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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Administrative Law Court Judge

Op. No. 2024-UP-189
(S.C. Ct. App. re-filed August 14, 2024)
Case No. 2020ALJ300064AP

South Carolina Technical College System, Petitioner,

v.

Carla Jackson and South Carolina
Department of Administration, Defendants,

Of Whom, Carla Jackson is the..... Respondent.

**PETITIONER’S MOTION FOR EXTENSION
OF TIME TO FILE PETITION FOR
WRIT OF CERTIORARI**

The Petitioner South Carolina Technical College System (“SCTCS”) respectfully moves this Court for an Order granting an extension of time to file a Petition for Writ of Certiorari and Appendix in the above referenced action as discussed below.

By way of procedural background, the South Carolina Court of Appeals issued its original opinion on May 29, 2024. On June 13, 2024, the Petitioner SCTCS filed a timely Petition for Rehearing, and the Court of Appeals ordered the Respondent to file a return.

Thereafter, by order filed August 14, 2024, the Court of Appeals granted the Petitioner's Petition for Rehearing although the ultimate decision was not changed, meaning that the Court of Appeals still affirmed the decision of the Administrative Law Court. The Court of Appeals withdrew the opinion filed May 29, 2024, and after *granting* the Petition for Rehearing, the Court issued a new opinion on August 14, 2024. The new opinion does not address each of the grounds raised by the Petitioner in its Petition for Rehearing filed June 13, 2024. Therefore, in order to ensure that it has complied with Rule 221(b) and Rule 242(d)(1), SCACR, the Petitioner filed an additional Petition for Rehearing *directed at the new opinion issued on August 14, 2024*. The Petitioner did so because the initial Petition for Rehearing was granted; yet, the ultimate resolution did not change and each of the Petitioner's grounds for rehearing have not been addressed in the new opinion.

With respect to that subsequent Petition for Rehearing filed on August 29, 2024, the Court of Appeals directed the Respondent to file a return, which ostensibly demonstrates that the Court of Appeals believes that petition is procedurally proper and intends to adjudicate the petition on its merits. That Petition for Rehearing is currently pending before the Court of Appeals for a ruling.

However, in her Return filed in the Court of Appeals on September 6, 2024, the Respondent argues that "the appropriate procedural step for SCTCS to take if it desires to further appeal a decision ... is to file a petition for writ of certiorari to the Supreme Court." That is suggestive that the Respondent is arguing or intends to argue that subsequent Petition for Rehearing filed on August 29, 2024, is procedurally improper.

Under the South Carolina Appellate Court Rules, the filing of a petition for rehearing in the Court of Appeals is a prerequisite for seeking a writ of certiorari in this Court. The Appellate

Court Rules, however, are silent as to what a petitioner's responsibility is where, as in this case, the Court of Appeals *grants* a petition for rehearing and also issues a new decision (even if the ultimate adjudication is not altered). In the undersigned counsel's experience, when the Court of Appeals withdraws an opinion and issues a new opinion without changing the result, the Court typically *denies* rather than grants the petition for rehearing. That has not occurred in the case at bar. Rather, this case is more akin to what occurred in the *Shirley's Iron Works, Inc. v. City of Union* litigation,¹ where the Court of Appeals issued three different opinions after the filing of two petitions for rehearing. In that example, because the Court granted a petition for rehearing and issued a new opinion on each occasion, it was deemed necessary to file a successive petition for rehearing directed at each new opinion, and the Court of Appeals acted on each such petition. Ultimately, the Supreme Court granted a writ of certiorari in that case. *See, Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 743 S.E.2d 778 (2013).

The Petitioner SCTCS feels it is between the proverbial "rock and a hard place."² If the Petitioner did not file a subsequent petition for rehearing after the *grant* of rehearing and the issuance of a new opinion, it could be argued that the Petitioner failed to file a petition for rehearing directed at the opinion to be appealed to the Supreme Court, and hence, did not satisfy the procedural requirement of obtaining the denial of a petition for rehearing. On the other hand, by filing the subsequent Petition for Rehearing filed on August 29, 2024, the Petitioner runs the

¹ *See, Shirley's Iron Works, Inc. v. City of Union*, 2009 WL 4796073 (Ct. App. 2009); *Shirley's Iron Works, Inc. v. City of Union*, 387 S.C. 389, 693 S.E.2d 1 (Ct. App. 2010); and *Shirley's Iron Works, Inc. v. City of Union*, 397 S.C. 584, 726 S.E.2d 208 (Ct. App. 2010).

² This Court has previously acknowledged the concerns for an appealing party not to unwittingly forfeit its right to appeal. Specifically, in *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), this Court stated: "We strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place." 602 S.E.2d at 781-782.

risk of the Respondent arguing and this Court possibly ruling that its Petition for Writ of Certiorari is not timely because it was not filed within thirty days of the Court of Appeals' decision issued August 14, 2024.³ As indicated, the Appellate Court Rules do not provide explicit guidance as to a petitioner's responsibility under these unique circumstances. At best, Rule 242(c), SCACR, states: "A decision of the Court of Appeals is not final for the purpose of review by the Supreme Court until the petition for rehearing or reinstatement has been *acted on* by the Court of Appeals." Rule 242(c), SCACR. (Emphasis added). There is no indication, however, as to the precise meaning of "acted on," and there is no case law on that issue. In effect, it is unclear whether the rehearing must be denied or whether the "grant" of a petition for rehearing is also sufficient to exhaust the prerequisite for seeking a writ of certiorari.

The Petitioner is intending to petition for a writ of certiorari once the Court of Appeals rules on the pending Petition for Rehearing, unless the Court of Appeals issues a new opinion which reverses the Administrative Law Court. However, given the uncertainty described above and wanting to make certain it takes no action that jeopardizes its rights to seek a writ of certiorari, the Petitioner SCTCS felt constrained to file a Petition for Rehearing in the Court of Appeals from the new order issued August 14, 2024, after the *grant* of rehearing, in order to ensure compliance with Rule 221(a) and Rule 242(d)(1), SCACR, and thereby making certain that issues raised but not addressed are deemed preserved for further appellate review. At the same time, the Petitioner is filing this request for an extension with the Supreme Court within the original thirty-day window to make certain that it does not inadvertently waive its rights to seek a writ of certiorari from this Court under this unique procedural scenario.

³ Rule 242(c), SCACR, states: "A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals." Rule 242(c), SCACR.

WHEREFORE, the Petitioner South Carolina Technical College System respectfully requests that it be granted an extension to file and serve a Petition for Writ of Certiorari and Appendix for a period of thirty days after the date that the Court of Appeals issues its order denying the Petition for Rehearing filed August 29, 2024, which is still pending in the Court of Appeals.

Respectfully submitted,

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