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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

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

C.E. Holmes,

Appellant,

v.

C.N. Collie,

Respondent.

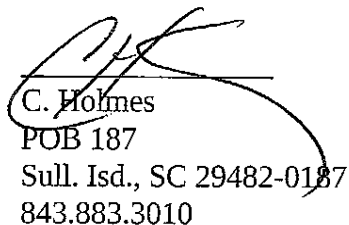
MOTION TO THE COURT TO CORRECT THE DOCKET REGARDING
MISSING DOCKET ENTRY SERVED AND FILED WITH FEE PAID ON SEPTEMBER 19, 2024,
AND MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION
BY THE COURT OF RELIEF REQUESTED THEREIN

The appellant respectfully requests this Honorable Court correct the docket regarding missing docket entry served and filed with fee paid on September 19, 2024, and respectfully motions for abeyance of all time limits pending resolution therein.

The appellant timely filed the document with proof of service, copy attached, in the usual and customary manner by fax at 803.734.1839 with successful fax transmission of 19 pages to that number and recorded at 6:51:47 pm EDT on September 19, 2024.

For substantial justice affecting substantial rights and for good cause, the appellant respectfully requests the motions herein be forwarded to the Court for the Court's disposition (not a ministerial clerk) in order to correct the docket to reflect the missing docket entry timely served and filed on September 19, 2024, with abeyance pending resolution.

Respectfully submitted,



C. Holmes
POB 187
Sull. Isd., SC 29482-0187
843.883.3010

Short Title: **In the Matter of Naomi Hyler Collie** Case Status: **Awaiting Transcript**
 View Full Title

Filed Date: **03/04/2024** Oral Argument Date:
 Disposition Date: Disposition Type:
 Remittitur Date:
 Lower Court or Tribunal: **Lawington (2023CP20088)**

Party Information

Appellate Role	Party Name	Former	Attorney(s)
Appellant	Cynthia Holmes	N	Self Represented
Respondent	C. N. Collie	N	Robin A. Brinkwelder

Views
 Display: **Descending** **Go!**

Event Information

Filed Date	Event Information
03/24/2024	Correspondence - Outgoing (Transcript Overdue Letter)
03/03/2024	Non-Dispositional Decision - Order (file Action on Motion for Reconsideration of July 26, 2024 Letter)
03/05/2024	Motion - Reconsideration of July 26, 2024 Letter
07/26/2024	Non-Dispositional Decision - Withdrawal of Entry (No Action on Motion for Reconsideration)
07/19/2024	Motion - No Return - Reconsideration of 07/2024 Letter
05/17/2024	Motion - Reconsideration of 07/2024 Letter
03/07/2024	Deficiency - Deficiency Letter Sent (Amended Notices of Appeal)

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 AND
MOTION FOR ABEYANCE OF TIME LIMITS PENDING RESOLUTION

The appellant respectfully motions for clarification and reconsideration of the September 9, 2024, opinion which overlooks or misapprehends matters of great public importance and is reversible based on error of material fact: Specifically, no July 26, 2024, letter was sent to or received by the appellant at the required contact information which is corroborated by the fact that the same or similar letter dated July 26, 2024, in another matter was not sent to or received by the appellant at the required contact information either. As a threshold matter, the clerk fails to comply with the most basic fundamental requirement of due process, that is, required notice. Specifically, the clerk fails to comply with the usual and customary SCACR notice requirements including Rule 262, SCACR. The clerk's failure to comply with the usual and customary SCACR notice requirements including Rule 262, SCACR, prejudices citizens of this great State including the undersigned. The record reflects there is no counsel of record for the undersigned. The record reflects the undersigned is self-represented. Specifically, self-represented parties are not allowed to file electronically. Under Rule 262, SCACR, a self-represented party may ask the clerk to provide notice electronically. Rule 262, SCACR. The record reflects no such request and, in fact, no such request has been made. This office has no access to the internet. The record reflects the clerk ignores or rebuffs timely requests for compliance with Rule 262, SCACR. In reliance on the Rules of Court including Rule 262, SCACR, the party's appeal and the party are prejudiced by the clerk's failure to comply with the SCACR as well as with basic due process and fundamental fairness. The clerk's failure to comply with the SCACR including the usual and customary notice requirements is a recipe for improper procedural default, unequal treatment, discrimination against a member of a protected class which is against public policy, and/or the ministerial clerk's multiple overreaching attempts to dismiss meritorious appeals embodied in "Ad Hoc By Clerk" malicious, impending, unauthorized threats of dismissal by a ministerial clerk, not this Honorable Court. To the extent there is ambiguity, the rule of lenity supports the undersigned's position and the undersigned respectfully requests resolution regarding that unauthorized threatened

dismissal which is overlooked or misapprehended in the September 9, 2024, opinion. The record reflects the clerk's unauthorized notice is ineffective under the Rules of Court and the SCACR. As set forth more fully below, the undersigned respectfully submits motion for clarification, motion for reconsideration by this Honorable Court, motion for abeyance of time limits and if denied, Rule 240(j) appeal and Rule 221, SCACR, petition for rehearing with motion for abeyance of time limits pending resolution. Accordingly, the appellant respectfully requests this Honorable Court issue its order for compliance with SCACR's usual and customary notice requirements and contact information as required by the SCACR including Rule 262, SCACR, and for compliance with the clerk's solemn oath and sworn duty to facilitate appeals with even-handedness, transparency, and fundamental fairness.

It is respectfully submitted the September 9, 2024, opinion overlooks or misapprehends matters of great public importance and prejudice to parties including the undersigned regarding impending, unauthorized, "Ad Hoc By Clerk" threatened dismissal by the ministerial clerk without resolution. It is respectfully submitted that the citizens of this great State including some members of the Bar may not be familiar with the South Carolina Appellate Court Rules (SCACR). The record reflects the clerk is taking unfair advantage of this fact by failing to comply with the SCACR including notice requirements, by unauthorized overreaching attempts to dismiss meritorious appeals, by fabricating herein a requirement to file a motion in order to appeal a lower court opinion, by falsely claiming a purported lack of transcript request which the record reflects was timely filed with the notice of appeal, by failing to forward timely filed motions to this Honorable Court for interpretation of the law, and then converting that filing fee and refusing to return it. The appellant timely motions and petitions with abeyance the series of overreaching ex parte threatened dismissals of the party's meritorious appeal by a ministerial clerk in violation of the SCACR, without required notice, and without opportunity to be heard at a meaningful time. If denied, Rules 221, SCACR, petition for rehearing and 240(j), SCACR, appeal of opinion by "an individual judge or justice" are respectfully submitted with motion for abeyance of time limits pending resolution. Rule 240(j), SCACR. As a threshold matter, the clerk

violates the most basic principles of due process 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. Article V, § 16 of the South Carolina Constitution (*infra*) provides the Judges of the Court of Appeals (COA) shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term. By analogy, the U.S. Constitution provides similar protections for Article III Judicial Officers:

These protections are designed to ensure the independence and impartiality of the judicial officers authorized to decide the merits of a litigant's case. The Supreme Court has held that litigants in federal court have a personal right, conferred by Article III, to insist upon adjudication of their claims by a judge who enjoys the salary and tenure *protections afforded by Article III. Commodity Futures Trading Commission v. Schor*, 478 U.S. 833, 848, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986) ; *see Pacemaker Diagnostic Clinic of America, Inc. v. Instromedix, Inc.* , 725 F.2d 537, 542 (9th Cir. 1984) (en banc). *Roell v. Withrow*, 538 U.S. 580, 590, 123 S.Ct. 1696, 155 L.Ed.2d 775 (2003)....

Barring unusual circumstances, the named plaintiffs will have as strong an interest as the absent class members in having their claims adjudicated by an independent and impartial decisionmaker. *Koby v. ARS Nat'l Servs., Inc.*, 846 F.3d 1071, 1078 (9th Cir. 2017) (emphasis supplied).

The protections including salary and tenure protections found in Article V, § 16 of the South Carolina Constitution (*infra*) apply to South Carolina Constitutional Judicial Officers who are nominated, vetted, and voted by the Legislature to interpret the law. The clerk is not nominated, vetted, and voted by the Legislature to interpret 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 violations of the SCACR, unequal treatment, lack of transparency, denial of required due process, and/or violations of fundamental fairness. As set forth more fully below, the clerk's overreaching attempts to dismiss meritorious appeal herein cannot pass constitutional muster. Accordingly, the appellant respectfully requests the motions and petitions be forwarded to this Honorable Court for interpretation of the law by the Court, not a clerk. Challenges include violations of the SCACR, failure to provide required notice under the SCACR including Rule

262, SCACR, unauthorized claims a motion is required in order to file an appeal, overreaching, unauthorized, ex parte dismissal/threats of dismissal, unauthorized failure to comply with Rule 203, SCACR, regarding timely served and filed notice of appeal herein, falsely claiming in the June 7, 2024, letter that an unauthorized motion and filing fee are required to file appeal, falsely claiming lack of transcript request which the record reflects was filed with the notice of appeal, impermissible converting of and failing to refund filing fees when the clerk failed to forward to the Court the party's June 17, 2024, motion for interpretation of the law by the Court, and/or failure to comply with due process. The appellant is prejudiced thereby. Matters of great public importance have been overlooked or misapprehended.

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 September 9, 2024, opinion which overlooks or misapprehends matters of great public importance including the most basic, fundamental principle of due process, that is, required notice. The undersigned is prejudiced thereby and prejudiced by the clerk's multiple "Ad Hoc By Clerk" unauthorized ex parte

threatened dismissals of the party's meritorious appeal in violation of the SCACR. Specifically, violations of the SCACR include but are not limited to: Violation of Rule 262, SCACR, and the SCACR 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. Rule 262, SCACR. The following Constitutional protections, privileges, and immunities are pertinent:

Art. 1, § 23. Provisions of Constitution mandatory.

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.)

Art. 1, § 2. Religious freedom; freedom of speech; right of assembly and petition.

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department, including the judicial department for a redress of grievances. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 3. Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

Art. 1, § 4. Attainder; ex post facto laws; impairment of contracts; titles; effect of conviction.

No bill of attainder, ex post facto law, no law impairing the obligation of contracts, including family law contracts, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate. (1970 (56) 2684; 1971 (57) 315.) (Emphasis supplied.)

Art. 1, § 14. Trial by jury; witnesses; defense.

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.)

Art. V, § 8. Election of members of Court of Appeals.

The members of the Court of Appeals shall be elected by a joint public vote of the General Assembly for a term of six years and shall continue in office until their successors shall be

elected and qualify. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded. Provided, that for the first election of members of the Court of Appeals, the General Assembly shall by law provide for staggered terms. (1985 Act No. 9.)

Art. V, § 9. Jurisdiction of Court of Appeals; binding effect of Supreme Court decisions. The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law. The decisions of the Supreme Court shall bind the Court of Appeals as precedents. (1985 Act No. 9.)

Art. V, § 16. Compensation of Justices and judges; practice of law and dual office holding. The Justices of the Supreme Court and the judges of the Court of Appeals and Circuit Court shall each receive compensation for their services to be fixed by law, which shall not be diminished during the term. They shall not, while in office, engage in the practice of law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions except in the militia, nor shall they be allowed any fees or perquisites of office. Any such Justice or judge who shall become a candidate for a popularly elected office shall thereby forfeit his judicial office. (1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.)

Art. V, § 10. Appointment of Clerk of Court of Appeals. There shall be appointed by the Judges of the Court of Appeals a clerk of court, whose term and duties shall be prescribed by the Court of Appeals and shall be subject to the general administrative authority and supervision of the Chief Justice. (1985 Act No. 9.)

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 required notice has been provided by the clerk. The record reflects timely requests for compliance with Rule 262, SCACR, are ignored or rebuffed by the clerk. 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 her unauthorized, overreaching ex parte threats of 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 and the undersigned requests compliance with the SCACR including Rule 262, SCACR, and required notice. "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 "Ad Hoc By Clerk" 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 herein. To the extent a ministerial government employee in the future could or would attempt to impermissibly prejudice/dismiss appeals or engage in overreaching attempts to dismiss meritorious appeals at the behest of impermissible direct or indirect ex parte contact designed to evade the merits of the appeal, the Rules of Court and the SCACR are designed to foreclose that wrongdoing. *See Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 188 (4th Cir. 2013) (overreaching attempts to dismiss/deny nonfrivolous claims, deny full and fair hearing, and deny full and fair consideration on the merits are reversible as a matter of law); *Pillay v. INS*, 45 F.3d 14 (2nd Cir. 1995) (same). Accordingly, the undersigned 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 which is filed with the notice of appeal. 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 which undercuts appearance of a disinterested court, reasonable men/women should and would question impartiality requiring disqualification 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.

Ambiguous, deceptive misrepresentations regarding disposition by a South Carolina Constitutional Judicial Officer or "Ad Hoc" clerk is troubling on many levels including violations of the SCACR and denial of due process. To the extent there is ambiguity, the rule of lenity supports the appellant's position. Further, 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. It is respectfully submitted that falsely claiming a motion and another filing fee are required for the timely served and filed notice of appeal substantively has the effect/potential of wrongfully "dismissing or finally deciding a party's appeal." Rule 240(i), SCACR.

Moreover, 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 clerk's Ad Hoc threatened dismissal complies 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. The appellant timely filed the motion and paid filing fees, however, the clerk failed and refused to forward the motion to the Court. Accordingly, reconsideration is respectfully requested. "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).

CONCLUSION

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

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.

The appellant respectfully requests this Honorable Court issue its order for compliance with the SCACR generally, with Rule 262, SCACR, specifically, and with required notice under the SCACR.

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

The appellant respectfully requests this Honorable Court issue its order resolving that under the facts, a motion to amend the notice of appeal is not required herein.

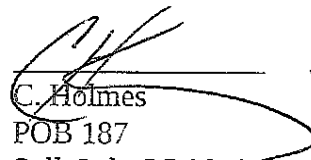
III. In her July 26, 2024, letter, the clerk overlooks or misapprehends that the record already reflects proof of transcript request.

The pending motion for abeyance of time limits may explain the SCCA's lack of response to date to the undersigned's timely transcript request. The appellant, prejudiced by the clerk's multiple unauthorized, overreaching attempts to dismiss this meritorious appeal and lack of required notice, respectfully requests the clerk's disqualification.

IV. Conversion of fees.

The appellant respectfully requests this Honorable Court issue its order for refund of the June 17, 2024, filing fees for the motion which was not forwarded to this Honorable Court for interpretation of the law thereby causing unnecessary delay and requiring the instant motions and petitions, timely filed and paid in full.

Respectfully submitted,


C. Holmes
POB 187
Sull. Isd., SC 29482-0187
843.883.3010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON 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,

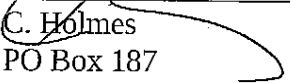
Respondent.

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 9/19/2024


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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SC Court of Appeals

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Thank
you!

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