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SC Court of Appeals

FORM 18
PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
MASTER -IN-EQUITY LAW

Judge Mikell R. Scarborough

Case Noa 2016-001201 (S.C. Ct. App. filed sept. 28, 2021)

Allen Livingston, Respondent,

v.

Harold Simmons Jr., Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CC: Allen Livingston, Court of Common Pleas Honorable Mikel R Scarborough S.C. Master-in-Equity, South Carolina Court of Appeals, Supreme court of South Carolina, US. Dpt. Of Justice, and SC Office Attorney General

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CERTIFICATE OF COUNSEL

The petitioner, Harold Simmons, respectfully petitions this court for a writ of certiorari to review the judgment and opinion of the South Carolina Court of Appeals, filed on September 28, 2021. The petitioner certifies that the Petition for Rehearing/ Reverse Order was made and finally ruled (denied)on by the Court of Appeals on September 28, 2021.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in not considering the Pro Se non-professional in a professional system and the limited literary ability of the petitioner and the violation of due process of law?

2. Did the Court of Appeals err in their order filed date August 4, 2021 in not considering the factual documented evidence verses a misprint that causes the order to be in err of its contents of Pursuant to Rule 203(b)(l), SCASR„?

3. Did the Court of Appeals err in not considering the entire origin of the appeals case and order a ruling in favor of the petitioner and the many violations of the respondent?

4. Did the Court of Appeals err in ignoring the Supreme Court opinion No: 2020-MO-008 date file JUNE 15, 2022 by a Dismiss Order dated AUGUST 04, 2021 and then reinforced the same Opinion Order No: 2022-OP-343 date file AUGUST 17, 2022. Also, ignoring Supreme Court Order dated JULY 01, 2022 and filed JULY 15, 2022 to the Supreme Court?

5. Did the Court of Appeals err in not considering the merit of the case verses only considering the unjust technicalities and dismissing the case prematurely?

STATEMENT OF THE CASE

Appellant Harold Simmons ask the court to reinstate Case No. 2016-001201 (S.C. Ct. App. filed sept. 28, 2021) and to please take under careful consideration the merit of the case verses the technicalities. This case has been mishandled unjustly and unrightfulfrom day one of the filing of the case. I beseech and pray for justice and truth in fairness with good faith as provided by Rule 60(a) of the South Carolina Appelate Court Rules. I am petitioning a motion to reinstate the case for the following factor reasonings: July 22, 2022 my family and I were dealing with a extremely close family members death. The burial was on July 29, 2022. My mother was hospitalized July 23, 2022 and a brother was hospitalized August 8, 2022 critically ill dealing with Kidney failure and blood disorder issues. He is still fighting for his life in the hospital to this day. I am on medications due to a severe disability physical and mental and therefore all the heavy pressure and incidents happening weighed in on my abilities and functions where this case is concerned and being able to fully comprehend matters at times.

Appellant Harold Simrnons is a disabled business man of Charleston County. Respondent, Allen Livingston, is a business man of Charleston County. On March 1 1, 2014 the Respondent filed a Lis Pendens concerning a property that was in contract between the respondent and the Appellant. On April 4, 2014 the Appellant was served the Lis Pendens. On April 23, 2014 the Appellant filed an answer and requested a jury trial at that time.

The respondent filed on April 28, 2014 an affidavit of defäult, on May 22, 2014 a motion to refer to master in equity. On June 10, 2014 the Appellant was served a notice of hearing before Judge Nicholson on July 16, 2014. The Appellant was served a letter on or about July 2, 2014 from Respondent Attorney giving notice of a no hearing date needed on July 16, 2014e The Appellant was served a letter on or July 3, 2014 from Respondent Attorney giving notice of hearing for Judge Mikell

Scarborough August 4, 2014. On August 4, 2014 the hearing was scheduled and set forth to take place on November 3, 2014 at loam.

From the first hearing date on or around November 2014 through December 7, 2014 Judge mikell Scarborough has denied the Appellant any and all due process along with ignoring and not accepting prior orders by Judge Nicholson and the fact that the respondent legal counsel false testified about a hearing and presented documents based on the false hearing and further refuse to take in consideration the Respondent perjury and falsification of documents in prior court proceedings under Judge Nicholson. Judge Mikell Scarborough has constantly denied the Appellant a jury trial, change of venue, and counter claim during the entire process and refuse to Dismiss the Respondent claim and Grant Appellant the counterclaim.

The court below erred in ruling that the denial of defendant's motion to alter and amend order, the master's sale on the foreclosure of the installment sales contract should take place, and in and all pursuant terms and conditions of the May 1 8, 2016 order as well. Grant of Order on May 1 8, 2016 was in error. This court should conduct its on review of the procedures and prior Judge Nicholson orders and all documents requested by Appellant.

Reverse all of the rulings of the court below and remand and grant the case for reconsideration of appellants$ motion for counterclaim and dismiss ofrespondent Lis Pendens case filing in light ofthe violation ofdue process and denial ofjury trial amongst all the other arguments presented in this appeal, In relief the Appellant asks for the granting of the counterclaim in the minimum summation of $600,000.00 för pain and suffering, an additional minimum summation 60$0,000.00 för harassment in the courts system, and reimbursement ofall overpayments in the minimum summation of 600,213 which is fair computation per the factual recordings of the payment records in and out the court system. This Appeal followed.

If the Due Process Law Clause applies to Pro Se litigants that have been denied the right to equal time in the court of law to present argument and the right to be given the proper rules and documents along with being limited and or lack the literary abilities and if such application is unconstitutional, rehearing should be granted to determine the proper remedy. If the Due Process Law Clause does apply than the petitioner should be granted the opportunity to properly submit Rule 59 (e) and be allowed to resubmit the appellant brief, See US Constitution Amendment Article Fourteen.

During this period oftime, petitioner was taking a medication, Oxycodone, prescribed by his physician, Dr. Richardson, of the Southeastern Spine Institute. Petitioner suffers from severe back pain due to back surgery. Petitioner was taking an additional medication, cymbolta, prescribed by his physician, Dr. Richardson Of the Southeastern Spine Institute. Petitioner suffers from major depression disorder due to nedical condition.

Petitioner immediately telephoned the South Carolina Court ofAppeals to ask for assistance in reinstating his appeal.

Petitioner, a layperson of the law, should not be penalized för being ignorant of appellate procedures. (People v. Davis (1965) 62 Cal*2d 806.) Moreover, the court must consider petitioner's state ofhealth and the bewilderment he must have felt in attempting to provide the court with the proper filings. Petitioner sincerely believed that he had proceeded properly and that he had done his best as legal representation on appeal. (People v. Hickok (1949) 92 Cal-App.2d 539.)] Petitioner due process of law was violated and based on the defendant Jillge Mikell Scarborough and Judge M. Dennis Jr. clearly acted outside ofthe scope of the law and therefore Immunity does not apply in this matter.

Petitioner respectfully requests this court to consider his filings in light of the standards announced in People v. Ribero (1971) 4 Ca103d 55, 65, that the power of appellate courts to grant relief from default " is to be liberally construed to protect the right to appeal, "

The Court of Appeals affirmed the judgment of the circuit court* Petitioner seeks a writ of certiorari to review that decision.

ARGUMENT

1. THE COURT OF APPEALS SHOULD HAVE CONSIDERED THE PRO SE NON-PROFESSIONAL IN A PORFESSIONAL SYSTEM AND THE LIMITED LITERARY ABILITY OF APPELLANT AND THE VIOLATION OF DUE PROCESS OF LAW.

Petitioner redeived correspondence from the South Carolina Court of Appeals advising him that his case was found no error. The ORDER is in error concerning its contents of Pursuant to Rule 203(b)(l), SCA CR.

On or around June 2 nd, 2016, petitioner certified mailed in his Notice of Appeal..

Petitioner contends that he immediately submitted the Notice of Appeal based on his best ability according to the issues that were raised in the lower court. Petitioner received aletter dated May 3 rd, 2016, that advised him ofthe South Carolina Court of Appeals affirmed no error.

The panel's conclusion did not state what the prosing party failed to comply with and file Rule to preserve the issue för appellate review and that the petitioner to givesevice 1K)tEeof was an accurate opinion without consideration of the fact that thePetitioner was Pro Se and therefore falls in the category of a non-professional in a professional system

and could have not been made aware of the Rule and or given the nextproper process step or documents, with the denial to finish arguments and have limited or lack of literary ability otherwise known as being feeble intellect is a huge oversight.

Powell v. Alabama, 287 U.S. 45 (1932), involved the conception of the due process of law clause. "While the question has never been categorically determined by this court, a consideration of the nature of the right and a review of the expressions of this and other courts, makes it clear that the right to the aid of counsel is of this fundamental character. It never has been doubted by this court, or any other, so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they, together with a legally cornpetent tribunal having jurisdiction of the case, constitute basic elements ofthe constitutional requirement ofdue process of law. The words of Webster, so often quoted, that, by "the law of the land" is intended "a law which hears before it condemns" have been repeated in varying forms of expression in a multitude of decisions. „The rule that no one shall be personally bound until he has had his day in court was as old as the law, and it meant that he must be cited to appear and afforded an opportunity to be heard. Bute v. Illinois, 333 US. 640 (1948), involved the due process of law clause "The right to be heard would be, in many cases, oflittle avail ifit did not comprehend the right to be heard by counsel Even the intelligent and educated layman has small and sometimes no skill in the science of law. Ifcharged with crime, he is incapable, generally of determining för himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requi}es the guiding hand ofcounsel at every step in the proceedings against him. Without it,

though he be not guilty, he faces the danger ofconviction because he does not know how to establish his innocence, If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect"

The Panel did not consider the Pro Se Context, federal courts overlooked the nonprofessional in a professional system and the limited literary ability of appellant along with the denial ofa jury trial puts the decision in direct conflict with the decision of other circuits, On November 21, 2013 the petitioner submitted a petition for panel rehearing or rehearing en banc as pro se, to the best of his ability considering petitioner is limited and lack literary ability with a feeble intellect. Petitioner submitted the petition in a timely manner by certified mail.

The practical Implications ofthe panel's decision further granting review. By opening the door to suits against officials challenging official government actions, the panel's decision potentially creates jurisdiction in this Circuit over every human rights case in the world—an outcome that, is very needed in the legal system. Indeed, ifa Pro Se litigant with limited literary abilities could be heard and obtain judicial review of virtually any official government action simply "by (the) artful pleading" of suing the responsible officer (person in their official capacity), the statute would become "optional." And the flood of potential suits allowed by the panel decision may well include challenges to the actions of important allies of the Official persons. See Belhas v, Ya'alon, 515 F.3d 1279 (D.Cu Cire 2008).

If the Due Process Law Clause applies to Pro Se litigants that have been denied the right to equal time in the court of law to present argument and the right to be given the proper

rules and documents along with being limited and or lack the literary abilities and if such application is unconstitutional, rehearing should be granted to determine the proper remedy. If the Due Process Law Clause does apply than the petitioner should be granted the opportunity to properly submit Rule 59 (e) and be allowed to resubmit the petitioner brief

See US Constitution Amendment Article Fourteen

2. PETITIONER DID NOT PROPERLY RECEIVE DUE PROCESS OF THE LAW PURSUANT TO RULE 203(b)(1)SCASR.

On or around May 2016 the petitioner submitted a notice ofappeal as pro se, petitioner is limited and lack literary ability with a feeble intellect along with the trial court failure to give the proper rules according to South Carolina Code ofLaws Section 14-17-260 (b) which clearly states that the clerk shall issue all processes and sign all judgments. The clerk shall (b) issue all rules and notices ordered in the common pleas, The Panel should be willing to consider and determine if the clerk fåiled to comply with the South Carolina Code ofLawse This contributed to the petitioner to be unaware ofthe Rule 59(e) after inquiry with the court clerk concerning the rules and next step in the process} no preorder or rules was sent to or given to the petitioner. The petitioner proceeded to file a notice of appeal on or around July, 2021 believing that the clerk direct him accurately in the process and had given him all ofthe rules at that time, not realizing that the clerk did not give him the rule of 59(e). The panel didnot consider that the Pro Se Petitioner did not have the proper information given to him andor that he comprehended the information.

3. PETITIONER DID NOT PROPERLY GET THE JUSTICE THAT IS DUE PER THE LAW AND RULING m THEIR FAVOR BASED ON THE MANY VIOLATIONS OF THE RESPONDENT ACTS

The Court sent a ORDER filed dates August 4, 2021 via delivery by email to me. The ORDER is in error concerning its contents of Pursuant to Rule 203(b)(l), SCA CR. I did serve in my legal 30 days written notice to the Regpondent, In fact I have provided legitimate proof of such matters to concur my statement of validity.

1: The Judgement was entered on April 27th , 2016

2: The USPS stamped date it May 2nd, 2016

3: Delivered it on May 3rd, 2016

4: The Appellant 30 days starts to run from May 4th, 2016 through June 2 nd , 2016.

Documents collaborate this as well and this is from 2016 even though there has been a minimum of two other orders that has came after this alleged service violation that brought about this ORDER on August 4th, 2021 . This is a direct insult to justice and yet another violation of my civil procedure rights and due process in the American Judicial system. I find it very unfair that I am called on this frivolous alleged violation in a ORDER, when for years the Respondent has committed varies violation including perjury, fålsifying documents, and even judges rendering false ORDERS and yet no one has been called to the forefront on their proven blatant criminal acts and this case being ruled upon in my favor, I am asking for the Appeals court to do their just duty and let justice prevail and give me exactly what any American citizen deserves and that Due process and justice for a wrong that has been doing to them. Neither did the Court of Appeals consider the original final.

The lower courts errored and ignored six requests for a jury trial from the Petitioner which goes against Rule 53(b) and Rule 38. The Appeals Court errored and ignored the facts by never looking the facts of the case and yet was making decisions on technicalities and never addressing the case and its merit of facts. Furthermore the lower courts errored in ignoring a

fraudulent Default Order filed on June 4, 2014 that was authored and signed by Judge Markley Dennis; which can be found on the Record of Appeal Page 194. The Petitioner/Appellant requested in writing August 1, 2018 immediately upon having knowledge of this fraudulent Default Order that was filed on June 4, 2014; which can be found on the Record of Appeal Page 195-196. The written request was asking for Judge Markley Dennis to correct the fraudulent Default Order. A even greater gross depth due process violation took place when Judge Markley Dennis gave a written letter reply on September 4, 2018 to the Appellant by denying with an improper response as if the Appellant was asking for legal advice instead of addressing the requested correction of the violation; which can be found on the Record of Appeal Page 197. This was also followed up with the unjust accusation by Judge Markley Dennis reasoning using the legal stance that the Petitioner was served when in fact was not never served concerning this fraudulent Default Order filed on June 4, 2014, and in fact on the Record of Appeal from the lower Court Roster further proves that the Petitioner was not served and this is found on Pages 199-203 of the Record of Appeals Court Roster. The Appeals Court errored and ignored the facts and merit of the case and in return focused on unjust technicalities and usurping their power by going against the Supreme Court opinion order and implementing the same exact ruling that was asked for them to correct by the Supreme Court.

4. THE COURT OF APPEALS SHOULD HAVE NOT IGNORED THE SUPREME COURT OPINION NO: 2020-MO-008 DATE FILE JUNE 15, 2022 BY A DISMISS ORDER DATD AUGUST 04, 2021 AND THEN REINFORCED THE SAME OPINION ORDER NO: 2022-OP-343 DATE FILE AUGUST 17, 2022. ALSO, IGNORING SUPREME COURT ORDER DATE JULY 01, 2022 AND FILED JULY 15, 2022 TO THE SUPREME COURT.

The lower court erred by ignoring the five written requests for Jury trial as provided by Rule 38(a)(b) in the record onAppeal Pages242-249. The lower courts further ignored and acted in favortism or mistakenly of the lower court as provided in Rule 55 Default (b)(2), (c) and Rule 60(a) in teh record of Appeal Pages 193-197. Appeal Page 341 clearly show the violation of default and due process of law. A reinstatement of the case should be granted so I as a Petitioner whom was denied a civil jury trial by a federal district court have at least three options: petitioning the court of appeals for a writ of mandamus; pursuing a permissive interlocutory appeal under 28 U.S.C. 1292(b); or appealing the denial of a jury trial after final judgment. *Writ of Mandamus*. In general, a writ of mandamus is used only in very limited circumstances, typically to order a lower court to perform a nondiscretionary act or to reverse actions that amount . . . to a judicial 'usurpation of power.' *Hahnemann Univ. Hosp. v. Edgar*, 74 F.3d 456, 461 (3d Cir. 1996). The writ of mandamus, however, has found a special niche in protecting the right to a jury trial.

As long ago as 1918, the Supreme Court recognized mandamus as the appropriate vehicle to cure erroneous denials of a civil jury trial. *In re Simons*, 247 U.S. 231 (1918). The court based its conclusion on judicial economy-avoiding duplicative bench and jury trials-and the convenience of prejudgment appeal to litigants. This reasoning survived over the ensuing decades, and in 1959, the Supreme Court affirmed that [w]hatever differences of opinion there may be in other types of cases . . . the right to grant mandamus to require jury trial where it [has] been improperly denied is settled. *Beacon Theatres Inc. v. Westover*, 359 U.S. 500, 511 (1959). Several years later, the court reiterated that courts of appeals have the responsibility . . . to grant mandamus where necessary to protect the constitutional right to trial by jury. *Dairy Queen Inc. v. Wood*, 369 U.S. 469, 472 (1962).

5. THE COURT OF APPEALS SHOULD HAVE TAKEN CONSIDERED THE MERIT OF THE CASE PRIMARILY OVER UNJUST TECHNICALITIES.

The lower courts erred in the fact that this case was frivolous for closing the case for non payment, even though the non payment was found at the trial to have been given to the Respondent and proper credit was determined due to Petitioner in that tria. So the reason for wrongly closing the case file was found in teh record on Appeal Transcript Page 332 line 20 and 21.

Qui tam statutes enlist the public to sue to recover civil penalties and forfeitures from those who have defrauded the government. Qui tam rewards those who sue in the government's name (called relators) with a portion of the recovered proceeds. A creature of antiquity, once common, today qui tam lives on in federal law only in the False Claims Act and in Indian protection laws. The False Claims Act proscribes: (1) presenting a false claim; (2) making or using a false record or statement material to a false claim; (3) possessing property or money of the U.S. and delivering less than all of it; (4) delivering a certified receipt with intent to defraud the U.S.; (5) buying public property from a federal officer or employee, who may not lawfully sell it; (6) using a false record or statement material to an obligation to pay or transmit money or property to the U.S., or concealing or improperly avoiding or decreasing an obligation to pay or transmit money or property to the U.S.; or (7) conspiring to commit any such offense. Offenders face the prospect of costs, expenses, attorneys' fees, damages, and perhaps triple damages in a civil action brought either by the U.S. or by a relator in the name of the U.S. Additional liability may flow from any retaliatory action taken against a False Claims Act whistleblower. The False Claims Act features a first-to-file bar that precludes copycat or piggyback relator suits and a public disclosure bar that precludes suits based on old news unless the relator is an original source. If the government initiates

the suit, others may not join. If the government has not brought suit, a relator may do so, but must give the government notice and afford it 60 days to decide whether to take over the litigation. If the government declines to intervene, a prevailing relator's share of any recovery is capped at 30%; if the government intervenes, the cap is lower and depends upon the circumstances. Relators in Indian protection qui tam cases are entitled to half of the recovery. Federal qui tam statutes have survived two types of constitutional challenges—those based on defendants' rights in criminal cases and those based on the doctrine of separation of powers. The courts have found the rights required in criminal cases inapplicable, because qui tam actions are civil matters. They have generally rejected standing arguments, because relators stand in the shoes of the United States in whose name qui tam actions are brought. They have rejected Appointments Clause arguments, because relators hold no appointed office. They have rejected Take Care Clause arguments, because the residue of governmental control over qui tam actions is considered constitutionally sufficient.

This is all based on the lower courts actions in this case from the start and was further carried out in the Appeals Court as they ignored and disregarded the merit of case and the Highest State Court: South Caolina Supreme Court Opinion as if the Appeals Court has the higher authority in this case by derailing the Supreme Court decision Opinion.

CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

October 21, 2022

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