

Carnie Norris
Q4B223 #227226
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

RECEIVED

JUL 02 2019

SOUTH CAROLINA OFFICE OF INDIGENT DEFENSE
Susan B. Hackett, Esquire
Assistant Appellate Defender
11330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina
29201

S.C. SUPREME COURT

RE: REBUTTAL TO THE JUNE 12, 2019, CORRESPONDENCE
NORRIS V. STATE, #2012-CP-42-4651
NORRIS V. STATE, #2019-000334

Ms. Hackett,

Please note that I am in receipt of this Office's correspondence, dated June 12, 2019, concerning the Motion To Dismiss I filed on May 31, 2019, relating to an issue of an untimely filing of a post-trial pleading. Although I have read this Office's position in this matter, I am somewhat confused and befuddled as to this Office's stance in this matter; especial;ly in light of the events and circumstances of this particular case.

I have received and reviewed the cases that this Office has supplied me for my inspection, and where this Office seems to assume that they are relevant to my claims. I am especially perplexed by the case of Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (2009). One opinion is conflicting as to the position that this Office took in Lake v. State, ___ S.C. _ 826 S.E.2d 585 (2019), [WL 2524602]. because of the merits of this case was founded upon the position that the State is precluded from advancing an appeal from a position inconsistent with the position taken at trial. This is one of the basis' I am attempting to preserve and litigate upon in the dismissal motion.

It would seem apparent that this Office finds the failure to timely comply with the mandatory time periods of Rule 59(e) somewhat dwarfed or inapplicable to this current case and its issues. When I view this Office's position that has been asserted as to the merits of this Motion To Dismiss; especially in light of the evidence attached to that Motion, it seems that this Office has taken an adverse stance contrary to my rights, privileges and Court Rules under well-settled standards. Furthermore, I am of the belief that there is no excuse that can reasonably be provided that could permit these Respondents the opportunity in which to be granted a grace beyond the mandatory time limits embedded within Rule 59(e), of the South Carolina Rules of Civil Procedure, SCRPC. (See Fn. 1). I do not believe that this Office has taken my Motion, and its contents, seriously, nor has it taken the time in which to look

Fn. 1 - Rule 59(e), SCRPC, provides: "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."

at the evidence attached to the Motion To Dismiss.

This Office has supplied me with a copy of the Motion To Alter Or Amend Judgment, i.e., Rule 59(e), that was purportedly served, and filed, on September 12, 2017. Yet, a careful examination of this purported post-trial pleading clearly demonstrates that it was [clock-stamped] on September 15, 2017; but, was "VOID CLOCK STAMP ERROR". Had this pleading been competently filed with the Clerk of Courts Office, then that would have established the Rule 59(e) motion was timely filed. As the record shows, it was not. The September 12, 2017, pleading was in fact refused by the Clerk of Courts Office because of an apparent defect or error in the pleading. It is irrelevant that the Respondents made an error when preparing the pleading, because they were bound by whatever they included in the pleading. Charleston County School Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 559 S.E.2d 362 (Ct.App. 2001) (Parties are judicially bound by their pleadings unless withdrawn, altered, or stricken by amendment or otherwise). There is no place in any of these records as to whether the Respondents timely attempted to correct the deficiency in which these Respondents intentionally caused.

My position that these so-called "scrivener's error", as this Office puts it, can not simply be overlooked. I take this position in accordance with Rule 11(a), of the South Carolina Rules of Civil Procedure, SCRPC. (See Fn. 2). Respondents simply can not rely on an error, whatever the error is, which was generated and prepared by the attorney within that Office, as an excuse to overcome what is specifically mandated by the Rules of Court, or affirmative defenses, because the opposing party could simply attempt to file whatever matter they desired, in whatever time frame they wished, that exceeded

the mandatory time limits of that Rule. The time limit within Rule 59(e) specifically mandates a 10 day performance. One point, a post-trial motion that is not filed with the Clerk of Courts Office is not a proper pleading and cannot be excused for any defects which were the product of the parties own negligence. To permit such an abnormal and ambiguous application of that specific Rule, would undermine the demands of justice, ignore the minimum due process rights and Rules for effective pleadings and litigation.

We must examine the evidence, and events, in a manner that would provide a clear picture of these claims asserted in the original Motion To Dismiss and rebuttal to what matter have recently been disclosed to me.

As this Office is aware, on MAY 31,2019, I served and have diligently attempted to file with this State' Supreme Court Motion To Dismiss Respondents Appeal due to that COURT having appellate and/or subject matter jurisdiction because of an untimely Rule 59(e) motion. As the Exhibits plainly show, there exists a meritorious claim relating to the failure to timely file the Rule 59(e) pleading. Clearly by the plain and unambiguous language of Rule 59(e), this type of motion requires entry of the pleading and service to all parties, which includes the trial judge, not later than 10 days after receipt of the order from that judge granting or denying the relief.

Fn. 2 - Rule 11(a), SCRCF, provides in pertinent part: "Every pleading, motion or other paper of a party represented by an attorney shall be signed ... signature of an attorney ... constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay."

On June 12, 2019, this Office revealed a document, i.e., Motion To Alter Or Amend Judgment, that is purported to be sufficient for the tolling of the mandatory 10 day period. It has come to my attention that this Office is of the opinion the September 12, 2017, Rule 59(e) motion creates some form of cushion which makes it timely filed. I have found that such a stance does not comport to well-settled standards of law.

First of all, the September 12, 2017, motion was not "filed" for all intents and purposes as required in Upchurch v. Upchurch, 367 S.C. 16, 624 S.E.2d 643 (2006). In Upchurch, our Supreme Court held that "only after the order is filed with the Clerk of Court are the parties given notice of the order." See also Bowman v. Richland Memorial Hosp., 335 S.C. 88, 515 S.E.2d 259 (1999). There arises a situation that placed the question of "timeliness" into jeopardy. As this record reflects the September 12, 2017, motion was clock-stamped on September 15, 2017; but, on that same day, it was "VOID CLOCK STAMP ERROR". It would seem by this document that the Respondent's failure to abide by the Mandates of Rule 11(a), SCRCP.

Simply because this Office would tempt me to believe the error that was caused and created at the hands of these Respondents was a minor error ... does not foreclose the fact that it costs them the ability to timely file their post-trial pleading. This does not excuse the fact that the September 12, 2017, motion was not timely filed; especially where the Clerk of Court refused to file the motion. As far as the email goes ... emails are not pleadings. Even if it could be considered persuasive that the email this Office provided was sufficient as a means of providing "notice", it does not foreclose the fact that the Rule 59(e) motion, which was finally filed on September 25, 2017, was a timely filed motion.

As an example, this Office could inform me, (verbally, email, correspondence), that was in the process of instituting a civil rights action against me; then fail to do so within the mandatory two year period, surely this would be lost due to the fact that this Office failed to meet the specific time line. The Respondents attempted to file a post-trial motion on September 12, 2017, but due their negligence, that attempt did not cease the 10 day period of Rule 59(e) from expiring. It is my opinion that, had I failed to serve such a pleading within the ten days prescribed by Rule 59(e), my claims would be considered moot. Furthermore, I find it hard to swallow that the Respondents mailed a second Rule 59(e) motion to be filed with the Clerk of Courts Office on September 19, 2017; and it was clock-stamped on September 25, 2017. My position lays in the fact that these two offices are across the street from each other. It does not calculate.

Then we must examine the mailing issue ... In Gary v. State, 347 S.C. 627, 557 S.E.2d 662 (2001), this Court held that "It is clear under South Carolina law that mailing does not constitute filing. When a statute requires the filing of papers or documents, it is filed when delivered and received by the proper officers." Also Fox v. Union-Buffalo Mills, 226 S.C. 561, 86 S.E.2d 253 (1955) (failure to properly serve the commissioner, by mailing, did not constitute filing); Ward v. State, 2011 WL 11748286 (matter not filed until received by the Clerk of Court). And where the Respondents have relied upon a consecutive or second Rule 59(e) motion for an attempt to salvage their untimely filing; let the record show that the second Rule 59(e) was completely out of time. (See Motion To Dismiss, Exhibit [2]). Neither one of these Rule 59(e) motions provide any form of proper notice. Especially where the facts are recorded within the September 25, 2017, pleading. ("This

Court granted relief by order dated September 6, 2017. Respondent received the filed signed order via Spartanburg Clerk of Court on September 8, 2017."). It would be reasonable to me that had the Respondents stated, in their September 25, 2017, motion, there had been an attempt to file on September 12, 2017, that ththat post-trial motion had been refused (September 12, 2017), there may have been a manner available to them to salvage their pleading and position. Yet, the failure to preserve that issue is not properly before this Supreme Court, at this time. Simply put, it was not preserved, either by pleading or argument, in the lower court and cannot be asserted as a justification or defense before the Supreme Court. Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct.App. 1998). Especially where this issue or material fact would have been crucial, in nature, as establishing an excusable presumption that the second Rule 59(e) motion was properly and timely filed. There is no "plain error" rule in South Carolina appellate courts, which does not recognize in certain circumstances the allowance of consideration, or even to rectify an error, not raised or made a part of the record by a party. Dykemia v. Carolina Emergency Physicians, P.C., 348 S.C. 549, 560 S.E.2d 894 (2002); Kennedy v. South Carolina Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001). The issue that the September 25, 2017, motion, which is filed completely out of time, does not support that it is a [second] like motion, and this is not a fact which is supported by any part of the record.

Secondly, in taking the opportunity in which to examine the language and intent used when promulgating Rule 59(e), it is evident that there exists mandatory language which commands a specific time line for the performance in filing the post-trial motion. The word "shall", as provided in Rule 59(e), has been held to create a duty that cannot be disregarded. Abbeville School District v. State of South Carolina, 335 S.C. 58, 515 S.E.2d 535 (1999).

The interpretation of Court Rules are determined in the same manner as statutes. The cardinal rule of statutory construction is to ascertain the intent of the legislature when creating or promulgating a provision. Nexsen v. Ward, 96 S.C. 313, 80 S.E. 599 (1914); Media Gen. Communications, Inc. v. South Carolina Department of Revenue, 388 S.C. 138, 147-48, 694 S.E.2d 525, 529 (2010). If there is no ambiguity in the provision sought to be enforced, then the Supreme Court has no right to impose another meaning. Gay v. Ariail, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009); Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). There is no other manner of application for Rule 59(e) ... it has a mandatory 10 time period that is strictly enforced. The reason for this strict and unveering amount of time is due to the fact that trial judges are held that circuit for a limited period of time, as general rule, and the trial judge who presides over that particular proceeding has exclusive jurisdiction over the matter in which he presided. Ness v. Eckerd Corp., 350 S.C. 399, 566 S.E.2d 193 (Ct.App. 2002)(trial judge retains jurisdiction to alter judgment once filed; after 10 days jurisdiction is lost); Ackerman v. V-3 Chemical, Inc., 349 S.C. 212, 562 S.E.2d 613 (2002).

Surely we must be mindful of the fact that (1) there was an initial Rule 59(e) motion which the Clerk of Court refused to file (or once filed voided the clock stamp because of error in the pleading) for having the "wrong case #" (it is immaterial why the Clerk voided the clock stamp), the fact remains that the initial Rule 59(e) was not filed properly); (2) that in preparation of a second Rule 59(e) the drafter (Respondents) failed to disclose that there had been an initial Rule 59(e) and this now makes that fact obsolete; (3) there was a change in representation between the initial Rule 59(e) and the second Rule 59(e), without notice to the opposing party; and (4) that the filed Rule 59(e), dated September 25, 2017, was completely

out of time. The fact that Respondents did not adhere to the [10] day mandated time period for Rule 59(e) has caused the original PCR court not to have jurisdiction to entertain the second Rule 59(e). Heins v. Heins, 344 S.C. 146, 543 S.E.2d 224 (Ct.App. 2001)(motion was filed more than 10 days after the initial order, it could not properly have been before the court); Pittman v. Republic Leasing, Inc., 351 S.C. 429, 570 S.E.2d 189 (Ct.App. 2002)(trial court lacked subject matter jurisdiction to award attorney fees ... motion for fees was untimely ... failed to file within 10 days of judgment). And I have demonstrated that "mailing" does not constitute a filing.

It is clear that there has been a deficient, negligence performance where Respondents have not abided by the Rules of Court, (Condon v. State, 354 S.C. 634, 583 S.E.2d 430 (2003) (the Attorney General, like everyone else, must follow the Rules of Civil Procedure), and this has caused an untimely Rule 59(e) motion to be filed within the Clerk of Courts Office, and as such has deprived the Supreme Court the authority and/or jurisdiction in which to entertain the appeal sought in this matter by Respondents. Casual Ins. Co. v. Caldwell, 338 S.C. 1, 524 S.E.2d 416 (1999)(failure to timely file post-trial motion made the motion untimely)(relying on Coward Hund Construction Co. v. Bell Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct.App. 1999).

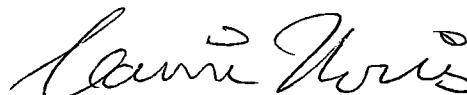
Please note that, if, this Office cannot look beyond the stance that may be taken contrary to my Motion To Dismiss, and adheres to its position in the June 12,2019, correspondence, especially in light of these Exhibits and arguments; and the Motion is dismissed due to "hybrid representation" (when I have not attempted to by pass this Office, nor am I pursuing a frivolous matter), then I will have no other alternative but to pursue an avenue of relief within the Federal Court under a 42 U.S.C. §1983. There is simply too much supportive evidence in favor of the relief I seek. Also, note that I am serving

copies of this communique' upon all previously served persons, and judiciary officials. I am in hopes that this Office, and I, can come to some form of agreement in this matter.

If I may be of any further assistance to this Office, in these matters, please do not hesitate to contact me. Thank you for this Office's time and attention to these matters. I look forward to hearing from this Office, or the Supreme Court in the very near future.

June 27, 2019

Respectfully Submitted,



Carrie Norris
Q4B223 #227226
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

rds/CN

cc: FILE
SHEAROUSE
JAMES
HACKETT
RUCKER

LEGAL MAIL

Carnie Morris #337226
Perry Corr. Inst., Q4B 223
430 Oaklawn Rd
Pelzer, S.C. 29669

RECEIVED

JUN 27 2010

PC.I. MAILROOM

S.C. Supreme Court
Daniel E. Shearouse, Clerk
P.O. Box 11330
Columbia, S.C. 29211-1330