Submitted

*Jose Alberto Maldonado*  
Jose Alberto Maldonado, #312648  
Appellant, Pro - Se,  
Kershaw Corr. Inst. MB/Room, # 63  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

Jose Alberto Maldonado, #312648  
Kershaw Corr. Inst. MB/Room, # 63  
4848 Goldmine Highway  
Kershaw, South Carolina 29067

October 5th, 2017

**RECEIVED**

The Honorable Jenny Kitchings  
Court of Appeals

OCT 10 2017

SC Court of Appeals

Clerk of Court  
Post Office Box 11629  
Columbia, South Carolina

Re: Jose Alberto Maldonado, #312648 Case No.2015-CP-23-04747 v.  
State of South Carolina.

Dear Jenny Kitchings:

Please find enclosed My Petition for Abeyance, within the "Notice of Appeal," with case document for appeal. And also the you file an original and provide Appellant within case number, or the clock-stamped copy when you received this Notice of Appeal. That I can keeping a copy for my records.

Thank you for your kind service in this matter. And I looking forward to hearing from you court sooner, concerning the content of this Petition for Abeyance.

Sincerely, Submitted

Enclosures:(4)

Attachments:(2)

  
Jose Alberto Maldonado, #312648  
The Appellant

Cc: AG's Office, Alan Wilson

Jose Alberto Maldonado #312648

Kershaw Corr. Inst. MB/Rover, #63

OCT 05 2017

4848 Goldmine Highway

Kershaw, South Carolina 29067

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OCT 10 2017  
SC Court of Appeals

LEGAL - MAIL

The Honorable Jenny Kitchings  
Clerk of Court, S.C.  
Court of Appeals

Post Office Box 11629  
Columbia, South Carolina 29211