

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
ROBERT E. HOOD, CIRCUIT COURT JUDGE

Case No. 2016-CP-40-6916
Appellate Case No. 2017-002577

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SC Court of Appeals

Charles Eugene Carpenter,.....Appellant,

v.

South Carolina Department of Corrections and
The State of South Carolina, Respondents.

**FINAL BRIEF IN REPLY TO
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

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STATEMENT OF THE CASE

Subsequent to the filing of Appellant's Brief and the brief of Respondent South Carolina Department of Corrections (hereafter SCDC), the South Carolina Supreme Court issued an order denying Appellant's petition for original jurisdiction and habeas corpus. The order, dated June 12, 2018, also denied Appellant's motion to certify the appeal pursuant to Rule 204(b), SCACR.

ARGUMENT IN REPLY TO RESPONDENT SCDC

1. Appellant adequately preserved and addressed all issues with respect to all Respondents.

Respondent South Carolina Department of Corrections (hereafter SCDC) first argues that Appellant failed to preserve arguments as to habeas corpus relief against SCDC. The basis for such an assertion is that argument in Appellant's Brief is allegedly solely directed at the "Order Dismissing Petition for Writ of Habeas Corpus" (termed "Habeas Order" in Appellant's Brief) instead of also being directed at the "Order for Judgment in Favor of the South Carolina Department of Corrections" (termed the "SCDC Order" in Appellant's Brief). Resp. SCDC Br. p. 4-5. However, the portion of the SCDC order addressing habeas issues¹ is in line with the habeas discussion in the "Habeas Order," and thus both are fully and fairly addressed by Appellant's discussions of the same in its Appellant's Brief, even if express reference to the issue as set forth by the circuit court only quoted from one of the two orders that addressed the issue.

To the extent that SCDC wishes to seize upon the "proper party" snippet in the SCDC Order to claim an unpreserved jurisdictional issue, Appellant would point out that the order did

¹ This section of the SCDC Order is labeled "Habeas Relief" and appears on pages 9-10 of that order. (R. pp. 23-24).

not rely on that snippet as the basis for any conclusion or finding in its order. Instead, before the end of that sentence even, the order shifted to the only issue it would fully address in the remainder of the order, the appropriateness of the habeas issue being in circuit court generally without respect to *which* party in circuit court would have to defend such a claim. As such, Appellant rightfully addressed in his brief the errors related to the “this case shouldn’t be here” position taken by the court, and did not address the irrelevant side issue of SCDC seeking to foist that issue solely upon the State (a position considered twice before, both times resulting in SCDC not being relieved as party).² See *Conits v. Conits*, Op. No. 27749 (S.C.Sup.Ct. filed Nov. 15, 2017)(Shearouse Adv.Sh. No. 43 at 13) (citing *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011) (“We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner.”)); *Myers v. S.C. Dep’t of Health & Human Servs.*, 418 S.C. 608, 626 n. 2, 795 S.E.2d 301 (Ct.App.2016) (finding the “crux of his argument” adequately presented an issue for consideration, even though “not specifically raised”).

2. The Circuit Court was proper venue for consideration of this habeas petition.

As anticipated, Respondent SCDC tries to distinguish the Toal order and the final orders by claiming Judge Toal was engaged in a more restricted, preliminary review of the matters at hand, and thus her order had no preclusive effect. As stated in Appellant’s Brief, however, “nothing factually referenced or legally cited in the final orders now being appealed properly justify any determination or action to the contrary” of her order.

² In the Statement of the Case for its brief, SCDC claims that its Motion to Dismiss was by Judge Manning “granted the motion [to dismiss] to the extent” that he found the State should be added as a party. Judge Manning did find that the State was a necessary party under Rule 19, SCRPC, and therefore should be added. But he made no *substitution* of parties, nor did he release SCDC as requested, and thus did not “grant” anything relieving SCDC of any responsibility as to habeas corpus. (R. pp. 4-6). Nor did Judge Toal do so when she finally decided the motion to dismiss on its merits. (R. pp. 7-12).

SCDC references “evidence presented at trial, which was not before Judge Toal at the motion to dismiss hearing” regarding Carpenter’s previous and various attempts at rectifying improper actions taken against him. Resp. SCDC Br. p. 6. However, Judge Toal’s order makes specific reference to a 1993 petition for writ of habeas in the circuit court, and subsequent appeal to the Supreme Court, and regardless of the nature of motion before her, she was aware of the existence (and limits) of *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Thus, it can be said again that basis for ruling in each circumstance, Judge Toal and subsequently Judge Hood, was an identical, purely legal issue of the subject matter jurisdictional limits of the circuit court with respect to habeas petitions. Legal issues were the same, and thus the result should have been the same.

3. Appellant’s prior use of the internal grievance process has not precluded his current claims made in circuit court.

Respondent contends that Appellant has failed to address the conclusion by the trial court that Appellant previously had notice and an opportunity to be heard, and therefore has no viable due process claim. However, Appellant did generally reference his history of prior legal action in his brief, and take exception to the same as being a preclusion to his current action. App. Br. p. 14. The particular reference made was specifically as to the Habeas Order and prior appeals and PCR actions. However, the same relevant point with respect to the prior internal grievance activity referenced by SCDC is the point made in reference to the prior PCR actions, factual detail of the activity makes clear that the issues raised in those separate matters was not identical to those currently raised by Appellant in the underlying circuit court action. For instance, none of the internal grievance documentation produced by SCDC referenced the manner in which Bobby Horne was treated disparately. (R. pp. 441-442). Additionally, those internal grievances were filed

prior to the expiration of his lawful 25-year sentence, and raising the issues now, when prevailing on the sentence length issue would mean that Appellant is being detained past the lawful conclusion of his sentence, is fundamentally different. As Judge Toal recognized in her prior order:

the *Al-Shabazz* process exists to challenge internal SCDC matters, such as disputes about sentencing credits, in most circumstances. However, that process does not preclude the common law writ of habeas corpus... Moreover, none of [Appellant's] prior filings raised the issue now before the Court, *i.e.*, whether Carpenter's term of incarceration has expired such that he is being illegally held, and that issue is not required to be determined internally by SCDC procedure.

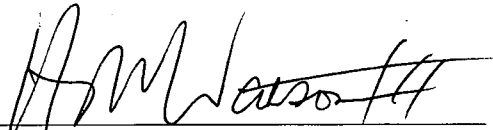
(ROA pp. 10-11)

4. Appellant's Equal Protection claim is not premised on notion that all inmates should be treated in a certain manner, just that Appellant and another particular inmate sentenced under the same indictment should be treated equally.

Appellant has set forth evidence that he has been treated unequally as compared to one particular person convicted for the same offense, pursuant to the same indictment as Appellant. SCDC acknowledges an error with Appellant's co-conspirator resulted in that person being released with improper credit against his sentence. But then states that "it does not follow that this mistake should result in the release of *all* inmates convicted of the same offenses and correctly sentenced." (emphasis original). Appellant first contends that he was not "correctly sentenced" for reasons explained in detail in this appeal. But beyond that, he clearly is not advocating for a broad release of numerous inmates as SCDC makes it appear. He merely wants "all" inmates sentenced under the same indictment (No. 90-GS-47-5002), for the same offense, to be treated equally. Adding Appellant alone to that class of individuals would make that narrow class "all-inclusive" and be as broad as the appropriate, full relief should be in this matter.

CONCLUSION

For the reasons set forth in Appellant's opening Brief, the trial court orders should be reversed, with remand of the matter back to the trial court for further proceedings.



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October 26, 2018

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

Respectfully submitted,



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