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**Nov 27 2023**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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On Petition for Writ of Certiorari to the Court of Appeals  
Appeal from Horry County  
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge  
Honorable William H. Seals, Jr., Circuit Court Judge  
Appellate Case No. 2023-001660

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THE STATE,

Respondent,

vs.

JAMIE GOSS,

Petitioner.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## STATEMENT OF ISSUES ON CERTIORARI

### I.

“Was the Court of Appeal negligent in considering these exceptional circumstance pertaining to obstruction of mail by third party as outlined in Section 18 U.S. Code 1701?”

### II.

“Was the Court of Appeal unaware of the significant importance when the Horry County Clerk of Court sent a faxed document prior to the case being denied?”

### III.

“Was the force majeure clause, which was submitted prior to the denial of the case overlook by the Court of Appeal in accordance?”

### IV.

“Did the Court of Appeal overlook the frustration doctrine?”

### V.

“Was the Court of Appeal unaware of the significant significance of [Goss’s] sudden and intense or distressing prolonged duress stress disorder resulting from COVID-19 during which [Goss] nearly lost [his] life in shower which continues to afflict [him] with difficulties?”

### VI.

“Has the Court of Appeal neglected to consider Article 12 Section 2 of the S.C. Constitution, thus breaching [Goss’s] right to due process and denying [him] the freedom to comply with a court order as guaranteed by the United States Constitution?”

### VII.

“Did the Court of Appeal overlooked the United States guideline for force majeure clause about the important of the case as a whole before making a ruling?”

## **COUNTER-STATEMENT OF ISSUES ON CERTIORARI**

### **I.**

Did the Court of Appeals correctly dismiss Goss's appeal when Goss failed to comply with the mandates of the South Carolina Appellate Court Rules?

### **II.**

Should the merits of Goss's various appellate claims be considered or addressed on certiorari at the present time when the Court of Appeals has not yet addressed the merits of any of Goss's claims since it dismissed Goss's appeal on procedural grounds due to his failure to comply with the requirements of the South Carolina Appellate Court Rules?

## STATEMENT OF THE CASE

In October of 2006, Petitioner Jamie Goss was arrested after a quantity of narcotics were discovered inside a vehicle he used in an unsuccessful attempt to flee from an officer trying to conduct a routine traffic stop. In November of 2006, the Horry County Grand Jury indicted Goss for trafficking in cocaine base. On November 12, 2007, a jury trial was commenced in the Horry County Court of General Sessions with the Honorable Edward B. Cottingham, circuit court judge, presiding. At the conclusion of the two-day trial, the jury convicted Goss as indicted. Following the verdict, the trial judge sentenced Goss to a twenty-eight-year term of imprisonment along with a \$50,000 fine.

Over thirteen years later, Goss—following a variety of unsuccessful efforts to obtain a new trial—filed a motion seeking compassionate release on March 12, 2021.<sup>1</sup> Through an order filed on August 9, 2021, the Honorable R. Ferrell Cothran, Jr., circuit court judge, summarily denied Goss’s motion. A few days later, Goss submitted a motion entitled “Motion to Alter or Amend or Make Additional Fact Findings Pursuant to S.C. Rules Civ. Proc. 59(e) and S.C. Rules Civ. Proc. 52(b) and Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (June 25, 2001).” Through an order filed on September 8, 2021, the Honorable William H. Seals, Jr., circuit court judge, denied that motion following a hearing on the matter. On October 21, 2021, Goss served a notice of appeal on the State.<sup>2</sup>

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<sup>1</sup> Some of the records from Goss’s case—including the trial transcript—are currently available through the South Carolina Appellate Court Public Index as the result of an earlier appeal filed by Goss. Appellate Records for Jamie Goss v. State of South Carolina, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=33364>.

<sup>2</sup> In a letter dated June 28, 2022, that Goss submitted to the Court of Appeals when attempting to correct deficiencies with his notice of appeal, Goss asserted he received written notice of the order denying his motion on September 21, 2021. Appellate Records for State v. Jamie Goss, South Carolina Appellate Court Public Index,

On appeal, Goss—amongst other things—filed a Record on Appeal after initial briefs were submitted. However, due to numerous improprieties with the Record on Appeal as filed by Goss, the State moved to strike it and require the filing of an Amended Record on Appeal. Ultimately, after considering the matter, the Court of Appeals—through an order issued on June 9, 2023—granted the State’s motion, struck the Record on Appeal as filed, and directed Goss to file an Amended Record on Appeal that complied with the requirements of the South Carolina Appellate Court Rules within thirty days. Following the issuance of that order, Goss filed a number of documents but did not submit an Amended Record on Appeal as directed. On July 17, 2023, the Court of Appeals issued an order dismissing the appeal due to Goss’s failure to comply with the order requiring the filing of an Amended Record on Appeal. Thereafter, Goss submitted a petition for rehearing, and that petition was denied on September 22, 2023. Goss then filed a petition for a writ of certiorari in the Supreme Court.<sup>3</sup>

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<https://ctrack.sccourts.org/public/caseView.do?csIID=74477>. Resultantly, Goss’s appeal appears to be untimely pursuant to the requirements of the South Carolina Appellate Court Rules. See Rule 203(b)(2), SCACR (“After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment.”). Accordingly, no proper appellate jurisdiction exists in Goss’s case, which constitutes a compelling reason for his petition for a writ of certiorari to be rejected. See State v. Devore, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) (“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”).

<sup>3</sup> Around the same time, Goss apparently submitted a motion to the Court of Appeals that appeared to be seeking—pursuant to the South Carolina Rules of Civil Procedure—rehearing en banc of the denial of his earlier petition for rehearing. Appellate Records for State v. Jamie Goss, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=74477>. The Court of Appeals has declined to act upon that improper motion. Id.

## ARGUMENT

### I.

**The Court of Appeals correctly dismissed Goss’s appeal because Goss failed to comply with the mandates of the South Carolina Appellate Court Rules.**

Through his pro se petition for a writ of certiorari, Goss appears to be challenging the dismissal of his appeal on procedural grounds. In doing so, Goss references a section of the United States Code of Law, the South Carolina Rules of Civil Procedure, an “unsettling experience” he purportedly had, and a variety of other things, including a force majeure clause. Importantly though, Goss—to date—has not yet complied with the order of the Court of Appeals directing him to file an Amended Record on Appeal in compliance with the requirements of the South Carolina Appellate Court Rules. Because Goss failed to—and has continued to fail to—comply with the unambiguous mandates of our state’s appellate court rules, the Court of Appeals justifiably dismissed his appeal after affording him an opportunity to correct the deficiencies with the Record on Appeal. Goss’s petition for a writ of certiorari should be denied.

Pursuant to the requirements of the South Carolina Appellate Court Rules, an appellant is required to file a Record on Appeal containing “all matter designated to be included by any party.” Rule 210(c), SCACR. Meanwhile, an appellant *cannot* include any “matter which was not presented to the lower court or tribunal” pursuant to the applicable rule’s plain language. Id.

In the case at bar, Goss failed to comply with the requirements of our state’s appellate court rules by submitting a Record on Appeal that contained improper matter that could not properly be included in one and that also failed to contain all the matter properly designated for inclusion by the State. Appellate Records for State v. Jamie Goss, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=74477>. Due to the significant problems with the Record on Appeal as filed, the State filed a motion to strike it, and

the Court of Appeals ultimately granted the State’s motion while affording Goss thirty additional days to submit a corrected appellate record. However, instead of doing so, Goss filed a number of other documents without ever submitting an Amended Record on Appeal as directed. Id.

Since no Record on Appeal was ever filed in Goss’s case that complied with the mandates of the South Carolina Appellate Court Rules, Goss’s appeal could not proceed forward to a proper resolution. See Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.”).

Therefore, the Court of Appeals was fully justified in dismissing Goss’s appeal after Goss failed to avail himself of the opportunity extended to him to submit an Amended Record on Appeal, and it committed no error by doing just.<sup>4</sup> See Sloan Const. Co. v. S.C. Bd. of Health & Env’t Control, 285 S.C. 523, 525, 331 S.E.2d 345, 347 (1985) (recognizing failure to comply with appellate procedural rules can result in the dismissal of an appeal); cf. Diamond v. Powell, 271 S.C. 183, 184, 246 S.E.2d 233, 234 (1978) (dismissing an appeal based on appellate counsel’s failure to comply with a requirement concerning how the statement of issues on appeal must be presented). Goss’s petition for a writ of certiorari should be denied.

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<sup>4</sup> Importantly, that remained true regardless of the fact Goss elected to represent himself in a pro se capacity on appeal. See Goodson v. Am. Bankers Ins. Co. of Fla., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988) (instructing courts in South Carolina “will not hold a layman to any lesser standard than is applied to an attorney”); see also Brown v. City of St. Louis, 842 S.W.2d 163, 165 (Mo. Ct. App. 1992) (“Although an appellant has the right to act pro se on appeal, he or she is bound by the same rules of procedure as attorneys and is entitled to no indulgence that would not have been given if the appellant were represented by counsel.”).

## II.

**The merits of Goss’s various appellate claims should not be considered or addressed on certiorari at the present time because the Court of Appeals has not yet addressed the merits of any of Goss’s claims since it dismissed Goss’s appeal on procedural grounds due to his failure to comply with the requirements of the South Carolina Appellate Court Rules.**

Although not completely clear due to manner in which the arguments and allegations have been presented, Goss—through his pro se petition for a writ of certiorari—appears to potentially be suggesting the Court of Appeals erred by failing to grant him compassionate release in light of the “extraordinary circumstance” involved in his case. Significantly though, the Court of Appeals did *not* address the merits of any of Goss’s many appellate claims because it dismissed his appeal on procedural grounds. Therefore, to the extent Goss is attempting to raise merits-based appellate claims through his pro se petition for a writ of certiorari, the merits of those claims should not be considered or addressed at the present time, and, instead, the matter should be remanded to the Court of Appeals in the event—and only in the event—this Court concludes the Court of Appeals somehow erred by dismissing Goss’s appeal on procedural grounds, which it did not. Goss’s petition for a writ of certiorari should be denied.

Generally, on certiorari, this Court does not consider an issue unless that issue was first considered and addressed by the Court of Appeals. Baggott v. S. Music, Inc., 330 S.C. 1, 6, 496 S.E.2d 852, 855 (1998). Based on that, a remand to the Court of Appeals would typically be the appropriate relief when the Court of Appeals failed to address an appellate issue due to a decision it reached on another matter that was subsequently reversed on certiorari. Cf. State v. Larmand, 415 S.C. 23, 33, 780 S.E.2d 892, 896 (2015) (remanding an appeal to the Court of Appeals following a reversal of its decision on one issue in order for it to address the merits of several other previously-unaddressed issues); S.C. Second Inj. Fund v. Am. Yard Prod., 330 S.C.

20, 24, 496 S.E.2d 862, 864 (1998) (“In view of the conclusion of the Court of Appeals, other issues raised by the parties were not addressed; therefore, this matter is remanded to the Court of Appeals for consideration of those issues.”).

In the case at bar, the Court of Appeals did *not* address the merits of any of Goss’s various appellate claims related to the denial of his motion seeking compassionate release from incarceration. Instead, the Court of Appeals dismissed Goss’s appeal on procedural grounds following Goss’s failure to comply with its order and file an Amended Record on Appeal that met the requirements of the South Carolina Appellate Court Rules.

Therefore, because the Court of Appeals has not yet addressed the merits of Goss’s various appellate claims related to his unsuccessful attempt to obtain compassionate release at the circuit court level, it would be premature for the merits of those various claims to be addressed on certiorari. See Baggott, 330 S.C. at 6, 496 S.E.2d at 855 (explaining the Supreme Court “generally do[es] not consider issues which were not addressed by the Court of Appeals”). Instead, should the procedural dismissal of Goss’s appeal somehow be found to have been erroneous on certiorari, the appropriate relief would then—and only then—be to remand the matter for the merits of Goss’s various appellate claims to be addressed by the Court of Appeals.<sup>5</sup> Cf. Larmand, 415 S.C. at 33, 780 S.E.2d at 896 (“[B]ecause the court of appeals did not address the remainder of [Larmand]’s arguments on appeal, we remand the matter to the court of appeals for further action not inconsistent with this opinion.”). Goss’s petition for a writ of certiorari should be denied.

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<sup>5</sup> For the reasons identified in the State’s initial brief filed with the Court of Appeals, Goss’s various appellate claims are wholly lacking in merit. Appellate Records for State v. Jamie Goss, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=74477>.

**CONCLUSION**

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be denied.

Respectfully submitted,

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November 27, 2023