THE STATE OF SOUTH CAROLINA

In the Supreme Court

RECEIVED

Feb 04 2021

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY

Court of General Sessions

Carmen T. Mullen, Circuit Court Judge

Lower Court Case Nos. 2017-GS-47-35, -36, -37;
2018-GS-47-49

The State,..……..……...……Respondent,

v.

James H. Harrison,....…..……...Appellant.

Appellate Case No. 2018–002128

PETITION FOR REHEARING

David. M. Pascoe, Jr.
First Circuit Solicitor
S.C. Bar No.: 66523

W. Baker Allen
Assistant Solicitor
S.C. Bar No.: 80237

P.O. Box 1525
Orangeburg, SC 29116
(803) 533–6252

ATTORNEYS FOR RESPONDENT

Respondent respectfully petitions the Court for rehearing pursuant to Rule 221(a), SCACR. Respondent submits the Court overlooked the practical import of its ruling, which will require future special prosecutors to refer criminal targets to the Attorney General when there is a known conflict of interest involving the matter under investigation. Such a rule invites corruption and should be reconsidered. The Court also misapprehends the significance of the Attorney General's failure to make his position regarding Solicitor Pascoe's authority known in a timely manner. Further, the majority opinion misstates the record and the arguments made by Respondent in the following respects: (i) Respondent never claimed "boundless authority" in this investigation; (ii) the record contains ample evidence of the Attorney General's conflict; and (iii) Respondent never claimed "unfettered prosecutorial discretion" as the sole basis for entering into corporate integrity agreements. These issues are addressed below.

I

The Court's opinion overturning Appellant's convictions for statutory and common law misconduct hands down the wrong rule and invites conflicted prosecutorial decision-making. The Court reasons the State's special prosecutor—an appointment necessitated by the Attorney General's voluntary and ethically correct decision to recuse—should return to the conflicted Attorney General for a decision when the conflicted matter expands because evidence of criminal conduct is discovered involving others who have a direct nexus to the original investigative targets. See State v. Harrison, Op. No. 28005 (S.C. Sup.Ct. filed Jan. 20, 2021) (Davis Adv. Sh. No. 2 at 20) ("That authority extended to the two redacted legislators and the businesses suspected of being used by them in derogation of state law—nothing more, nothing less."). While such a rule is untenable, Solicitor Pascoe nevertheless remained within the boundaries of the rule because Appellant was the Chief Operating Officer of one of the businesses included in the SLED report.

When a prosecutor is recused, he recuses as to the matter—the *entire* matter—not merely the individuals that comprise the components of the investigation. The majority's decision overlooks the fact that Appellant was not an unrelated target, but was an integral employee of one of the businesses in the redacted portion of the SLED report "suspected of being used in derogation of state law." It is absurd that the special prosecutor should report back to a conflicted Attorney General under these circumstances.

In the concurring opinion, Justice James writes, "[a]ll he had to do to bring the corruption to light was report his suspicions to the Attorney General." Harrison, Op. at 43 (James, J., concurring). This simplification fails to recognize the pervasive relationship the Attorney General has with the principals at the core of the investigation, which is well documented in the record of this matter.[1] For example, the record reflects that the Attorney General personally reassured Jimmy Merrill that everything would work itself out; that the Attorney General discussed the investigation with Richard Quinn, Sr. almost every day until he was indicted; that both Richard Quinn Senior and Junior actively worked behind the scenes to discredit the investigation; that an employee of the Attorney General's office was pressured by the Quinns to spread disinformation about Solicitor Pascoe while being paid by both the Attorney General and RQA; that the Attorney General invited Richard Quinn to participate in drafting letters to Solicitor Pascoe concerning the investigation; that the grand jury requested the Attorney General testify about his involvement in the

[1] Respondent is puzzled by the Court's insistence that the record does not reveal the Attorney General's conflict. The Report of the 28th State Grand Jury, which is cited by the majority opinion and is part of the record, provides ample detail regarding the Attorney General's conflict, including a finding by the grand jury that the Attorney General put his loyalty to the Quinns above his duties to this State. See R. pp. 2179–2417. The record also includes Respondent's reply to the Attorney General's brief regarding the corporate integrity agreements, which discusses the Attorney General's continued involvement with the Quinns, even after the state grand jury issued indictments in the investigation. See R. pp. S095–S113.

investigation; and numerous other disconcerting episodes. R. pp. S107–S108; pp. 2218–2232. For those in Solicitor Pascoe's office, as well as investigators for SLED and the FBI, there was no question that turning the case over to the Attorney General would result in the whole matter being quietly swept under the rug. In Respondent's view, reporting to the conflicted Attorney General would only assure that the corruption uncovered in this matter would be kept in the shadows. Insulating the investigation from the Attorney General's office was not a matter of expanding Solicitor Pascoe's authority, it was a matter of protecting the integrity of the ongoing criminal investigation.[2] The rule announced by the Court would require future special prosecutors to return to the Attorney General for direction despite knowing the Attorney General was even more conflicted than originally thought.

Here, the Attorney General recused himself for reasons that were voluntary and of his choosing. He subsequently had second thoughts, resulting in the Court's decision in Pascoe v. Wilson.[3] Thereafter, Respondent's investigation revealed criminal activity by others, causing the special prosecutor to seek expansion of the scope of the grand jury investigation from the presiding judge of the grand jury. One of those individuals pled guilty; another, the Appellant, went to trial. The Court maintains Appellant's misconduct convictions must be reversed, but somehow the guilty plea of another secured under the *exact same* procedural circumstances, is somehow untainted by what the Court sees as the exercise of "excessive" authority over the matter. Cf. Harrison at 21–22 ("While Solicitor Pascoe was incorrect about the extent of the authority granted to him, we find no evidence he acted in bad faith."). The rule announced by the Court dictating

[2] The majority asserts that the Attorney General's involvement is constitutionally essential, yet the majority also appears to implicitly recognize the problem with his involvement in this investigation by instructing the Attorney General to publicly announce his actions on remand.

[3] Pascoe v. Wilson, 416 S.C. 628, 788 S.E.2d 686 (2016).

Respondent should have returned to the conflicted Attorney General after discovering further criminal activity by one of the employees of a business in the redacted SLED report opens the door to abuse of authority. Permitting the individual with the conflict to exercise prosecutorial decision making over related implicated individuals will invite further corruption in our State.

This rule creates an untenable situation by tempting an Attorney General to improperly exercise the power of his office with favoritism after he has *correctly* recused himself to avoid this very temptation. The Court's rule is without precedent—as evidenced by the need to look to 40-year-old foreign precedent that the majority *concedes* is not on point. See Harrison at 28 ("While Di Falco is not perfectly on point, its reasoning is persuasive and informs our analysis"). The rule is unworkable—it requires supervision of a delegated criminal matter by the very person who should be furthest from it. And the rule encourages corruption by requiring a recused lawyer to reconsider that ethical decision. This cannot be the Court's intention.

II

On March 16, 2017, the grand jury indicted John Courson, and the indictments received significant media attention. Yet the Attorney General raised no objection to Solicitor Pascoe's use of authority. After the indictments of Appellant and others, the Attorney General maintained his silence. Even when Solicitor Pascoe called Appellant's case for trial, the Attorney General stood by in silent acquiescence. It was not until this Court invited the Attorney General to opine on an entirely unrelated matter that the he made his position known.

The Court recognizes this failure on the part of the Attorney General to assert his claim regarding Solicitor Pascoe's authority in footnote 19. However, the footnote provides that "as soon as the issue was formally raised by one of the affected defendants, the Attorney General promptly made his position known." Harrison at 24 n.19. This is simply not accurate as the issue was

litigated at the circuit court level on multiple occasions and covered in the media, yet the Attorney General remained silent. Respondent would respectfully submit that the Attorney General's late attempt to quash the investigation was hardly prompt and should not be permitted to retroactively limit the scope of Solicitor Pascoe's authority.

The majority opinion cites Justice Few's dissent in Pascoe for the proposition, "[i]f there is any doubt about the scope of the delegation of power, that doubt must first be addressed by the Attorney General, and only then, when necessary, a court of competent jurisdiction in the context of a justiciable controversy."[4] Harrison at 19 (citing Pascoe, 416 S.C. at 648, 653–54, 788 S.E.2d at 697, 700 (Few, J., dissenting)). This proposition should equally apply when the Attorney General stands by in silent acquiescence. To be sure, no such doubts existed in the minds of Respondent as prosecutors proceeded with their duties after receiving authority from the presiding judge to expand the scope of the investigation. The majority opinion would impose upon Solicitor Pascoe and all future special prosecutors a duty to raise an issue on behalf of the Attorney General where he is unaware any such issue exists in the first instance.[5]

[4] The majority credits Justice Few in footnote 17 for foreseeing challenges to delegation of authority by the Attorney General. Nevertheless, even Justice Few in his dissent in Pascoe recognized that the result would likely be the same; the question is one of form over substance. Pascoe, 416 S.C. at 648, 788 S.E.2d at 697 (Few, J., dissenting). The Court proceeds from the erroneous proposition that Solicitor Pascoe seeks to "recast the holding in Pascoe and broaden his authority" to "grant him unlimited authority to conduct a broad-sweeping statehouse corruption probe . . . ." Harrison at 21. This is a mischaracterization. Respondent has never claimed unlimited or overly broad authority based on an interpretation of Pascoe v. Wilson. This point was emphasized numerous times by Solicitor Pascoe during oral arguments when he reiterated that all of these cases are *directly related* to the initial subject matter of the investigation—this is authority that is very clearly limited by the subject matter of the investigation at hand.

[5] How this might be accomplished without violating the grand jury secrecy requirements is problematic.

Respondent respectfully submits that the Attorney General's failure to challenge Solicitor Pascoe's authority following the indictment of individuals beyond the "redacted legislators" ratified the scope of authority to include individuals with a close nexus to the original targets.[6] The dissent correctly recognizes that there is a direct nexus between the Quinns and Appellant. Solicitor Pascoe has never claimed to be "the public corruption czar in South Carolina" and, while the many detractors of the investigation have accused Solicitor Pascoe of a broad sweeping power grab, the scope of the investigation and its targets has never approached such a broad interpretation. See R. p. S103 ("All of the targets of this Investigation have related to improper dealings with Rick Quinn's family business, RQA."). Solicitor Pascoe was merely following the evidence uncovered in a complex investigation to its logical conclusion.[7]

III

The majority incorrectly asserts that Solicitor Pascoe's position is that Pascoe v. Wilson granted him "boundless authority to investigate and prosecute public corruption wherever he found it . . . ." Respondent has never taken this position and Solicitor Pascoe could not have been more clear during oral argument that all cases arising from this investigation had a direct nexus to the initial subject matter. Indeed, Justice Kittridge's first questions to Solicitor Pascoe settled the issue.

---

[6] In all fairness to the Attorney General, it is easy to conceive why he would fail to intervene and risk the appearance of obstruction given the significant media attention surrounding the case. Indeed, the fact that the Attorney General did not challenge the scope of authority despite his strong protestation to Solicitor Pascoe's authority prior to the Court's decision in Pascoe is recognition of the impropriety of further interference in the prosecution of this public corruption investigation.

[7] As noted in the State's reply brief to the Attorney General's memorandum, Respondent takes exception to Justice Few's assertion that Solicitor Pascoe permitted Rick Quinn "to go essentially scot free" and fails to see the necessity to reassert it in the majority opinion. R. p. S111; Harrison at 22 n.17. It is also an inaccurate castigation. The State conducted a lengthy presentation asking for a harsh sentence. The sentencing court, perhaps pensive to send Mr. Quinn to prison, elected to suspend the sentence. It is the province of the Court to hand down a sentence, not the prosecutor.

In response, Solicitor Pascoe confirmed Respondent's position that the grant of authority extends to targets *that bear a nexus to the Quinns* and that the investigation was not pursuing any more targets. This is not a statement that approaches "boundless authority."

The majority would dismiss Justice Hearn's "follow the money" comment as "theatrics," but this pejorative characterization discounts a key facet recognized by the dissent—that the expanded investigation uncovered additional criminal acts. The approach taken by Justice Hearn and Chief Justice Beatty is one of common sense and following the law whereby a prosecutor leading a confidential grand jury investigation into public corruption has an obligation to pursue the corruption to its logical conclusion. Furthermore, each indictment, as well as the corporate integrity agreements, were directly related to and flowed from the "redacted legislators investigation." The misconduct indictments against Appellant are the counterpart to the misconduct of RQA—opposite sides of the same coin. When the misdeeds of RQA were discovered, investigators merely followed the trail of money to the recipients. This is sound prosecutorial work pursuing evidence of corruption to its logical ends. The Court's suggestion otherwise is incorrect.

IV

The Court recognizes in footnote 22 that "the issue of the corporate integrity agreements is not technically before the Court," but nevertheless expresses their concerns regarding the agreements. In his concurring opinion in State v. Quinn, [8] Justice Few criticized the agreements and telegraphed to the parties that the issue would be addressed in oral argument. Footnote 22

[8] State v. Quinn, 430 S.C. 115, 843 S.E.2d 355 (2020).

appears to regurgitate this criticism. The State welcomed the opportunity to address the agreements and fully prepared to do so during oral argument in the instant matter.

In response to the Court's March 12, 2020 Inquiry, Respondent provided a full discussion of the agreements. See R. pp. S008–S030. The authority to enter into the agreements is more than merely the "unfettered discretion" inaccurately referenced in footnote 22. It is a product of the constitutional authority of the Executive Branch of government in determining when and how to prosecute a criminal case. Following a problematic response by the Attorney General, Respondent submitted a reply brief as a supplemental filing in the instant matter. See R. pp. S095–S113. The reply brief discusses not only issues raised by the Attorney General's response, [9] but also issues raised by the concurring opinion in State v. Quinn. Solicitor Pascoe expressed to Justice Kittredge during oral argument his opinion that the agreements *must* be subject to scrutiny by the Court. As indicated in Respondent's brief on the topic, the agreements are designed to promote the ends of justice in a manner that best suits the complex scenario presented by the corporate actors. Neither Solicitor Pascoe nor his office have received any benefit from the agreements and the presiding judge will most certainly be asked to oversee any distribution of the funds.

CONCLUSION

For the foregoing reasons, Respondent requests the Court grant the petition for rehearing and substitute its opinion with a decision affirming Appellant's two misconduct convictions.

[SIGNATURE PAGE FOLLLOWS]

[9] For example, the Attorney General's brief takes a position regarding the agreements that is contrary to prior opinions issued by the Attorney General's Office.

Respectfully submitted by,

DAVID M. PASCOE, JR.
First Circuit Solicitor
SC Bar No.: 66523

W. BAKER ALLEN
Assistant Solicitor
First Judicial Circuit
SC Bar No.: 80237

By: _____
W. Baker Allen
First Circuit Solicitor's Office
P.O. Box 1525
Orangeburg, SC 29116
(803) 533–6252
ATTORNEYS FOR RESPONDENT

February 4, 2021
Orangeburg, South Carolina.