

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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OCT 18 2024

APPEAL FROM OCONEE COUNTY  
COURT OF COMMON PLEAS

SC Court of Appeals

H. STEVEN DEBERRY, IV CIRCUIT COURT JUDGE

Dennis M. Temple

Appellant,

v.

State of South Carolina

Respondent,

Appellate Case No. 2024-001193

APPELLANT'S EXPLANATION BRIEF

Dennis M. Temple  
Prose Appellant Defender

Tyger River Correctional Inst.  
200 Prison Road  
Enoree, South Carolina 29335

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STATEMENT OF ISSUE ON APPEAL

1). Did the circuit Court err by granting the respondent's motion to Dismiss appellant's Habeas Corpus action pursuant to Rule 12(6)(1) of the SCRCP. After appellant filed a motion for Entry of default and Default Judgment. As a result, of the respondent's failure to timely file a return to appellant's Habeas Corpus action pursuant to Rule 12(4), SCRCP.?

2). Did the clerk of court err by failing to entry of default in the appellant's case?

## STATEMENT OF THE CASE

Appellant, Dennis M. Temple a state prisoner filed a petition for writ of Habeas Corpus in the Oconee County Court of Common Pleas pursuant to Rule 65(f)(1) of the South Carolina Rules of Civil Procedures (SCRCP) against the state of South Carolina, Director Bryan Stirling and Warden, Shane Jackson for placing and holding him incarcerated in prison in violation of Appellant's 4th, 5th, 6th, 8th and 14th amendments of the United States Constitution and South Carolina Constitution Article 1, sections 3, 12, 14, & 15 and Common Laws and S.C. codes of Laws.

The respondents failed to file a return to the Appellant's petition for writ of Habeas Corpus. Also, respondent did not even file an extension of time to do so. As a result, Appellant moved the court for a motion for Entry of Default and Default Judgment under Rule 55 of the SCRCP. However, the Oconee County, Clerk of Court refused to enter the Default. Respondent's files a untimely return and motion to Dismiss Appellant's Habeas Corpus action under Rule 12(b) SCRCP.

Respondents alleges, (1) that appellant's state Habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court and requests this action be summarily dismissed pursuant to Rule 12(b)(1) of the SCRCP, because this

court lacks subject matter jurisdiction 2), that appellant is procedurally barred from petitioning the circuit court for writ of Habeas Corpus where the matter alleged is one which could have been raised in a PCR application" and 3), that appellant must make a prima facie case showing he is entitled to relief and present sufficient factual allegations to support the petition before he is entitled to a hearing.

On April 9, 2024 a hearing was held before Judge H. Steven Deberry, IV. Where the state raised all their defense to appellant's petition for writ of Habeas Corpus action. However, Judge Deberry denied appellant from raising all of his claims and defenses during the hearing. Also, circuit court granted the state's motion to Dismiss appellant's petition for writ of Habeas Corpus over appellant's objection and motion to strike their return from the record. A final order was filed by the state's attorney, which did not rule on most of appellant's claims, arguments, pleadings and motions. As a result, Appellant filed a motion to Alter/Amend the Judgment, pursuant to Rule 59(c) requesting the circuit court to rule on all his issues, pleadings, claims and motions. Circuit court filed a order failing to rule on appellant's issues, denying appellant's Rule 59(c) motion and upholding the respondent's motion to Dismiss.

Appellant appealed. This brief follows.

## STANDARD OF REVIEW

"The question of subject matter jurisdiction is a question of law for the court." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). Thus, when reviewing the trial court's grant of a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCP this court is free to decide questions of law with no deference to the trial court. *Id.*

## ARGUMENT I

Did the Circuit Court err by granting the respondent's motion to Dismiss appellant's Habeas Corpus action pursuant to Rule 12(b)(1) of the SCRPC. After appellant filed a motion for Entry of default and Default Judgment. As a result, of the respondent's failure to timely file a return to appellant's Habeas Corpus action pursuant to Rule 12(a), SCRPC?

## PUBLIC OFFICIAL CORRUPTION COVERUP CASE

In 2010, appellant, Dennis Temple a 38 year-old blackman from Oconee County, South Carolina was arrested and detained by the Oconee County Sheriff's Department officer Lieutenant Greg Reed and Sergeant Scott Arnold for sexually assaulting Catherine McGough a 19 year-old white female Clemson University student at the All Safe Storage in Seneca, South Carolina. Appellant was charged with Grand Larceny, more than \$5,000; Kidnapping and Criminal Sexual Conduct, 1st degree; However, Catherine McGough the alleged victim wrote a seven page statement to police, which never stated she identified Appellant as the assailant, prior to trial and there was no DNA linking Temple to the crimes.

Appellant's paid attorney Robert Mills Ariail Jr.; public defender's Sarah Drawdy; Keith Denny and Kurt Tavernier conspired against their client (appellant) and helped Judge Blake A. Norton; Judge William Derrick, Judge R. Lawton McIntosh; Judge J. Cordell Maddox Jr.; Judge Alexander Macaulay; solicitor, Christina Adams and Assistant Solicitor Lindsey Satterfield Simmons falsely arrested, falsely imprisoned Appellant without probable cause and maliciously prosecuted Appellant for these crimes he did not commit. Appellant was never accused of committing the crimes by the alleged victim, prior to trial. Trial Judge Maddox forced Appellant to represent himself in a 3 day Jury trial before 11 white and 1 black Juror, Judge Maddox allowed the state to call all 12 of their witnesses to testify on the stand, then the state rested its case. Appellant called upon the Judge Maddox to call two of his witnesses to the stand to testify. Judge Maddox denied Appellant to call his witnesses in his defense. Then Judge Maddox sentenced Appellant to consecutive 30 years, 30 years, 30 years and 10 years in prison. These sentences are excess and illegal. (ROA, p. 13-38).

### FACTUAL AND PROCEDURAL BACKGROUND

1). On July 10, 2023 Appellant, a state prisoner at Lee Correctional Institution filed a Summons, verified Complaint, Notice of Motion and a motion for Petition of Writ of Habeas Corpus with the Oconee County, Clerk of Court. (ROA, p. 1-38).

2). On July 18, 2023 appellant mailed (3) copies of the summons, verified Complaint, notice of motion and motion for Petition of writ of Habeas Corpus to the Richland County Sheriff's Department requesting them to be served upon the South Carolina Department of Corrections (SCDC) General Counsel and the state of South Carolina Attorney General, Alan Wilson. See. ROA P. 43.

3). On August 9, 2023 the Richland County Sheriff's Department officer P. Wilkes served a copy of the summons, verified Complaint, notice of motion and petition for writ of Habeas Corpus on the state of South Carolina, attorney General's assistant, Janee McCrea. See. ROA P. 58-59.

4). Also, On August 9, 2023 appellant filed a notice and motion for leave to Amend Verified Complaint with the Oconee County, Clerk of Court and served a copy on the Respondent's attorney, the State of South Carolina, Attorney General, Alan Wilson. See. ROA P. 45-51.

5). On August 28, 2023 Appellant went to the mailroom at Tyger River Correctional Institution and mailed out (3) three more Summons, verified Complaints, notice of motion and motion for Petition of writ of Habeas Corpus by certified mail to the Attorney General, Alan Wilson with returned receipt requested. See. ROA. P. 56

6). The summons, included a statement informing the respondents that a default would be sought against them for the relief sought in the verified complaint unless the respondents answered or respond within 30 days. See, ROA. P. 9-11.

7). On September 12, 2023 appellant filed the original certified mail receipt and the returned Green Card and a copy with the Oconee County, Clerk of Court. See, ROA. P. 56.

8). On September 14, 2023 appellant filed the original Affidavit of Service from the Richland County Sheriff's Department with the Oconee County, Clerk of Court. See, ROA. P. 57-59.

9). On October 6, 2023 Appellant filed a (second) notice and motion for leave to Amend verified Complaint with the Oconee County, Clerk of Court. See, ROA. P. 60-65.

10). On October 18, 2023 Appellant filed a Notice, motion for Entry of Default and Default Judgment; an Affidavit of Default; verified statement, Exhibits A, B, C, E, F & G and order entering default Judgment. See, ROA. P. 66-74.

11). On December 4, 2023 Appellant filed a (second) notice; motion for Entry of default and Default Judgment; an Affidavit of Default; verified statement. Exhibits A, B, C, E, F, G, H, & I and a order entering default Judgment with the Oconee County, Clerk of Court. See. ROA. P. 75-88.

12). The Respondent did not file a answer, otherwise Pled, or requested an extension of time in which to answer.

13). On December 11, 2023 Appellant received a clocked-in stamped copy of the (second) notice, motion for Entry of default and Default Judgment, an affidavit of Default, verified statement and Exhibits A, B, C, E, F, G, H & I from the Oconee County Clerk of Court.

14). On December 27, 2023 Appellant filed a (new) order entering default Judgment with the Oconee County, clerk of Court. See. ROA. P. 87.

15). On January 4, 2024 Appellant filed another order entering default Judgment. See. ROA P. 88.

16). On March 8, 2024 respondent filed a Return and motion to Dismiss Petition for Writ of Habeas Corpus with the Oconee County Court of Common Pleas and a copy was served upon the appellant. See. ROA. P. 89.-99.

## STATE HABEAS CORPUS HEARING

17). On April 9, 2024 a hearing was held at the Anderson County Courthouse regarding the appellant's petition for writ of Habeas Corpus before the Presiding Judge H. Steven Deberry IV, where the respondents attorney, Talida Balaj, assistant Attorney General was allowed by the Judge Deberry to raise all of there claims and defenses against appellant's "petition for writ of Habeas Corpus. However, appellant was only allowed by Judge Deberry to raise some of his claims and arguments, moreover, Judge Deberry prevented appellant from raising other claims and arguments. During the hearing twice, Judge Deberry went so far as to cut appellant off from speaking in order to stop appellant from raising his claims and arsuments.

18). On May 17, 2024 Judge H. Steven Deberry, IV. filed a Final order of Dismissal in this case with the Oconee County court and a copy was served upon the appellant. See. ROA P. 100-103.

19). On May 31, 2024 appellant filed a notice of motion, motion to Alter or Amend Judsiment and certificate of service with the Oconee County, clerk of Court and a copy was served upon the respondent. See. ROA. P. 104-128.

20). On July 1, 2024 Judge H. Steven DeBerry, IV. filed a order Denying Applicants motion to Reconsider. See. ROA. P. 129-130.

## Discussion

### Rule 65, SCRCP

#### Rule 65. INJUNCTIONS; MANDAMUS, HABEAS CORPUS AND OTHER REMEDIAL WRITS

(f)(1) Remedial writs. No writ of mandamus, habeas corpus, or other remedial writ shall be granted without notice of motion for the writ to the adverse party, which notice shall be served, together with the summons and complaint, in event no summons and complaint have previously been filed and served in the action, upon the adverse party in accordance with the provisions of Rule 4 and 5. Such notice and motion shall be supported by affidavit or verified complaint setting forth clearly the facts entitling the moving party to such writ. The motion shall be heard upon such notice as the court may prescribe, and the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Unless a different time be prescribed by the court, the adverse party shall plead to the complaint and respond to such motion in the time prescribed by these rules for other civil actions.

## Rule 12, SCRCP

### Rule 12. DEFENSES AND OBJECTIONS-- WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS

(a) When presented. A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the court directs otherwise when service of process is made pursuant to Rule 4(e), and provided further that the state of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.

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## Rule 55, SCRCP

### RULE 55. DEFAULT

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).

(b) Judgment. Judgment by default may be entered as follows:

(1) Cases Involving Liquidated Damages or Sum Certain Amounts. When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter Judgment for that amount and costs against the party against whom judgment by default is sought, if that party has been defaulted for failure to appear and if such party is not a minor or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

## LAW / ANALYSIS

A determination in this case requires an evaluation of Rule 65(f)(1); Rule 12(a) and Rule 55(a) & 55(b)(1) of the South Carolina Rules of Civil Procedure. That are the main reasons for filing a Habeas Corpus in the lower court; serving a answer or return within 30 days and to seek Judgment for affirmative relief is sought for a party failure to Pled.

When interpreting a court rule." We apply the same rules of construction used in interpreting statutes. Therefore, the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." Green v. Lewis Truck Lines, Inc., 314 S.C. 303

304, 443 S.E. 2d 906, 907 (1994). When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning. (quoting Stark Truss Co., Inc. v. Superior Const. Corp., 360 S.C. 503 602 S.E. 2d 99 (Ct. App. 2004).

First, a Habeas Corpus action is soundly established in the U.S. Constitution and the South Carolina Constitution, Article I, Section 18. A Habeas Corpus action may be instituted in the lower court pursuant to Rule 65(f)(1) of the South Carolina Rules of Civil Procedures and/or in its original Jurisdiction in the South Carolina Supreme Court pursuant to Rule 245 of the South Carolina Rules of Appellate Procedures. Both Court Rules, Rule 245 and Rule 65(f)(1) specifically states what documents are to be submitted, how the court suppose to proceed and what rules apply in the action.

In pertinent parts, Rule 65(f)(1) states as follows:  
"Quote"

"The motion shall be heard upon such notice as the court may prescribe and the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require unless a different time be prescribed by the court, the adverse party shall plead to the complaint and respond to such motion in the time prescribed by these rules for other civil actions."

unless an extension is granted, a defendant must serve his answer within thirty days "After the service of the complaint upon him." Rule 12(a), SCRCP. If a party has failed to "plead or otherwise defend as provided by [the South Carolina Rules of Civil Procedure] and that fact is made to appear by affidavit or otherwise," the clerk of court will enter default. Rule 55(a) SCRCP. Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party, see, Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E. 2d 122, 123 (Ct. App. 1987). (holding that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party).

Appellant argue that the circuit court erred by granting the respondent's motion to Dismiss appellant's Habeas Corpus action pursuant to Rule 12(b)(1) of the SCRCP. Although respondents filed a return after appellant filed two Notices and motion for Entry of default and default Judgment, it did not comply with the time requirements of Rule 12(a), SCRCP. Respondents clearly failed to file an answer/return within thirty days of service of the Notice, petition, summons and verified complaint upon them. see "Factual and Procedural History", and they were technically in default. Thus, respondents return was not a valid Pleading or defense "as provided by"

the Rules of civil procedure. A plain reading of Rule 55 (a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of civil procedure. To hold otherwise would render the requirement in Rule 12(c), SCRCP meaningless.

A criminal defendant has a due process right to have his case heard by a fair and impartial Judge, see, Schweiker v. McClure, 456 U.S. 188, 195, 102 S.Ct. 1665, 72 L.Ed. 2d 1 (1982).

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process clause of the Fifth or Fourteenth amendment of the United States Constitution."  
Kurschner v. City of Camden Planning Comm'n., 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). Fundamentally, due process requires notice, a meaningful opportunity to be heard and Judicial review. Id. (quoting Thompson v. State, 415 S.C. 560 785 S.E.2d 189 (2016)).

"Due process demands impartiality on the part of those who function in judicial or quasi-judicial capacities." Similarly, he has the right to have a Judge assigned to his case, in a manner free from bias or the desire to influence the outcome of the proceedings. Cruz v. Abbate, 812 F.2d 571, 574 (9th Cir. 1987).

We find that the circuit court was bias and granting the respondent's motion to Dismiss appellant's Habeas Corpus action was improper and prejudicial to the appellant's case.

## ARGUMENT II

Did the clerk of court err by failing to entry of default in the appellant's case?

## PUBLIC OFFICIAL CORRUPTION COVERUP CASE

In 2010, appellant, Dennis Temple a 38 year-old blackman from Oconee County, South Carolina was arrested and detained by the Oconee County Sheriff's Department officer Lieutenant Greg Reed and Sergeant Scott Arnold for sexually assaulting Catherine McGough a 19 year-old white female Clemson University student at the All Safe Storage in Seneca, South Carolina. Appellant was charged with Grand Larceny, more than \$ 5,000; Kidnapping and Criminal Sexual Conduct 1st degree; However, Catherine McGough the alleged

victim wrote a seven page statement to police, which never stated she identified appellant as the assailant, prior to trial and there was NO DNA linking Temple to the crimes.

Appellant's paid attorney Robert Mills Ariail Jr.; public defender's Sarah Drawdy; Keith Denny and Kurt Tavernier conspired against their client (appellant) and helped Judge Blake A. Norton; Judge William Derrick; Judge R. Lawton McIntosh; Judge J. Cordell Maddox Jr; Judge Alexander Macaulay; Solicitor, Christina Adams and Assistant Solicitor Lindsey Satterfield Simmons falsely arrested, falsely imprisoned appellant without probable cause and maliciously prosecuted appellant for these crimes he did not commit. Appellant was never accused of committing the crimes by the alleged victim, prior to trial. Trial Judge Maddox forced appellant to represent himself in a 3 day jury trial before 11 white and 1 black juror. Judge Maddox allowed the state to call all 12 of their witnesses to testify on the stand, then the state rested its case. Appellant called upon Judge Maddox to call two of his witnesses to the stand to testify. Judge Maddox denied appellant to call his witnesses in his defense. Then Judge Maddox sentenced appellant to consecutive 30 years, 30 years, 30 years and 10 years in prison; Totaling 100 years. These sentences are excessive and illegal. See. RDA p. 13-38.

## FACTUAL AND PROCEDURAL BACKGROUND

21). On July 10, 2023 Appellant, a state prisoner at Lee Correctional Institution filed a summons, verified Complaint, notice of motion and a motion for petition of writ of Habeas Corpus with the Oconee County, clerk of Court. See. ROA P. 1-38.

22). On July 18, 2023 appellant mailed (3) copies of the summons, verified Complaint, notice of motion and motion for petition of writ of Habeas Corpus to the Richland County Sheriff's Department requesting them to be served upon the South Carolina Department of Corrections (SCDC) General Counsel and the state of South Carolina Attorney General, Alan Wilson. See: ROA P. 43

23). On August 9, 2023 the Richland County Sheriff's Department officer P. Wilkes served a copy of the summons, verified Complaint, notice of motion and petition for writ of Habeas Corpus on the state of South Carolina, attorney General's assistant, Janee McCrea. See. ROA P. 58-59.

24). Also, On August 9, 2023 appellant filed a notice and motion for leave to Amend verified Complaint with the Oconee County, clerk of Court and served a copy on the respondent's attorney, the state of South Carolina Attorney General, Alan Wilson. See. ROA P. 45-51.

25). On August 28, 2023 appellant went to the mailroom at Tiger River Correctional Institution and mailed out (3) three more summons, verified Complaints, notice of motion and motion for petition of writ of Habeas Corpus by certified mail to the attorney General, Alan Wilson with returned receipt requested. See, ROA P. 56.

26). The summons, included a statement informing the respondents that a default would be sought against them for the relief sought in the verified Complaint unless the respondents answered or respond within 30 days. See, ROA P. 9-11.

27). On September 12, 2023 appellant filed the original certified mail receipt and the returned Green Card and a copy with the Oconee County, Clerk of Court. See, ROA P. 56.

28) On September 14, 2023 appellant filed the original Affidavit of Service from the Richland County Sheriff's Department with the Oconee County, clerk of Court. See, ROA P. 57-59.

29). On October 6, 2023 appellant filed a (second) Notice and motion for leave to Amend verified Complaint with the Oconee County, clerk of Court. See, ROA P. 60-65.

30). On October 18, 2023 appellant filed a notice, motion for Entry of Default and Default Judgment; an Affidavit of Default, verified statement, EXHIBITS A, B, C, E, F & G and order entering default Judgment. See. ROA P. 66-74.

31). On December 4, 2023 appellant filed a (second) notice; motion for Entry of default and Default Judgment; an affidavit of Default; verified statement, Exhibits A, B, C, E, F, G, H & I and a order entering default Judgment with the Oconee County, clerk of Court. See. ROA P. 75-86.

32). The Respondent did not file a answer, otherwise Pled, or requested an extension of time in which to answer.

33). On December 11, 2023 appellant received a clocked-in stamped copy of the (second) notice, motion for Entry of default and Default Judgment, an affidavit of Default, verified statement and EXHIBITS A, B, C, E, F, G, H & I from the Oconee County, clerk of Court.

34). On December 27, 2023 appellant filed a (new) order entering default Judgment with the Oconee County, clerk of Court. See ROA. P. 87.

35). On January 4, 2024 appellant filed another order entering default Judgment. See. ROA P. 88.

36). On March 8, 2024 respondent filed a Return and motion to Dismiss Petition for Writ of Habeas Corpus with the Oconee County, clerk of court and a copy was served upon the appellant. See. ROA P. 89-99.

### STATE HABEAS CORPUS HEARING

37). On April 9, 2024 a hearing was held at the Anderson County courthouse regarding the appellant's petition for Writ of Habeas Corpus before the presiding Judge H. Steven Deberry, IV. Where the respondents attorney, Talida Balaj, assistant attorney General was allowed by the Judge Deberry to raise all of there claims and defenses against appellant's "petition for Writ of Habeas Corpus. However, appellant was only allowed by Judge Deberry to raise some of his claims and arguments. moreover, Judge Deberry prevented appellant from raising other claims and arguments. During the hearing, twice, Judge Deberry went so far as to cut appellant off, from speaking in order to stop appellant from raising his claims and arguments.

38). On May 17, 2024 Judge H. Steven Deberry, IV, filed a final order of Dismissal in this case with the Oconee County court and a copy was served upon the appellant. See. ROA P. 100-103.

39). On May 31, 2024 appellant filed a Notice of motion, motion to Alter or Amend Judgment and certificate of service with the Oconee County, clerk of court and a copy was served upon the respondent. See, ROA. P. 104-128.

40). On July 1, 2024 Judge H. Steven Deberry, IV filed a order Denying Applicant's motion to Reconsider. See, ROA P. 129-130.

## Discussion

### Rule 65, SCRCP

#### Rule 65. Injunctions; mandamus, HABEAS CORPUS AND OTHER REMEDIAL WRITS

(A)(1) Remedial Writs. No writ of mandamus, habeas corpus, or other remedial writ shall be granted without notice of motion for the writ to the adverse party, which notice shall be served, together with the summons and complaint, in event no summons and complaint have previously been filed and served in the action, upon the adverse party in accordance with the provisions of Rule 4 and 5. such notice and motion shall be supported by affidavit or verified complaint setting forth clearly the facts entitling the moving party to such writ. The motion shall be heard upon such notice as the court may prescribe, and the

court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. unless a different time be prescribed by the court, the adverse party shall plead to the complaint and respond to such motion in the time prescribed by these rules for other civil actions.

### Rule 12, SCRPC

#### RULE 12. DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS

(a) When presented. A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the court directs otherwise when service of process is made pursuant to Rule 4(e), and provided further that the state of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.

## Rule 55, SCRCP

### Rule 55. DEFAULT

(a) *Entry.* When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).

(b) *Judgment.* Judgment by default may be entered as follows :

(1) *Cases Involving Liquidated Damages or Sum Certain Amounts.* When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter Judgment for that amount and costs against the party against whom judgment by default is sought, if that party has been defaulted for failure to appear and if such party is not a minor or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

## LAW ANALYSIS

A determination in this issue requires an evaluation of Rule 65(f)(1), Rule 12(a) and Rule 55(a) & 55(b)(1) of the South Carolina Rules of Civil Procedure. That are the main reasons for filing a Habeas Corpus in the lower court; serving a answer or return within 30 days and to seek Judgment for affirmative relief is sought for a Party Failure to plead.

When interpreting a court rule." We apply the same rules of construction used in interpreting statutes. Therefore, the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule". Green v. Lewis Truck Lines, Inc., 314 S.C. 303 304, 443 S.E.2d 906, 907 (1994). when the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning (quoting Stark Truss Co. Inc. v. Superior Const. Corp.: 360 S.C. 503 602 S.E.2d 99 (Ct. App 2004).

First, a Habeas Corpus action is soundly established in the U.S. Constitution and the South Carolina Constitution, Article 1, Section 18. A Habeas Corpus action may be instituted in the lower Court pursuant to Rule 65(f)(1) of the South Carolina Rules of Civil Procedures and/or in it's original Jurisdiction in the South Carolina Rules of Appellate Procedures. Both Court Rules. Rule 245 and Rule 65(f)(1) specifically states what documents are to be submitted, how the court suppose to proceed and what rules apply in the action.

Rule 65(f)(1) states in pertinent parts as follows:

"Quote"

"The motion shall be heard upon such notice as the court may prescribe and the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require, unless a different time be prescribed by the court, the adverse party shall plead to the complaint and respond to such motion in the time prescribed by these rules for other civil actions."

Unless an extension is granted, a defendant must serve his answer within thirty days "After the service of the complaint upon him", Rule 12(a), SCRPC. If a party has failed to "plead or otherwise defend as provided by [the South Carolina Rules of Civil Procedure] and that fact is made to appear by affidavit or otherwise," the clerk of court will enter default. Rule 55(a) SCRPC. Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party, see, Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App. 1987). (holding that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party).

Appellant argue that the clerk of court erred by failing to entry of the default. After, appellant filed a motion for entry of default and default Judgment. As a result, of respondent failing to file a return to the appellant's Notice, motion, summons and verified Complaint. Although respondent filed a return after appellant filed two notices and motion for entry of default and default Judgment, it did not comply with the time requirement of Rule 12(a), SCRCP. Respondent clearly failed to file an answer/return within thirty days of service of the Notice, petition, summons and verified Complaint upon them. See, "Factual and procedural History," and they were technically in default. Thus, respondent's return was not a valid Pleading or defense "as provided by the Rules of civil procedure. A plain reading of Rule 55(a) allows entry of default when a Pleading or defense is asserted in a manner noncompliant with the Rules of civil procedure. To hold otherwise would render the requirements in Rule 12(a), SCRCP meaningless.

A criminal defendant has a due process right to have his case heard by a fair and impartial Judge. See, Schweiker v. McClure, 456 U.S. 188, 195, 102 S.Ct. 1665, 72 L.Ed. 2d 1 (1982).

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due process clause of the fifth or fourteenth Amendment of the United States Constitution." Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E. 2d 346, 350 (2008). Fundamentally,

due process requires notice, a meaningful opportunity to be heard and judicial review. *Id.* (quoting Thompson v. State, 415 S.C. 560 785 S.E.2d 189 (2016)).


"Due process demands impartiality on the part of those who function in judicial or quasi-judicial capacities." Similarly, he has the right to have a judge assigned to his case, "in a manner free from bias or the desire to influence the outcome of the proceedings." Cruz v. Abbotte, 812 F.2d 571, 574 (9th Cir. 1987).

We find that the clerk of court was biased and failing to entry of default in this case was improper and prejudicial to the appellant's case.

### CONCLUSION

For the foregoing reasons, appellant request that the court grant his explanation brief on appeal, vacate the lower court order of dismissal, vacate the conviction and sentences and release the appellant from prison.

Respectfully submitted,



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