

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Gregory I. Settle v. Ralph Terry, Acting Warden

No. 17-0337 (Kanawha County 15-P-562) · No. No. 17-0337 · Decided January 8, 2018

SUMMARY

The West Virginia Supreme Court of Appeals dismissed Gregory I. Settle’s appeal from the denial of his second habeas corpus petition without prejudice and remanded the matter to the circuit court. The court held that Settle’s timely Rule 59(e) motion to alter or amend the judgment remained pending, suspending the judgment’s finality and making the appeal unripe. The court also denied Settle’s motion for appointment of appellate counsel as moot.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Allen H. Loughry II; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	January 8, 2018
DOCKET	No. 17-0337
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Kanawha County's denial of his second petition for a writ of habeas corpus. While the appeal was pending, the circuit court had not ruled on petitioner's timely Rule 59(e) motion to alter or amend the judgment.
STANDARD OF REVIEW	The appellate court independently determines whether it has authority and jurisdiction to hear the appeal, including whether a final appealable order exists.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Gregory I. Settle v. Ralph Terry, Acting Warden, Mt. Olive Correctional Complex

TOPICS

- appellate procedure
- final judgment rule
- ripeness
- state post-conviction relief
- motion for reconsideration

PRACTICE AREAS

Appellate procedure

State post-conviction habeas corpus

Civil procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court of Appeals had jurisdiction over an appeal from a habeas judgment while a timely Rule 59(e) motion to alter or amend that judgment remained pending in the circuit court.
2. Whether the appeal should be dismissed without prejudice and remanded for the circuit court to rule on the pending Rule 59(e) motion.

HOLDINGS

1. A timely motion to alter or amend a judgment under Rule 59(e) suspends the finality of the judgment and renders it unripe for appeal until the motion is resolved.
2. The court must determine its own authority to hear an appeal, and parties cannot confer appellate jurisdiction where it is otherwise lacking.

KEY QUOTATIONS

“A timely-filed motion to alter or amend judgment “suspends the finality of the judgment and makes the judgment unripe for appeal.”” (at 2)

“Therefore, we conclude that the finality of the circuit court’s March 22, 2017, order is currently suspended making it unripe for appeal.” (at 2)

FACTUAL BACKGROUND

A jury convicted Gregory I. Settle of daytime burglary and first-degree sexual assault, and the circuit court imposed consecutive sentences. After an earlier habeas petition was denied and affirmed on appeal, Settle filed a second habeas petition alleging ineffective assistance by counsel in the first habeas proceeding. The circuit court denied the second petition on March 22, 2017, but Settle timely moved under Rule 59(e) to alter or amend that order, and the motion remained unresolved when he filed his appeal.

PROCEDURAL HISTORY

After convictions for daytime burglary and first-degree sexual assault, petitioner pursued habeas relief. His first habeas petition was denied and the denial was affirmed in *Settle v. Ballard*. Petitioner then filed a second habeas petition alleging ineffective assistance in the first habeas proceeding; the circuit court denied it on March 22, 2017. Petitioner timely filed a Rule 59(e) motion on March 31, 2017, but appealed before the circuit court ruled on that motion. The Supreme Court of Appeals dismissed the appeal without prejudice and remanded for the circuit court to decide the Rule 59(e) motion.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The appeal was dismissed without prejudice and remanded for the Circuit Court of Kanawha County to rule on petitioner's motion to alter or amend the March 22, 2017, order. The motion for appointment of appellate counsel was denied as moot.

CASES CITED

- Settle v. Ballard, No. 14-0907, 2015 WL 5086766 (W. Va. Aug. 28, 2015) (memorandum decision)
- State ex rel. Parsons v. Zakaib, 207 W. Va. 385, 532 S.E.2d 654 (2000)
- James M.B. v. Carolyn M., 193 W. Va. 289, 456 S.E.2d 16 (1995)
- McGraw v. American Tobacco Co., 224 W. Va. 211, 681 S.E.2d 96 (2009)

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