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Mar 11 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Honorable Michael G. Nettles, Circuit Court Judge
Appellate Case No. 2018-001331

MCIVER FEAGIN,

Respondent,

vs.

THE STATE,

Petitioner.

MOTION TO WITHDRAW APPEAL

Petitioner (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

Respondent McIver Feagin (Feagin) was indicted by the June 2010 term of the Florence County Grand Jury for first-degree burglary (2010-GS-21-681). William E. Grove, Esquire (Grove), represented Feagin on this charge. On September 21, 2010, Feagin entered a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), to second-degree burglary (non-violent). The Honorable Thomas A. Russo sentenced him to confinement for fifteen years suspended upon time served (279 days) and five years’ probation. On December 10, 2012, Feagin again appeared before Judge Russo for a probation violation, again represented by Grove, and Judge Russo revoked his probation in full.

A notice of appeal of the probation revocation was filed on Feagin's behalf, and an appeal was perfected pursuant to Anders v. California, 378 U.S. 738 (1967). This Court dismissed the appeal on December 17, 2014, and the remittitur issued on January 13, 2015. State v. Feagin, Op. No. 2014-UP-460 (filed on December 17, 2014).

II.

On January 8, 2015, Feagin filed an application for post-conviction relief alleging probation revocation counsel was ineffective. Petitioner served its return on January 17, 2017, requesting an evidentiary hearing be held. An evidentiary hearing into the matter convened on November 17, 2017, at the Florence County Courthouse before the Honorable Michael G. Nettles. Feagin was present at the hearing and represented by Jonathan D. Waller, Esquire.

The post-conviction relief court granted relief by order dated December 1, 2017, and filed December 4, 2017, was ineffective for failing to argue at the probation revocation hearing that the sentence imposed at the guilty plea was unlawful, and therefore, the full fifteen-year sentence should not have been revoked. The PCR court then vacated the fifteen-year revocation. On December 18, 2017, the State filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRPC. Feagin filed a response to the motion on January 3, 2018. On January 8, 2018, the State filed a reply. The post-conviction relief court denied the State's motion to reconsider by written order filed July 5, 2018.

Petitioner timely filed its notice of appeal on July 23, 2018, and petitioned for a writ of certiorari on February 15, 2019. Feagin filed a return to the petition on May 17, 2019. By order dated May 31, 2019, the South Carolina Supreme Court transferred the appeal to this Court pursuant to Rule 243(l). On February 22, 2021, this Court directed the parties to submit memoranda within twenty days on the issue of whether the appeal is moot.

III.

Subsequent to the State's initiation of the appeal, Feagin was released from the custody of the South Carolina Department of Corrections after completing service of his sentence. Therefore, the State believes the appeal has become moot, as the post-conviction relief action only challenged the sentence imposed at the probation revocation hearing, not the underlying conviction itself. Pursuant to Rule 260(c) of the South Carolina Appellate Court Rules, the State asks this Court to withdraw the appeal and allow the matter to be promptly remanded to the Florence County Court of General Sessions for any further proceedings that may potentially be necessary in light of the post-conviction relief judge's ruling. See Rule 260(c), SCACR ("An appeal or other proceeding may be dismissed on motion of the appellant or petitioner upon such terms as may be fixed by the court."). Counsel for the State has conferred with Feagin's counsel, who agrees the matter is moot and consents to the withdrawal.

IV.

WHEREFORE, Petitioner prays this Court will withdraw the State's appeal in the case of McIver Feagin v. State, Appellate Case No. 2018-001331; issue remittitur; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General

By: s/ Lindsey A. McCallister
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PROOF OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," amended May 29, 2020, the undersigned hereby certifies a true copy of the Motion to Withdraw Appeal has been served upon opposing counsel by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
khudgins@sccid.sc.gov

This 11th day of March, 2021.

s/ Lindsey A. McCallister

LINDSEY A. MCCALLISTER
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ALAN WILSON
ATTORNEY GENERAL

March 11, 2021

The Honorable Jenny Abbott Kitchings
Clerk - South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
(via electronic filing)

RE: McIver Feagin v. State – Appellate Case No. 2018-001331

Dear Ms. Kitchings:

On February 22, 2021, the Court requested the parties submit memoranda on the issue of whether the above-reference appeal is moot. After reviewing the issue, the State believes the appeal is in fact moot. Accordingly, in lieu of a memorandum, enclosed for filing please find the State's original Motion to Withdraw Appeal, along with proof of service.

Sincerely,

s/ Lindsey A. McCallister

Lindsey A. McCallister
Assistant Deputy Attorney General
Bar No. 79054

LAM
Enclosures

cc: Kathrine H. Hudgins, Esquire (via email only)
Victim Advocacy Division