

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Sep 26 2022**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Bentley Price  
The Honorable R. Markley Dennis, Jr.

App. Case No. 22-001123  
Ct. App. No. 2019-001671

J. Doe,

Petitioner,

v.

Design Review Board (DRB)  
of the  
Town of Sullivans Island (TOSI),  
Alka Construction Co.,  
Svjetlana Bilic Damjanovic,  
Individually and d/b/a Alka  
Construction Co., Branko  
Damjanovic, Individually and  
d/b/a Alka Construction Co.,  
Kenneth Craft, III, Individually and  
d/b/a Craft Design Co.,

Respondents.

PETITION FOR REHEARING

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SC 29482-0187  
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For Petitioner

To the extent appeal and meaningful review require petition for rehearing, petitioner timely submits petition for rehearing. Without being disagreeable, there is disagreement. It is respectfully submitted the opinion filed September 14, 2022, misapprehends and/or overlooks material fact and law and fails to follow the South Carolina Appellate Court Rules (SCACR) and controlling precedent in this matter regarding the circuit court sitting in its appellate jurisdiction and statutory authority. This matter involves the Court of Appeals' failure to follow the South Carolina Appellate Court Rules (SCACR) including but not limited to, Rule 240(j), SCACR, and State and Federal Constitutional mandates, as well as conflict with this Honorable Court in the interpretation/application of Rule 240(j), SCACR, and other South Carolina Appellate Court Rules. Uniformity and consistency in the interpretation/application of the SCACR in the appellate courts deserves review. As the intended beneficiaries, this great State and its citizens request it. Matters of great public importance are involved, including but not limited to, dismissal of appeal by a single government employee with no record on appeal (ROA), affidavit, or factual support which is a violation of the SCACR he is sworn by solemn oath to uphold and which is, by definition, consistent with abuse of discretion. Thereafter, Court of Appeals (COA) Rule 221, SCACR, petition for rehearing was timely filed and fees paid. By order dated 8/11/22, the self-same conflicted single government employee wrongfully repeated his pattern and practice of violating the SCACR by conversion of the timely paid filing fees and by wrongful refusal of the timely filed COA Rule 221, SCACR, petition for rehearing thereby denying/obstructing full and fair, meaningful review of his wrongdoing. Petitioner is prejudiced thereby. It is respectfully submitted, under these facts, alleged misconduct by a single conflicted government employee including but not limited to, violations of the SCACR and conversion of unearned monies, obstructed/denied meaningful judicial review of that single conflicted government employee's breach of trust, abuse of discretion, and/or other wrongdoing in violation of due process

and State and Federal Constitutional protections of litigants' individual and property rights. Accordingly, under these facts, the state court of last resort is the only court to provide meaningful review of the single conflicted government employee's misinterpretation, misapprehension, conversion, and/or wrongdoing under the SCACR and other authority which supports the instant petition for rehearing. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See U.S. Const., Article I, sec. 9 and 10; U.S. Const., Article III; U.S. Const. amend. I, IV, V, VII, and XIV.

The facts herein are chilling. A brand-new Chief Judge of the currently Murdaugh-besmirched South Carolina judicial system, as a single government employee and without affidavit, factual support, or ROA (Record on Appeal) for meaningful review, arbitrarily, capriciously, and summarily dismissed meritorious appeal. The South Carolina Appellate Court Rules (SCACR), the Federal Rules on which the SCACR are based, the South Carolina Legislature's intent, and the letter and spirit of the statutory authority in S.C. Code § 14-8-220 mandate de novo review of a single government employee's Court of Appeals order. The Legislative intent and the purposes of that statute include but are not limited to, protection of the integrity of the judicial system, protection of the Court of Appeals, protection of the individual judges, and compliance with State and Federal Constitutional mandates and substantial rights:

**S.C. Code § 14-8-220**

**SECTION 14-8-220. Power of Court and judges to administer oaths and writs; appeal.**

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

The record reflects that the single conflicted government employee who is duty bound by sworn oath to uphold the SCACR violated the SCACR and that statute. The record reflects the self-same conflicted government employee at every turn evaded de novo review of his own unauthorized arbitrary and capricious order for summary dismissal of meritorious appeal without affidavit, factual support, or ROA (Record on Appeal) in a pattern and practice designed to deny meaningful judicial review. A reasonable person should and would have reasonable questions regarding impartiality.

The record reflects and the docket confirms the self-same conflicted single government employee has evaded and/or unlawfully prevented disposition on the merits on petitioner's timely Court of Appeals (COA) Rule 221, SCACR, petition for rehearing. "When a judge or the appellate court dismisses the case, the party should file a petition for rehearing **pursuant to Rule 221, SCACR.**" Toal *et al.*, *Appellate Practice in South Carolina*, Third Edition (2016), p. 374 (emphasis supplied). Pursuant to Rule 242(c), SCACR, "A decision of the Court of Appeals is **not final** ... until the *Rule 221* petition for rehearing has been acted on by the Court of Appeals." Rule 242(c), SCACR (emphasis supplied). In fact, Rule 242(d)(1), SCACR, requires petitioner herein to certify the Rule 221, SCACR, petition for rehearing has been finally ruled on. Toal *et al.*, *Appellate Practice in South Carolina*, Third Edition (2016), p. 514. See *Aiken Speir, Inc. v. Henry*, 326 S.C. 268, 486 S.E.2d 492 (1997). The timely filed and paid COA Rule 221, SCACR, petition for rehearing in this matter has not been finally ruled on, therefore, the SCACR provide no jurisdiction or authority for granting or denying cert petition until and unless the timely filed COA Rule 221, SCACR, petition for rehearing has been decided. As a repeat offender, the self-same conflicted government employee, is currently sitting on the timely filed and paid motion for reconsideration. The docket reveals wrongful conversion of

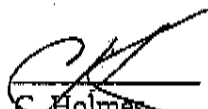
multiple unearned fees is business as usual for the self-same single conflicted government employee. Repeated wrongful conversion of multiple unearned fees paid in good faith by members of the public is a violation of, including but not limited to, the SCACR. Per the SCACR as well as statutory and case law, the matter herein is not final and jurisdiction is currently pending in the Court of Appeals for disposition on the timely COA Rule 221, SCACR, petition for rehearing. Jurisdiction can be raised at any time. Jurisdiction cannot be waived. To the extent there is ambiguity, the rule of lenity supports disposition on the COA Rule 221, SCACR, petition for rehearing. The South Carolina Constitution does not authorize a single conflicted government employee to make legislative decisions which essentially re-write the statutes and the SCACR rules for his conflicted convenience. Matters of great public importance invite review. Accordingly, it is respectfully requested that the petition be granted.

### CONCLUSION

For the reasons stated and for substantial justice affecting substantial rights, petition for rehearing is respectfully entered.

Respectfully submitted,

Dated 9/26/2022

  
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