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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

R. Markley Dennis, Jr., General Sessions Judge

Case No. 2022-000472

The State,

Respondent,

v.

Bowen Gray Turner,

Respondent,

In re: Victim C.B.,

Appellant.

APPELLANT'S RETURN TO MOTION TO DISMISS

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APPELLANT’S RETURN TO MOTION TO DISMISS

The State has moved to dismiss the appeal for lack of standing. Relying on dicta in this Court’s opinion in *Reed v. Becka*, 333 S.C. 676, 681, 511 S.2d 396, 399 (Ct. App. 1999), the State argues that “[n]othing in our Constitution or statutes provides the ‘victim’ standing to appeal the trial court’s order.” Victim C.B. will show that, although there is no specific grant to victims of the right to appeal, there is a specific grant to victims of the right to seek a writ of mandamus with a circuit judge or a justice of the Supreme Court. In the hearing in the trial court in this matter, Victim C.B. properly filed for and sought a writ of mandamus, which was denied. Nothing in the South Carolina Constitution prohibits an appeal to the Court of Appeals after a denial or a refusal to hear a petition for a writ of mandamus by the trial court.

Victim C.B. will show that allowing appellate review of a trial court’s refusal to acknowledge a petition for a writ of mandamus is necessary to protect Victim C.B.’s constitutional rights, including the right to petition the circuit court for mandamus. Appellate review is especially important when the trial court’s refusal to entertain the petition is based on its creation of a procedural bar to such petition in a “Four-Day Rule.”

I. Pertinent Facts as Set out in the Notice of Appeal and Alternative Writ

Defendant Bowen Turner was charged with Criminal Sexual Conduct - First Degree, stemming from an offense on June 2, 2019. The State filed a Motion for Bond Revocation, and a hearing was scheduled for April 8, 2022. Significantly, neither Victim C.B. nor her counsel were expressly notified by the Solicitor that he intended to cancel the scheduled bond revocation hearing and, instead, dispose of the charge by a guilty plea hearing. However, Victim C.B. suspected that the Solicitor might use the scheduled time for a hearing on a guilty plea and filed a

Writ of Mandamus as well as two motions opposing the anticipated plea agreement. At the plea hearing on April 8, 2022, the trial court summarily refused to entertain Victim C.B.'s petitions, a ruling based not on the merits, but on the basis that each petition was untimely filed and served in violation of "the four-day rule." During the hearing, counsel for Victim C.B. moved the court for a continuance in order to comply with the court's four-day rule. The court denied this motion and proceeded with the guilty plea hearing.

II. The Court of Appeals has jurisdiction over an appeal from a circuit judge's refusal to entertain a petition for a writ of mandamus.

The Court of Appeals has jurisdiction over any case in which "an appeal is taken from an order, judgment, or decree of the circuit court, family court, a final decision of an agency, a final decision of an Administrative law judge, or the final decision of the Worker's Compensation Commission." S.C. Code 14-8-200.

An appeal of a refusal to consider a petition for a writ of mandamus is within this Court's jurisdictional powers and is not prohibited by the Constitution or statutory or case law. If this Court did not have jurisdiction to hear an appeal from a refusal to consider a petition for a writ of mandamus, then, under the reasoning of the South Carolina Attorney General, the only feasible remedy would be to seek another writ in the South Carolina Supreme Court based upon the denial of the right to petition for a writ. In this situation, one would be seeking a writ for a denial of a writ.

Victim C.B. brings this action as an appeal from an order of the circuit court refusing to consider a petition for a writ of mandamus. This appeal is proper and in accordance with the jurisdictional statute which expressly allows appellate review of orders. The statute does not expressly state that criminal defendants have the right to appeal; their right to appeal is implied.

Similarly, Victim C.B. urges the Court to recognize that, in certain circumstances, victims should have equal rights to seek review of systemic problems, such as the trial court's refusal to entertain a writ of mandamus and other motions.

III. The Circuit Judge's Four-Day Notice Rule for a Writ of Mandamus was error.

Victim C.B. filed a Petition for a Writ of Mandamus with the trial judge before the hearing. The judge refused to consider the petition because it was not timely filed in accordance with the "Four-Day Rule," apparently the trial judge's requirement that a petition for a writ of mandamus be filed four days before the hearing thereon.

The circuit courts frequently silence the victim before the plea is accepted by the judge, waiting until after the plea is accepted before allowing the victim to present. Hearing from the victim at this point is an empty gesture because the plea has already been accepted. Aware of this custom, Victim C.B. filed and served the petition for a writ of mandamus as well as the other two motions prior to the hearing. However, the trial judge would not consider any of them due to his "Four-Day Rule."

The State relies on *Reed v. Becka* for the proposition that a victim's rights can only be protected through a Mandamus; however, the facts of this case show how inadequate a writ is as an enforcement mechanism. The Solicitor notified Victim C.B. on Monday afternoon that a motion to revoke bond would be presented to the Court on Friday. Victim's counsel acted expeditiously to file the petition for writ of mandamus with the circuit court but was unable to comply with the circuit judge's "Four-Day Rule." Although the *Reed* decision as quoted by the State does allow for the enforcement of a victim's rights through a mandamus, the facts of this

case show that when a trial court invents procedural hurdles, the curative mechanism crafted in the Constitution is rendered ineffective and appellate review is critical.

The State argues that a petition to the South Carolina Supreme Court for a writ of mandamus is the appropriate avenue for review of Victims' Rights issues. Victim C.B. recognizes and agrees that a petition to the South Carolina Supreme Court is available. However, the Victims' Bill of Rights also allows for a Petition to the circuit court judge to require compliance. It states as follows:

The right created in this section may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a wilful failure to comply with a writ of mandamus is punishable as contempt.

Victim C.B. filed a petition for mandamus with the circuit judge as allowed by this constitutional provision. The circuit judge refused to consider the petition due to his "four-day rule." The Victim C.B. seeks review of the circuit judge's decision to disregard the properly filed petition for writ of mandamus through an appeal to this Court of Appeals.

IV. Victim C.B. is a real party in interest.

Victim C.B., separate and apart from meeting the requirements to qualify as a victim in this matter, has standing as a real party in interest. To have standing, one must have a personal stake in the subject matter of the lawsuit. *Sea Pines Assoc. for the Protection of Wildlife, Inc. v. S.C. Dept of Natural Resources and Community Svcs. Assoc., Inc.*, 345 S.C. 594, 550 S.E.2d287(S..C Sup Ct 2001).

The circuit court refused to consider Victim C.B.'s petition for a writ of mandamus. The South Carolina Constitution allows victims to file such petitions with a circuit court judge.

Standing for this appeal should be implied where those rights are guaranteed by our Constitution. Looking to the United States Constitution's ruling in 1803 in the case of *Marbury v. Madison*, it has been understood that, where a specific duty is assigned by law and individual rights depend upon the performance of that duty, the individual who considers himself injured has a right to resort to the laws of his country for a remedy. *Marbury v. Madison*, 5 U.S. 137 (1803). Similarly, standing should be recognized for appeals from a refusal to consider a petition which is expressly allowed by the South Carolina Constitution.

V. Conclusion

Victim C.B. opposes the motion to dismiss and seeks a determination that this Court is a proper venue to hear an appeal from a circuit judge's refusal to entertain a petition for a writ of mandamus and additional motions. Victim seeks that any issues that this Court may determine are not within its jurisdiction, but that would appropriately be in the jurisdiction of the South Carolina Supreme Court, be transferred to that tribunal.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served Appellant's Return to Motion to Dismiss and by emailing a copy of it on, 2022, to the South Carolina Court of Appeals at ctappfilings@sccourts.org; to Alan Wilson of the S.C. Attorney General's Office at awilson@scag.gov; to William Blich of the S.C. Attorney General's Office at wblitch@scag.gov; and to Respondent Bowen Gray Turner's attorney of record, Robert Dudek of the S.C. Commission on Indigent Defense at rdudek@sccid.sc.gov by emailing a copy of it on June 2, 2022.

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