

The Supreme Court of South Carolina

Johnny Lee Paden, Jr., Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2019-000993

Lower Court Case No. 2006GS2304246

ORDER

The court of general sessions denied relief to petitioner under the Access to Justice Post-Conviction DNA Testing Act (S.C. Code Ann. §§17-28-10 to -120). The South Carolina Court of Appeals denied the petition for a writ of certiorari to review that denial on April 30, 2019. When no petition for rehearing was received within the time provided by Rule 221 of the South Carolina Appellate Court Rules (SCACR), the Court of Appeals sent the remittitur on May 17, 2019.¹

In a motion dated June 14, 2019, petitioner now seeks review of the decision of the Court of Appeals. Since review of a decision of the Court of Appeals is by a petition for a writ of certiorari under Rule 242, SCACR, this motion has been construed as a petition for a writ of certiorari.

Under Rule 242(a) of the South Carolina Appellate Court Rules (SCACR), this Court will only review a final decision of the Court of Appeals, and a decision is not final for the purposes of review until a petition for rehearing or reinstatement has been acted on by the Court of Appeals. Rule 242(c), SCACR. Since no petition for rehearing has been ruled on by the Court of Appeals in this matter, there is no final decision for this Court to review.²

¹ Before the Court of Appeals, the Appellate Case Number was 2018-000098.

² Petitioner did attempt to file a *pro se* petition for rehearing with the Court of Appeals. This petition, which was dated May 22, 2019, was actually received by the Court of Appeals on May 24, 2019. The Court of Appeals rejected this

Further, when no timely petition for rehearing was received by the Court of Appeals, the Court of Appeals properly sent the remittitur. Rule 221, SCACR. The sending of the remittitur ended appellate jurisdiction over this case. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

Accordingly, the petition for a writ of certiorari is dismissed.



C.J.

FOR THE COURT

Columbia, South Carolina
June 20, 2019

cc: Mr. Johnny Lee Paden, Jr.
DeShawn Herman Mitchell, Esquire
Melody Jane Brown, Esquire
Joanna Katherine Delany, Esquire
The Honorable Jenny Abbott Kitchings

untimely petition for rehearing for two reasons. First, the *pro se* petition was improper because petitioner was represented by counsel before the Court of Appeals. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989). Second, the petition could not be considered because appellate jurisdiction had ended with the sending of the remittitur.