

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Petition of Writ of Certiorari to Orangeburg County
Court of Common Pleas
The Honorable Craig D. Brown, Post-Conviction Relief Judge
The Honorable Edgar W. Dickson, Trial Judge

S.C. SUPREME COURT

Appellate Case No. 2020-000896

JULIAN YOUNG, #352043,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

RETURN TO PETITION TO DISMISS APPEAL

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

I.

Mr. Young filed an application for post-conviction relief on March 5, 2015. A hearing on his application was held before the Honorable Craig D. Brown on October 4-5, 2018. After considering both Young’s proposed order and the State’s proposed order, the lower court signed an order on May 11, 2020 and served on the State on May 26, 2020 granting post-conviction relief and remanding the matter to the Orangeburg County Court of General Sessions for a new trial. The State filed an untimely Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e) on June 14, 2020. The State filed a motion to withdraw its motion to reconsider on June 19, 2020. On the same date, the State filed its Notice of Appeal. Judge Brown signed an order granting the State’s motion

to withdraw its motion to reconsider on August 3, 2020. Young filed an untimely cross-appeal on November 30, 2020, however, the State is not challenging the timeliness of said appeal.

II.

Young argues the State's Notice of Appeal was filed prematurely, as the notice of appeal was filed prior to issuance of an order granting the State's withdrawal of its motion to reconsider. As is clearly established above, the State's Notice of Appeal was timely filed based on receipt of notice of the final dispositive order in this matter. First, as noted in Young's procedural history in his motion to dismiss, the notice of appeal was not premature since the information provided by Young shows the 59(e) motion was filed more than ten days after the State received written notice of entry of the order granting relief and was thus untimely. Young further mentions a number of dates that are not relevant to this Court's determination as to the timeliness of the notice of appeal and the State's 59(e) motion. Young rightly states that the order granting relief was signed on May 11, 2020, however, the State received written notice of entry of the order on May 26, 2020. Young does not conclude whether or not the State's 59(e) motion was untimely, which is the dispositive issue in this matter. The State's Motion to Reconsider was clearly untimely, as it was filed nearly twenty days after receipt of written notice of entry of the order. "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." SCRCP 59. As is also noted in Rule 59 SCRCP, "The time for appeal for all parties shall be stayed by a timely motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motions." SCRCP 59. The State filed its Notice of Appeal on June 19, 2020, which was within thirty days from receipt of notice of entry of the order of dismissal. Young's argument is based on the erroneous assumption that the State's Rule 59(e) motion was timely, although it clearly was not. The State's time for filing the Notice of Appeal properly began to run from receipt of notice of entry of the order and was not stayed by the

untimely 59(e) motion. The order granting the State's motion to withdraw and finding the notice of appeal was premature was therefore a nullity. "When no timely Rule 59 motion was made nor timely sua sponte order filed under Rule 59(e), the January form order "matured" into a final judgment. The order filed on February 10 was a nullity because the trial judge no longer had jurisdiction over the matter. See Doran v. Doran, 288 S.C. 477, 343 S.E.2d 618 (1986) (in appeal decided under predecessor to SCRPC, court held judge lost jurisdiction to issue supplemental order after end of term, and noted in footnote that under Rule 59(e), judge would have jurisdiction to alter or amend order for a 10 day period after entry of judgment)." Leviner v. Sonoco Prod. Co., 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000). "A trial judge loses jurisdiction to modify an order after the term at which it is issued, except for the correction of clerical orders. Whittle v. Multiple Services, Inc., 283 S.C. 559, 324 S.E.2d 62 (1984). Once the term ends, the order is no longer subject to any amendment or modification which involves the exercise of judgment or discretion on the merits of the action. Center v. Center, 269 S.C. 367, 237 S.E.2d 491 (1977)." Doran v. Doran, 288 S.C. 477, 478, 343 S.E.2d 618, 619 (1986). After the ten days ran from receipt of entry of the order and the State's 59(e) motion was untimely, the lower court lost jurisdiction on the matter. Accordingly, the notice of appeal in this case had to be filed within thirty days of the date the State received written notice of the order granting the post-conviction relief application pursuant to mandates of our appellate court rules, and the State did that by filing a notice of appeal on June 19, 2020. Therefore, there is no proper basis to dismiss the State's appeal as the notice of appeal was timely and properly filed, and anything done by the circuit court judge after that was a nullity since he lost jurisdiction to act when the post-trial motion period elapsed without any timely motions being filed and as a result of a timely notice of appeal being filed. Therefore, the State's Notice of Appeal was timely filed and Young's motion to dismiss the appeal should be denied.

Respectfully submitted,

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