

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Aiken County

Courtney Clyburn Pope, Circuit Court Judge

RECEIVED

May 12 2020

SC Court of Appeals

WILLIAM MCCLADDIE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001979

MOTION TO CONSOLIDATE APPEALS

Pursuant to Rule 214, SCACR, undersigned counsel moves to consolidate two appeals pending regarding the same post-conviction relief (PCR) action. As explained infra, Petitioner has two appeals pending because this Court held his previously-filed appeal in abeyance and remanded his PCR action to the circuit court, and after the circuit court decided the legal issues on remand, Petitioner's counsel for the matter on remand filed a second notice of appeal, which was prescribed by the PCR order as the method for obtaining appellate review. On May 4, 2020, the Supreme Court issued an order transferring the second appeal to this Court. Petitioner respectfully requests this Court (1) consolidate the two appeals, (2) hold the case in abeyance pending receipt of the transcript of the PCR hearing, and (3) permit Petitioner to file (a) a second petition for writ of certiorari to address the matters decided by the circuit court on remand after receipt of the PCR

hearing transcript and (b) a supplemental appendix to incorporate the materials reviewed by the circuit court on remand and the new order denying relief.

Following his convictions, Petitioner filed an application for PCR, which included a request for a belated direct appeal. The circuit court judge granted the request for a belated direct appeal, but he did not address any other PCR issues as the matter was handled without a hearing. On appeal from the PCR judge's order, undersigned counsel filed the petition for writ of certiorari and accompanying appendix on March 13, 2017.¹ The sole question in the petition for writ of certiorari was whether Petitioner knowingly, intelligently, and voluntarily waived his right to present other PCR claims. Counsel also filed the brief of appellant pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), on that date. The state responded on July 26, 2017, by arguing the issue presented in the petition for writ of certiorari was unpreserved. Counsel filed a reply on August 4, 2017. On October 30, 2017, the Court transferred the case to this Court.

This Court granted certiorari on September 24, 2018. After Petitioner filed his brief, the state moved to remand to the circuit court for a hearing to determine if Petitioner knowingly, intelligently, and voluntarily waived his other PCR claims. On March 21, 2019, this Court remanded the PCR case to the circuit court "to conduct an hearings it deem[ed] necessary to (1) determine whether Petitioner knowingly, intelligently, and voluntarily waived his post-conviction relief claims other than his request for belated appellate review and (2) resolve any post-conviction relief claims the court determines were not knowingly, intelligently, and voluntarily waived." This Court ordered the appeal to be held in abeyance pending the circuit court's review of the matter on remand.

¹ The appellate case number for the first appeal is 2016-001979. The appellate case number for the second appeal is 2020-000620.

After hearing testimony, the Honorable J. Cordell Maddox found that Petitioner did not knowingly, intelligently, and voluntarily waive his right to present his PCR allegations. Thus, on May 16, 2019, Judge Maddox granted Petitioner a full evidentiary hearing on his PCR application in accordance with this Court's order. Thereafter, on January 21, 2020, the Honorable Courtney Clyburn Pope presided over the evidentiary hearing. Arthur Aiken represented Petitioner, and Brianna Schill represented the state. By an order filed March 16, 2020, Judge Pope denied Petitioner relief. The order stated that Petitioner "must file and serve a notice of appeal" in order "to secure the appropriate appellate review." As required by the order, Petitioner filed and served a notice of appeal regarding the March 16, 2020, order on April 15, 2020. The Supreme Court assigned appellate case number 2020-000620 to the appeal. Based upon information and belief, the transcript of the PCR hearing has not been ordered yet.

Undersigned counsel learned of the second notice of appeal on April 20, 2020, when the state sent the PCR order and notice of appeal to counsel via electronic mail. Thereafter, Counsel filed a motion to transfer the appeal to this Court. On May 4, 2020, the Supreme Court transferred the appeal to this Court. Counsel now files this motion to consolidate pursuant to Rule 214, SCACR. According to the rule, "[w]here there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated." Rule 214, SCACR. Although the appeals concern two different orders, those orders arise out of the same case – Petitioner's request for post-conviction relief. In fact, the matter pending before this Court is being held in abeyance for resolution of the legal issues that were resolved by the appeal pending at the Supreme Court. Thus, the two matters should be consolidated into a single appeal.

Further, in order to permit meaningful appellate review of the matters heard during the PCR hearing before Judge Pope pursuant to the remand order from this Court, it is necessary that Petitioner file a second petition for writ of certiorari and a supplemental appendix. The second petition for writ of certiorari would permit appellate review of the decision granting the belated direct appeal and any other PCR issues raised in the petition that were addressed by Judge Pope. The supplemental appendix would permit appellate review of the lower court records related to the remand proceedings.

Petitioner respectfully requests this Court (1) consolidate the two appeals, (2) hold the case in abeyance pending receipt of the transcript of the PCR hearing, and (3) permit Petitioner to file (a) a second petition for writ of certiorari to address the matters decided by the circuit court on remand after receipt of the PCR hearing transcript and (b) a supplemental appendix to incorporate the materials reviewed by the circuit court on remand and the new order denying relief.

Respectfully submitted,

s/Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

I consent:

s/ Brianna L. Schill
Brianna Schill, Esquire
Attorney for Respondent

This 12th day of May, 2020.

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CERTIFICATE OF SERVICE
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Pursuant to the Supreme Court's Order "Re: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies that a true copy of the Motion to Consolidate in the above referenced case has been served upon Brianna Schill, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is briannaschill@scag.gov; and William McCladdie, #364614, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 12th day of May, 2020.

s/Susan B. Hackett
Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER