

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable Brooks P. Goldsmith, Circuit Court Judge

QUINCY A. MCCANTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001436

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT IN REPLY

At the time of this filing, it has been 5,831 days since Petitioner was arrested. App. 461 ll. 6 – 8. He has been incarcerated ever since. Through no fault of his own, he is still awaiting finality regarding his PCR appeal. The PCR court's failure to abide by the clearly established deadline in this case was error, and PCR counsel's acquiescence does not prevent this Court's review, where the initial date set for the hearing was already outside the sixty-day window mandated by this Court.

The PCR court failed to substantially comply with this Court's order. At the time the continuance was sought, the case was already scheduled for a hearing date outside the sixty-day timeframe established by this Court. The error had already occurred; the continuance simply compounded it further. This Court's order dated February 1, 2019 contained the following language:

We grant the motion to vacate Judge Dickson's order dismissing petitioner's PCR application and remand this matter to the circuit court to be heard by any available judge within sixty (60) days of the date of this order.

App. 557 – 558. The order did not state that a judge should hear the matter within sixty days unless a continuance was granted. The order unambiguously mandated a timeline, and that timeline, through no fault of Quincy McCants, was not met. This Court, in contemplating Petitioner's previous appeal, settled on a sixty-day deadline for Petitioner's new post-conviction relief hearing. For this Court's deadline to be meaningful, error should be imputed. In order for the timeframe ordered by this Court to bear some weight or hold some authority, Petitioner should receive relief in the form of a new trial. The efficacy of the Court's order on remand is

the subject of this issue on appeal, not a decision by Quincy McCants' counsel not to oppose a continuance request.

The jurisdiction of the circuit court to hear matters after issuance of the remittitur is well established. For instance, once the remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling. See Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 414–15, 438 S.E.2d 248, 250 (1993).

In Brackenbrook N. Charleston, LP v. Cty. Of Charleston, this Court examined the definition of the word mandate and held that instructions in one of its orders, unrelated to the matter in dispute, was not a part of the Appellants' cause and thereby not a part of the Court's mandate. 366 S.C. 503, 508-09, 623 S.E.2d 91, 93-94 (2005). This Court referred to a mandate as the “[o]fficial mode of communicating judgment of appellate court to lower court, directing action to be taken or disposition to be made of cause by trial court.” Id. (citing Black's Law Dictionary 867 (5th Ed. 1978)). The ‘disposition of the case’ in Brackenbrook was the dismissal of the Appellants' suit without prejudice due to the fact that it had been brought in the wrong forum. Id. at 509, 623 S.E.2d at 94. Accompanying instructions to the Respondent in the case to notify taxpayers about a refund “was not a part of Appellants' case, and thus not a part of our mandate. It was instead a directive to a party to take action for the benefit of non-parties” Id.

The inverse is true in Petitioner's case. This Court's order mandating that the case be heard within sixty days' time was a result of the motion to vacate filed by the undersigned and dispositive of Petitioner's application for post-conviction relief. As can be seen by the copy to the Lexington County Clerk of Court, this Court communicated to the circuit court and directed action to be taken.

Later, in Brackenbrook, this Court suggested that Respondents' failure to comply with the directive "would offend this Court, not the circuit court." Id. at 509, 623 S.E.2d at 94. In Petitioner's case, the failure to comply was an error at the circuit court level that this Court can remedy by granting Petitioner a new trial.

Critically, this Court **ordered** that Petitioner receive a new hearing within sixty days. As noted by Respondent, Rule 601, SCACR, sets forth the priority of tribunals when a conflict exists, and this Court holds the top position. The state had an obligation, as one of the parties in this matter, to appear at the hearing. The state, not one of its multiple witnesses, had the duty—as ordered by this Court—to appear for Petitioner's post-conviction relief hearing. It failed to do so and even further delayed resolution of Petitioner's case by seeking a continuance that pushed the hearing date well beyond the sixty-day judicially created timeframe.

The countless delays which pervaded his ongoing PCR action impacted Petitioner's case in other ways as well. For instance, Petitioner could not locate his previous girlfriend, Kimmy Graves, in order to secure her testimony at the most recent PCR evidentiary hearing. App. 776 ll. 16 – 18. It naturally follows that over the course of more than a decade, Petitioner would both be unable to locate his former girlfriend and unable to recall what she may have testified about. Similarly, defense counsel Myers was unable to recall why neither Graves nor Petitioner's mother was utilized at trial. App. 809, ll. 10 – 17. Based on the significant delays in his case, both Petitioner and trial counsel have been unable to recall specific facts regarding his case. Accordingly, Petitioner should receive a new trial.

In failing to schedule a new PCR hearing within the sixty-day timeframe, the PCR court disregarded this Court's order. By doing so, it committed a reversible error.

CONCLUSION

For the reasons set forth herein and in the Petition for Writ of Certiorari, Petitioner respectfully requests this Court grant certiorari, reverse the PCR court, and grant him a new trial.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of December, 2020.