

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	
City of Columbia,)	C/A no. 2019-CP-40-01374
)	
v.)	
)	Order denying Appellant's Rule 59(e), SCRCP
Marie-Thérèse Assa'd-Faltas,)	Motion to Reconsider
)	
_____)	
Defendant.)	

THIS MOTION comes before the Court on appellant's Rule 59(e), SCRCP Motion to Reconsider. A hearing was held on January 28, 2022 on an appeal from Richland County Magistrate Judge Newsom's denial of appellant's motions that he recuse himself and to reopen her case. This court issued an Order on February 9, 2022 affirming the magistrate's denial of appellant's Motions. In light of the law governing Rule 59(e), and in consideration of the facts as stated below, the Motion to Reconsider is DENIED.

I. Legal basis for appellant's rule 59(e) motion.

This court is vested with the authority to decide this matter pursuant to Chief Justice Beatty's September 15, 2020 Order assigning jurisdiction to the Hon. D. Craig Brown over this and other cases involving appellant.

Appellant timely filed her Rule 59(e), SCRCP motion within 10 days of this Court's Order. "Rule 59(e), SCRCP, provides for a motion to alter or amend judgment and preserve the record for appeal." Pelican Building Centers v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). In her motion, appellant asks that this court "rule *in writing* on matters on which he may have ruled orally but did not reduce to writing, to correct errors of the recitations of facts, to require a complete return from [Magistrate Newsom] ... and to reconsider *all* Judge Brown's rulings in this case." (p.1.)

II. Analysis of appellant's grounds for reconsideration.

Appellant's objections and requests are classified into five groups: (1) the request to clarify the court's ruling on her motion to file an Anders brief; (2) an objection to the evidentiary and legal sufficiency of the magistrate's return; (3) the applicable legal standard for determining judicial bias; (4) whether there was a violation of appellant's sixth amendment right to compulsory process; and the relevance of Dinah Gail Steele's mental injury to appellant's case. Each objection and request is addressed in turn below.

1. The court's oral ruling denying appellant's request for leave to file an Anders brief was based on a prior Order of our supreme court.

At the January 28, 2022 hearing, appellant made an oral motion for leave to file an Anders brief, which this court denied. Appellant now requests that the court reduce its ruling to writing and explain the basis for this decision.

Our supreme court's September 27, 2017 Order In the Matter of Marie Assa'ad-Faltas says that "In light of her prior conduct, Respondent's ability to proceed pro se shall end with the service and filing of the notice of appeal, and she shall be represented by counsel in the appeal (including any subsequent appeal to a higher court and any discretionary review under Rule 242 of the South Carolina Appellate Court Rules)." (p. 2.) The court finds that this portion of the supreme court's Order prohibits appellant from proceeding pro se in appellate matters, including filing an Anders brief in an appeal from magistrates court.

2. The February 9, 2022 Order was based on a sufficient return and the correct legal standard.

Appellant made multiple objections concerning the adequacy of the return, both as to its contents and as to the legal standard interpreting it. For the reasons stated below, this court finds

that the return was adequate and that both the magistrate and this court applied the proper legal standard interpreting the evidence contained therein.

A. The magistrate provided an adequate return.

Appellant asks why this court issued its February 9, 2022 Order based on an incomplete return. Upon reviewing the return and the applicable law, the court finds that the magistrate's return was neither incomplete nor defective. See S.C. Code Ann. § 18-7-80.

Judge Newsom filed his notice of return, the record, a statement of all the proceedings in the case, and the testimony taken at trial as required by S.C. Code Ann. § 18-3-40.¹ The return includes, amongst other things, transcripts of both the hearing on the motion to recuse and the motion to reopen, the appellant's 2009 courtesy summons for simple assault, a letter of disposition regarding Charlene Crouch's drunkenness charge, summary court summonses, appellant's motions for a new trial and to reconsider, the Supreme Court Order from the original trial, the Circuit Court Order remanding this case to the magistrates court, and the magistrate's February 27, 2019 Order denying appellant's motion to reconsider his ruling. Judge Newsom's return contains all of the "testimony, proceedings, and judgment" that were before the magistrate at the time of his ruling and is complete. See S.C. Code Ann. § 18-7-60.

B. This court applied the proper standard for after-discovered evidence in reviewing the return.

Appellant asserts that this court applied the wrong standard in reviewing the magistrate's return. She argues the court erred in applying the after-discovered evidence standard found in State v. Irvin, 270 S.C. 539, 243 S.E.2d 195 (1978). Appellant asks why this Court did not apply

¹ This court has previously noted that while the filing of the return was not timely, it was complete and otherwise complied with the laws governing magistrates returns.

the standard used for instances of prosecutorial misconduct for failure to disclose evidence pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and Rule 5, S.C. R. Crim. P. as stated in in Kyles v. Whitley, 514 U.S. 419 (1995) and Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2d 70 (2006).

The reason the Court applied the standard set forth in Irvin is that this is an appeal of a motion to reopen based on after-discovered evidence, Rule 29(b), S.C. R. Crim. P., not a Rule 5/Brady motion concerning the prosecution's disclosure of evidence. Appellant makes multiple allegations that the city attorney's office, the Columbia Police Department, and SLED withheld information in order to convict appellant. The magistrate heard these arguments and deemed them insufficient to grant appellant's motion to reopen. This court agrees with the magistrate.

The magistrate properly applied the after-discovered evidence standard in its ruling, and this Court affirms. While the magistrate did not explicitly rely on Irvin, the standard set forth in that case is still the proper standard for motions based on after-discovered evidence. See, e.g., State v. Adams, 430 S.C. 420, 845 S.E.2d 217 (Ct.App. 2020) (applying the same five elements to motions based on after-discovered evidence as those applied in Irvin). Contrary to appellant's argument, the proper legal standard was applied to this motion.

IV. The Court applied the proper legal standard for determining judicial bias.

Appellant alleges that this Court applied the wrong standard in finding there was no judicial bias, and cites Caperton v. A.T. Massey Coal Co., Inc., et al., 556 U.S. 868 (2009) as the "now-controlling standard." Caperton does not create a new standard, but instead applies existing standards to a specific instance, namely, judicial election contributions. Id. at 881-82. The South Carolina Code of Judicial Conduct and our case law in this area have not been overruled by Caperton, and this Court's decision affirming the magistrate remains the same.

V. Failure to subpoena witnesses did not violate appellant's Sixth Amendment Right to Compulsory Process.

The court agrees with appellant that it made a factual error in saying that witnesses were "subpoenaed" to appear at the February 4, 2019 hearing. The proper term in this case is "summoned." The return includes thirteen summonses for various witnesses, some of whom appeared, and some of whom did not. However, this error in word choice does change the court's analysis of the case, nor does it change the court's decision affirming the magistrate.

Appellant asks this court to address whether the Compulsory Process Clause of the Sixth Amendment applies to a Rule 29(b) hearing. This court finds that it does. See S.C. Code Ann. § 22-3-930; Rule 13, S.C. R. Magis. Ct. However, there has been no violation of the Compulsory Process Clause in this case. "[T]o demonstrate a Compulsory Process Clause violation, an appellant must make some plausible showing of how the testimony of an absent witness would have been both material and favorable to his defense." State v. Brockmeyer, 406 S.C. 324, 334, 751 S.E.2d 645, 650 (2013). Appellant testified that she wished to subpoena her trial counsel, Mr. Theodore Nichols Lupton (tr.pp. 8-9); Ms. Dinah Gail Steele and her medical records (tr.p. 10); Charlene Crouch² (tr.p.1.); Charles White (tr.pp. 17-22); and Teresa Ingram³ (tr.p. 27). The first fifty-three pages of the transcript of the motion to reopen are filled appellant detailing what she hoped to gain from these witnesses and pieces evidence if they were to appear in court.

Upon reviewing this testimony, and in light of the law regarding Sixth Amendment protections in post-trial motions, this court finds that appellant has failed to make a plausible showing under the Compulsory Process Clause of how the testimony of the absent witnesses and other evidence she wants subpoenaed would be both material and favorable to her defense.

² Ms. Crouch and Ms. Steele were summoned by the magistrate to the hearing on the motion to reopen and examined by Dr. Faltas. See Tr.pp. 78-87, 87-110.

³ Mr. White, Mr. Lupton, and Ms. Ingrahm were all summoned to the hearing but did not appear.

Therefore, while the Compulsory Process Clause does apply to Rule 29(b) motions generally, there is no violation in this case.

VI. Appellant failed to ask relevant questions when given the opportunity to examine Ms. Steele on her claims of mental injury.

Appellant asks this Court to clarify its ruling regarding Ms. Dinah Gail Steele's alleged mental injury and its relation to her motion to reopen. The court finds that appellant failed to show a sufficient connection between the mental injury Ms. Steele suffered and her case to justify granting the motion. In addition to being allowed to testify herself about the relation between Ms. Steele's mental injury and her case, appellant was allowed to examine Ms. Steele at length. (Tr.pp. 78-87.) While appellant's questions generally related to Ms. Steele's claims of mental injury, there were many diversions and irrelevant questions throughout the examination. The magistrate made multiple attempts to keep appellants questions focused on how Ms. Steele's mental injury related to the trial of her case, but ultimately found that she was not able to produce enough relevant evidence to grant her motion to reopen. This court agrees and upholds the magistrate's ruling.

At the conclusion of the hearing, the magistrate found applicant had failed to present sufficient evidence to support her motion to reopen. This court agrees, and for the foregoing reasons, appellant's Motion to Reconsider is DENIED.

[Signature Page to Follow]



Richland Common Pleas

Case Caption: City Of Columbia , defendant, et al VS Marie Assaad Faltas
Case Number: 2019CP4001374
Type: Order/Other

IT IS SO ORDERED

s/D. Craig Brown (2160)

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