

RECEIVED

Mar 12 2021

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO ORANGEBURG COUNTY
D. Craig Brown, Circuit Court Judge

Appellate Case No. 2020-000896

JULIAN YOUNG,

RESPONDENT/PETITIONER

v.

STATE OF SOUTH CAROLINA,

PETITIONER/RESPONDENT.

PETITION TO DISMISS APPEAL
OF
PETITIONER/RESPONDENT.

NOW COMES, Respondent/Petitioner asking this Honorable Court to dismiss the appeal of the Petitioner/Respondent from the Order of the Honorable D. Craig Brown, presiding Circuit Court Judge, in the above caption Post-Conviction Relief matter, filed on May 20, 2020. App.pp. 1372-1466. Available records reveal the following.

1. The Order granting Respondent/Petitioner was signed and dated May 11, 22020. App.pp. 1372-1466.

2. On May 13, 2020, Undersigned Counsel for Respondent/Petitioner was advised that the State had received the signed order at approximately 12:19 PM that day. ***See Attachment A.***
3. The Order granting relief was subsequently filed on May 20, 2020. App.pp. 1372-1466.
4. Petitioner/Respondent subsequently filed a Rule 59(e) Motion dated June 14, 2020. App.p. 1467-1497. Respondent/Petitioner was served with the State's Rule 59(e) Motion at 12:01 AM, June 15, 2020. The Rule 59(e) motion clearly states in the opening paragraph that the written order signed ***May 20, 2020***, had not yet been served on Respondent. (Emphasis added). App.p. 1467. The Order was in fact signed on ***May 11, 2020***. (Emphasis added) App.p. 1467. Thus, Petitioner/Respondent indicates that the Order in question was *signed* on the date it was in fact *filed* and does so on a date, June 15, 2020, when Petitioner/Respondent states that they had not yet been served with the clocked Order.
5. On June 18, 2020, Petitioner/Respondent noticed Counsel for Respondent/Petitioner, that he was withdrawing his Rule 59(e) motion. ***Attachment B.*** The following day, June 19, 2020, Petitioner/Respondent served Respondent/Petitioner with his Motion to Withdraw Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e), SCRC. App.pp. 1498 – 1499.
6. That same date, June 19, 2020, Petitioner/ Respondent served and filed his Notice of Appeal from the Order granting relief in this Post-Conviction Relief matter. The Notice of Appeal is not contained in the Appendix filed in this matter. That Notice of Appeal states that the Petitioner/Respondent was served with the filed Order on May 26, 2020. ***Attachment C.***
7. There is an *unclocked* copy of the Order issued by Judge Brown granting the State's Motion to Withdraw the Petitioner/Respondent's Rule 59(e) Motion to Reconsider, Alter or Amend in the Appendix filed in this matter. That Order is dated August 3, 2020 and, therefore, it could not have been filed before the Notice of Appeal was filed on June 19, 2020. App.pp. 1500-1501. The copy of this document contained in the Appendix does not contain a copy of the Certificate of Service on undersigned Counsel for Respondent/Petitioner. The copy of this document received by Counsel for Respondent/Petitioner is not clocked. As of today's date, Counsel has not been able to get a clocked copy of the Order granting the Motion to Withdraw the Petitioner/Respondent's Rule 59(e) motion from the Office of the Attorney General and apparently the Public Record does not indicate it was filed. Counsel did locate an email from Judge Brown dated August 3, 2020, to opposing counsel, Benjamin Limbaugh, indicated that the Order had been signed and sent to Mr. Limbaugh for forward to the Clerk of Court's Office for filing. ***Attachment D, top email.***

8. An email to Judge Brown dated July 30, 2020, from opposing counsel, indicates that a proposed order granting the Motion to Withdraw the Rule 59(e) motion filed by Petitioner/ Respondent was sent to Judge Brown as an attachment on that date. *Attachment D, bottom email.*
9. Correspondence from Judge Brown's Assistant, Stacey R. Minton, dated August 3, 2020, confirms that a signed order was sent to opposing counsel, Ben Limbaugh, on August 3, 2020; the same day the Order Granting the Motion to Withdraw was signed. *Attachment E.*
10. Undersigned Counsel has it upon information and belief that the Order granting the Petitioner/Respondent's motion to withdrawal the 59(e) in this matter was not sent for filing until significantly after August 3, 2020. At this time, Counsel has been unable to locate her clocked copy of the Order granting the Petitioner/Respondent's request to withdraw their Rule 59(e) motion, however, she feels certain she had it at the time the Notice of Cross-Appeal was filed. Counsel will submit a copy of that clocked order to this Honorable Court on Monday if it is not attached to her notice of Appeal. Counsel apologizes that she has not been able to locate it in advance of this filing. The Petitioner/Respondent has effectively conceded that the Order in question was signed by Judge Brown and has, as previously noted, included an unlocked copy of the Order in the Appendix filed with the Petition for Writ of Certiorari filed by Petitioner/Respondent.
11. The Order granting the State's Motion to Withdraw the Rule 59(e) motion filed in this matter, specifically found that the Notice of Appeal filed by Petitioner/Respondent was untimely filed. The final paragraph of said order states,

This Court further finds that the Notice of Appeal filed on June 19, 2020 was premature and finds that any Notice of Appeal from the Order of this Court filed May 20, 2020, should be served and filed within thirty (30) after the entry of this Order granting Respondent's Motion to Withdraw his Rule 59(e) motion.
12. Petitioner Respondent did not file a Rule 59(e) disputing the findings of the lower court regarding the fact that their Notice of Appeal was prematurely filed. Furthermore, they did not appeal the Order in which that find was made.
13. Rule 203 (b)(1), SCACR, specifically indicated that the time for filing an appeal from an Order of the Court of Common Pleas, "*shall run from receipt of written notice of entry of the order granting or denying such motion.*" This rule specifically states that it applies to a motion to alter or amend pursuant to Rule 59(e), SCRCP.

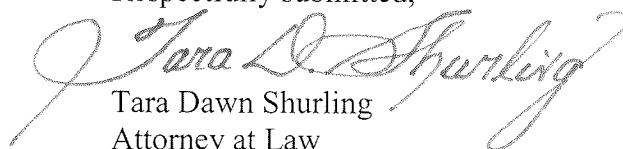
14. Other available emails between Counsel for Respondent/Petitioner and opposing counsel confirm that Counsel maintained ongoing contact with the Office of the Attorney General concerning this matter. Counsel. There are many additional emails concerning this matter available should the Court desire to see them, however, the most relevant are attached. These emails confirm that Counsel had been assured that a new Notice of Appeal would be filed after the Order granting their Motion to Withdraw the Rule 50(e) motion was granted. Furthermore, they confirm Counsel for Respondent/Petitioner made opposing counsel aware of her intent to file a cross-appeal on behalf of her client as soon as the Order on the Motion to Withdraw was filed and the new Notice of Appeal was entered. *See, Attachments F, G and H.*

15. The records of this Court will confirm that undersigned Counsel filed a timely cross-appeal pursuant to Rule 203(c) and (b), SCACR, on November 30, 2020, after she received a copy of the Order of Judge Brown signed and dated August 3, 2020. Undersigned Counsel has not been able to locate the clocked copy of her Notice of Cross-Appeal. It has apparently been misfiled. She would therefore reference the records of this Honorable Court for that document.

As is established by the above, Petitioner/Respondent's Notice of Appeal was filed prematurely. The lower court expressly found that the Notice of Appeal was prematurely filed and directed Petitioner/Respondent to file a Notice of Appeal within thirty days of the entry of the Court's Order Granting Withdrawal of the Rule 59(e) motion filed by the State. Petitioner/Respondent failed to do so. Furthermore, they did not file a Rule 59(e) motion challenging the ruling of the lower court on the timeliness of their Notice of Appeal. The Petitioner/Respondent did not appeal from the Order of the lower court dated August 3, 2020. Despite having advised Counsel for Respondent/Petitioner that a new Notice of Appeal would be filed once an written order granting the State's outstanding Motion to Withdraw the Rule 59(e) motion was granted, Petitioner/Respondent failed to do so. On the unusual facts of this case, Counsel for Respondent/Petitioner wishes to note that she has always enjoyed a good working relationship with the Assistant Attorney General assigned to this PCR

appeal. It is not her intent to impugn the integrity of this lawyer in any regard. Petitioner/Respondent, however, had every opportunity to right the course of this PCR appeal and simply failed to do so. Respondent/Petitioner asserts that this appeal was not filed in compliance with Rule 203 (a) and (b) (1), SCACR, and therefore must be dismissed. Respondent/Petitioner asks that the deadlines for his Return to the Petitioner/Respondent's Petition for Writ of Certiorari, and his Petition for Writ of Certiorari in his cross-appeal, be stayed pending this Honorable Court's ruling on this Petition to Dismiss. In the event of an unfavorable ruling on this petition, Respondent/Petitioner asks for fifteen (15) days in which to serve and file these pleadings.

Respectfully submitted,



Tara Dawn Shurling
Attorney at Law
S.C. Bar No. 5099

Law Office of Tara Dawn Shurling, P.A.
3614 Landmark Drive
Suite A
Columbia, S.C. 29204

tdslaw@shurlinglaw.com

(803) 738-8622 Phone

ATTORNEY FOR RESPONDENT/PETITIONER