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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas
The Honorable Debra R. McCaslin

Case No. 2023-CP-32-00881
App. Case No. 24-315

C.E. Holmes,

Appellant,

v.

C.N. Collie,

Respondent.

MOTION FOR RECONSIDERATION BY THE COURT AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION AND, IF DENIED,
RULES 221 AND 240, SCACR, PETITION FOR REHEARING EN BANC AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION

The appellant timely motions and petitions with abeyance request the series of ex parte threatened dismissals including the July 26, 2024, threatened dismissal of the party's meritorious appeal herein without due process, without required notice, and without opportunity to be heard at a meaningful time. The appellant respectfully motions for abeyance of time limits pending resolution. If denied, Rule 221, SCACR, petition for rehearing en banc and 240, SCACR, petition for rehearing are respectfully submitted with motion for abeyance of time limits pending resolution. As a threshold matter, the most basic principles of due process have been violated including required notice. To the extent the clerk purports to interpret the law, it is respectfully submitted the clerk has not been nominated, vetted, or voted by the Legislature to interpret the law. Significantly and materially, the clerk's ministerial duties do not include interpretation of the law. The clerk violates her duties which do include facilitating appeals with even-handedness, transparency, and fundamental fairness for the Court's disposition and interpretation of the law. The record herein reflects the clerk's unequal treatment, lack of transparency, denial of required due process, and/or violations of fundamental fairness. The appellant respectfully submits there is record evidence of the clerk's conflict of interest herein. Accordingly, the appellant respectfully requests the motions and petitions be forwarded to this Honorable Court for disposition by the Court, not a clerk, regarding the clerk's conflict of interest and wrongdoing including the clerk's unauthorized dismissal threats, unauthorized failure to comply with Rule 203, SCACR, regarding timely served and filed notice of appeal, falsely claiming an unauthorized motion and filing fee are required, conversion of filing fees, and/or failure to comply with notice requirements including Rule 262, SCACR.

INTRODUCTION

The Great Statesman, Rep. Elijah Cummings, may he rest in peace, observed, “When we're dancing with the angels, the question will be asked, *in 2024*, what did we do to make sure we kept our democracy intact?” Emphasis supplied. Along with Rep. John Lewis, may God rest his soul, it is fitting to remember these lifetimes of steadfast bravery and unremitting courage. It is fitting, as well, to remember the beginnings of that democracy. The framers of our State and Federal Constitutions risked life, limb, and liberty to escape abuses by the British government.

Both State and Federal constitutions were deliberately crafted to foreclose those abuses here. The framers did not need computers, tablets, or smart phones to discern the basic tenets of fundamental fairness and due process. An impartial decision-maker was seen as a non-negotiable requirement for preventing such abuses. The letter and spirit of our cherished Constitution categorically prohibit deprivation of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws. The right of trial by jury shall be preserved inviolate. As a corollary, another requirement, deemed mandatory and prohibitory, is that no single individual, whether British monarch or government official, shall have absolute authority over a citizen's life, liberty, or property without being subject to the right of appeal with meaningful review.

These issues are of exceptional public importance. The record reflects examples of pro se filings subjected to a separate second-class system of so-called justice, where the South Carolina Rules of Court are gleefully and cavalierly used as a trap for the unwary. Significantly and materially, there is an abundant body of law decisively declaring separate is never equal. The acknowledged systemic institutional biases threaten our democracy and feed the appearance of the proverbial “rigged” system. In the pro se setting, this issue is of exceptional importance as it is capable of repetition, capable of evading judicial review, and incapable of adequate remedy on appeal. The following inscription is

found at the Four Corners of Law in Charleston: *Where the rule of law ends, tyranny begins*. Emphasis supplied. The Honorable Judge J. Waties Waring Federal Judicial Center is named for the renowned crafter of divine dissents lying in repose in Charleston, who must be turning over in his grave at the historically persistent lawlessness. As set forth more fully below, it is respectfully submitted our democracy depends on the basic tenets of fundamental fairness and due process just as much, if not more so, in this age of cell phones, tablets, computers, and extraordinary and unprecedented public health and/or affiliated economic emergencies ongoing and still unfolding.

DISCUSSION

Without being disagreeable, there is disagreement with the July 26, 2024, letter and multiple ex parte threatened dismissals in violation of the SCACR of the party's meritorious appeal herein. Specifically, violations of the SCACR include but are not limited to: Violation of Rule 262, SCACR, and generally, regarding failure to provide required notice to a party causing that party extreme prejudice with improper, unauthorized threats of dismissal in less than 10 days while failing to provide the usual and customary required notice thereby undercutting appearance of a disinterested court.

I. As a threshold matter, the clerk's failure to comply with notice requirements including Rule 262, SCACR, renders the clerk's purported notice ineffective and/or unauthorized.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document as if repeated verbatim. As a threshold matter, a citizen has the self-evident right to full and fair notice from the clerk of the COA which complies with the SCACR. The clerk's failure to comply with notice requirements including Rule 262, SCACR,

renders the clerk's purported notice ineffective. Specifically, self-represented parties are not allowed to file electronically. The record reflects the appellant is self-represented. Under Rule 262, SCACR, a self-represented party may ask the clerk to provide notice electronically. The record reflects no such request has been made, and no notice of the clerk's violation of Rule 262, SCACR, has been timely provided. The record reflects timely requests for compliance with Rule 262, SCACR, are ignored or rebuffed. In reliance on the Rules of Court including Rule 262, SCACR, the party's appeal and the party are prejudiced and injured by the clerk including threatened wrongful dismissal and conversion of fees. To the extent there is ambiguity, the rule of lenity supports the appellant's position. Accordingly, the clerk's unauthorized notice is ineffective under the SCACR. "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 S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

II. The COA clerk falsely claims an unauthorized motion and filing fee are required.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document as if repeated verbatim. The appellant timely

motions for reconsideration by this Honorable Court including the clerk's June 7, 2024, and July 26, 2024, ministerial letters in violation of the SCACR containing overreaching attempts to gain improper default and/or bad faith dismissal of meritorious appeals timely served and filed. It is respectfully submitted the clerk provides no authority cited in support of the unauthorized motion she claims is required and none is found. On the other hand, there is an abundant body of law mandating due process including but not limited to, meaningful judicial review at a meaningful time and facilitation of appeals with even-handedness, transparency, and fundamental fairness. By analogy, Toal's *Appellate Practice in South Carolina* provides, "(I)f a party appeals a form order that provides a more complete order is to follow, **the prudent practice may be to serve and file a second notice of appeal** when the complete order is issued to preempt any argument that the appellate court lacks jurisdiction to review the complete order. No additional filing fee would be necessary in this situation." Toal *et al.*, *Appellate Practice in South Carolina* (2002), Second Ed., p. 121 (emphasis supplied). Moreover, if no appeal is taken until final judgment is entered, the appellate court may then review any intermediate order or decree necessarily affecting the judgment not before appealed from. *See Link v. School Dist. Of Pickens*, 302 S.C. 1, 393 S.E.2d 176 (1990); *SCDOT v. Faulkenbury*, 337 S.C. 140, 522 S.E.2d 822 (Ct. App. 1999); Toal *et al.*, *Appellate Practice in South Carolina* (2002), Second Ed., p. 88. As such, in this case, the later appeal, therefore, includes the earlier appeal. Under the facts, there is no SCACR Rule that requires a citizen to motion the Court of Appeals in order to file appeal from the court below and if there were, it could not and would not pass constitutional muster. Significantly and materially, there is no SCACR Rule requiring motion regarding the notice of appeal timely served and filed. To the extent a ministerial government employee in the future could or would attempt overreaching dismissals of meritorious appeals and/or attempt to impermissibly ex parte and/or prejudice the Court through overreaching attempts to dismiss meritorious appeals, the SCACR Rules are designed to foreclose that wrongdoing. *See Pillay v. INS*, 45 F.3d 14 (2nd Cir. 1995). Accordingly, appellant respectfully requests the motions and petitions be granted. "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 S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

III. In her July 26, 2024, letter, the clerk overlooks or misapprehends that the record already reflects proof of transcript request.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document as if repeated verbatim. In her July 26, 2024, letter labeled "Ad Hoc by Clerk," the clerk states as follows:

You must provide proof of having ordered the transcript in accordance with Rule 207, SCACR, within ten (10) days of the date of this letter or the appeal will be dismissed.
July 26, 2024, COA clerk's letter.

The clerk overlooks or misapprehends the record already reflects proof of transcript request. It is respectfully submitted that failing to provide required notice to a party and "overlooking" the previously filed transcript request is a recipe for improper default and/or bad faith dismissal. To the extent, the record reflects multiple bad faith overreaching attempts to gain improper default and/or dismissal of meritorious appeals timely served and filed undercutting appearance of a disinterested court, reasonable men/women should and would question impartiality requiring recusal of the clerk which is hereby requested.

Moreover, the July 26, 2024, letter labeled "Ad Hoc by Clerk," further provides:

The Court received your motion for reconsideration of our June 7, 2024 deficiency letter. We will not take any action on your motion pursuant to Rule 240(i), SCACR.

Specifically, Rule 240(i), SCACR, provides, "The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." Rule 240(i), SCACR. The appellant is informed and believes there is a misinterpretation by the COA clerk of the law and of Rule 240(i), SCACR. Given the totality of circumstances and under the facts, it is respectfully submitted that the threatened dismissal is compliant with Rule 240(i), SCACR. There is a misinterpretation by the clerk of the law and Rule 240(i), SCACR. In the interests of transparency and due process, there should be no ambiguity regarding the right of a citizen, pursuant to Legislative intent and the letter and spirit of the law, to request disposition by the Court, not a ministerial clerk. Accordingly, the appellant has timely filed and paid fees. "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 S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

IV. Conversion of fees.

To the extent there is no inconsistency in the provisions, the undersigned incorporates in full by reference the contents of this document as if repeated verbatim. As noted above, the July 26, 2024, letter labeled "Ad Hoc by Clerk," provides:

The Court received your motion for reconsideration of our June 7, 2024 deficiency letter. We will not take any action on your motion pursuant to Rule 240(i), SCACR.

To the extent there is ambiguity, the rule of lenity supports the appellant's position. The appellant is informed and believes that an "Ad Hoc by Clerk" letter is not an interpretation of law by the Court. The appellant paid the filing fee and filed requesting interpretation of law by this Honorable Court. The COA clerk failed to forward for disposition by the Court thereby converting that filing fee. Accordingly, the appellant respectfully requests return of that fee.


"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 S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

In the interests of transparency and due process, there should be no ambiguity regarding the right of a citizen, pursuant to Legislative intent and the letter and spirit of the law, to request disposition by the Court, not a ministerial clerk.

CONCLUSION

For substantial justice affecting substantial rights, the appellant respectfully requests the motions and petitions be granted.

Respectfully submitted,


C. Holmes
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Debra R. McCaslin

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App. Case No. 24-315

C.E. Holmes,

Appellant,

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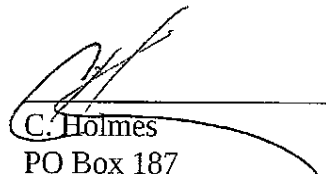
Respondent.

PROOF OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for the respondent by regular first class mail postage pre-paid on this date at this address:

Robin Braithwaite
759 Richland Ave. W
Aiken, SC 29801

Dated _____


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Hard copy
available
on request -

Thank you!

Fax Cover:

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