

State of South Carolina
County of Richland

John Wallace Hayward #291763
Petitioner

State of South Carolina
Respondent

The Supreme Court of South
Carolina

2019-CP-40-0286

Petition For Writ of
Certiorari

Hon. Judge Manning

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S.C. SUPREME COURT

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C.P. & G.S.
RICHLAND COUNTY

The ~~petitioner~~ petitioner is here in this Court to explain why the determination by the PCR Court to dismiss the petitioner's PCR application was improper.

This is a novel issue that has never been brought before the Court to be ^{ruled} on in South Carolina. It would be in good faith to grant this Petition For Writ of Certiorari. The legal landscape of the State of South Carolina needs a ruling on the importance of a proper remittitur directly and collaterally. The petitioner presents these questions to the Court for consideration:

#1. If appellate jurisdiction ^{was} transferred to the Circuit Court with an improper direct appeal.

remittitur, does that makes the PCR Court's judgment void pertaining to the three charges that were still in the jurisdiction of the South Carolina Court of Appeals?

#2. After the South Carolina Court of Appeals recalled the improper direct appeal remittitur from the circuit court and then properly resent the proper direct appeal remittiturs to the circuit court, can a "first bite of the apple", PCR application be filed pursuant to SC Ann Code §17-27-45(A)?

Applicant argues that he should be permitted to proceed forward on his post-conviction relief action because the PCR court lacked jurisdiction to rule on three(3) charges that were denied and dismissed without a direct appeal remittitur. The SC Court of Appeals just recently finalized the applicant's 2006 Direct Appeal pertaining to the three(3) charges with the proper sending and ~~the~~ filing of the direct appeal remittiturs in Richland + Lexington County Clerk of Court Offices after granting that applicant's Motion to Recall Remittitur on Sept. 21 2018 which relinquished their appellate jurisdiction of the three(3) charges securing the applicant's guaranteed right of due process of law under the ~~applicant's~~ South Carolina Constitution Art V § 3 Privileges and Immunities; due process; equal protection of laws the 14th Amendment of the US Constitution, SC Ann Code §17-27-30, SC Ann Code §17-27-45(A) and 16 SC Jur. App + Error §156(2021)

Appellant Jurisdiction

The remittitur was sent down improperly from the S.C. Court of Appeals after the entry of the judgment. The record clearly shows that the two Richland County Charges were never remanded from the S.C. Court of Appeals until Sept 28 2018. When the remittitur has been properly sent, the appellant court no longer has jurisdiction over the matter and no motion can be heard there after; the only exception to the rule is when the remittitur is sent down by mistake error, or inadvertence of the appellate court or it's officer. Wise vs SCDC 372 SC 173, 642 SE2d 551 (2007) Estate of Bridwell v Life & Hope Assembly of God 2015 WL 5047696 (2015) see also Levy v Carolinian LLC 2018 WL1181225 (stating an appellate court divest itself of jurisdiction over a matter when it properly sends the remittitur to a lower court.). The remittitur was improperly sent, so the exception to the rule is clearly made by the evidence at hand, the direct appeal on record. Recently determined in South Carolina the final disposition of a case occurs when the remittitur is filed in the circuit court. Beatty v Rawski 97 Supp 3d. 768 (Ct 4th SC 2015). Final disposition of a case occurs when the remittitur is returned by the Clerk of Appellate Court and filed in the lower court until that time the case is pending on appeal. Christy v Christy 317 SC 145 452 SE2d 1 (S.C. App 1994) McDowell v SC Dept of Serv. 300 SC 24, 386 SE2d 280 (Ct. App 1989) SC Dept of Trans. v Buckles ex rel Estate of 2009 WL9528925 (2009). Appellate record must affirmately show the proper taking of all necessary steps and existence of all facts necessary to confer jurisdiction

on the appellate court. Windham v Sanders 237 SE2d 205
287 SC 170 (1985) Since the appellate record must affirmately
show the proper taking of all necessary steps and existence of
all facts necessary to confer jurisdiction on the appellate
court then the appellate record must affirmately show proper
taking of all necessary steps and existence of all facts necessary
to confer jurisdiction on the circuit court to end appellate
jurisdiction. Jurisdiction over the case vests in the circuit
court upon receipt of the remittitur from the appellate court.

Brackenbrock North Charleston LP v County of Charleston
336 SC 503, 623 SE2d 91 (2005). In the present case the
jurisdiction over the three charges could not have been vested
in the circuit court without the receipt of the remittitur
from the appellate court. see Harleyville Mut. Ins. Co. v State
401 SC 15, 736 SE2d 651 (2012); Beatty v. Rawski 97

F. Supp 3d 768 (2015). Once the remittitur is sent down
from the appellate court circuit court acquires jurisdiction
to enforce the judgment and take any action consistent with
appellate court's ruling. Muller v Myrtle Beach Golf & Yacht
Club 313 SC 412, 438 SE2d 248 (1993). Martin v Paradise
Cove Marina 348 SC 379, 559 SE2d 348 (SC App 2001).

The three charges never left the jurisdiction of the S.C. Court
of Appeals until the remittitur was properly sent on Sept. 28
2019. Appellant now has remedy for PCR application pursuant to
S.C. Ann Code § 17-27-30 Jurisdiction of Court: The court in
which by the Constitution and statutes of this State original
jurisdiction in habeas corpus is vested may entertain in

accordance with its rules a proceeding under the chapter to the extent applicable, governs the proceeding. See S.C.

Constitution Art V § 9 Jurisdiction of Court of Appeals binding effect of the Supreme Court decisions: The Court of Appeals shall have jurisdiction as the General Assembly shall prescribe by general law. The decisions of the Supreme Court shall bind the Courts of Appeals as precedents.

Void PCR Judgment Pertaining to the Three Charges

The acts of the PCR court with respect to the three charges as to which it had no jurisdiction are void. The acts of a court with respect to a matter as to which it has no jurisdiction are void. State v Guthrie 572 SE2d 309 352 SC 103 (S.C. App 2002) City of Fort Mill v Fitzgerald 2014 WL7339453 (2014) Town of Hilton Head Island v Goodwin 634 SE2d 59, 61 (S.C. App 2006) Brown v State 540 SE2d 846, 343 SC 342 (2001). A judgment is void as to parties not within the jurisdiction of the court and when the jurisdiction defects appear on the face of the record the judgment may be disregarded as a nullity in any proceeding direct or collateral Yarbrough v Collins 290 SC 78 348 SE2d 194 reversed 293 SC 290 360 SE2d 300

(S.C. App 1986) The definition of "void" under rule permitting relief from judgment only encompasses judgment from courts which failed to provide due process or judgments from courts which ~~failed to provide due process~~ lacked subject matter jurisdiction or personal jurisdiction.

U.S. Constitution 14th Amendment Belle Hall Plantation
Homeowner's Assn Inc v. Murray 419 SC 605, 799 S.E.2d 310

(Feb 8 2017). With the PCR judgment pertaining to the three charges being void, the appellant's due process was violated pursuant to SC Constitution Art 1 § 3 Privileges and Immunities; due process; equal protection of laws, and U.S. Const 14th Amend. when appellate jurisdiction was never conveyed to the PCR court and the ~~proper jurisdiction~~ prejudiced the appellant because he was given a partial, prejudiced and limited PCR hearing. So the appellate can show the ~~void~~ judgment of the PCR court in the case of 2006-CP-40-7301 with respect to 2003-GS-40-00870, 2003-GS-40-00905, and 2003-GS-~~32~~-04191 as to which it has no jurisdiction is void because the PCR court lacked subject matter jurisdiction without the proper sending of the remittitur.


After the proper sending of the remittitur in 2018 the applicant filed a PCR application pursuant to SC Ann Code § 17-27-45(A): An application for relief pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later. The plain language of § 17-27-45(A) stipulates that a PCR can be filed within one year after the sending of

remittitur to the lower court from an appeal or the filing of the final of the final decision upon an appeal or whichever is later. The plain language of a statute is considered the best evidence of legislative intent. Glassmeyer v City of Columbia 414 SC 213 777 SE2d 835 (S.C. App 2015). The primary role of statute construction is to ascertain and give effect to the intent of legislative. State v Jones 786 SE2d 132 416 SC 283 (S.C. 2016) In construing a statute words must be given their plain and ordinary meaning without resort to subtle or forced construction to limited or expand the statute's operation. Brown v State 540 SE2d 846, 343 SC 342 (2001). With that said a direct appeal remittitur was never sent down to the Richland County nor Lexington County Clerk of Court Offices in regards to the three above charges until Sept. 28, 2018 making the later date ~~the~~ of § 17-27-45(A) the controlling date. ("... within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal or whichever is later.") Without ~~proper~~ jurisdiction the applicant's due process was violated. "A PCR application must be filed within one year after conviction or, if a direct appeal is taken, one year after the remittitur is ~~sent~~ sent to trial court." McCoy v State 410 SC 363, 737

SE2d 622 (2013) McCay Holdings: #1 one year limitations period governing application for post conviction relief begins to run from date remittitur is sent by appellate court on direct appeal, not from date of conviction.

Conclusion

Pursuant to US Constitution Amend 14th
SC Const Art V § 9, SC Ann Code § 17-27-30
SC Ann Code § 17-27-45(A) 16 SC Jur Appeal
& Error § 156 (2017) the Court will grant this
Petition for Writ of Certiorari.


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December 22, 2021