

(Page 1.  
of 18)

Mr. Emory W. Roberts Jr.	}	South Carolina Supreme Court
Plaintiff, Pro Se		Case No.: 2020-CP-08-01349
V.	}	Appellate Case No.: 2024-001521
State of South Carolina		Date: 11-5-2024
Respondent/Defendant	)	Form: Pleading

Re: Code 1976 } 15-53-10  
 Uniform Declaratory Judgments Act.  
 : Rule 57. Declaratory Judgments

Clerk of Court: Patricia A. Howard  
 Please Clock, Date & Return Stamped Copy Please  
 Thanking You In Advance.

Enclosed: Additional Copy To Be Stamped And Returned  
 To Mr. Roberts, Plaintiff.  
 : Return To Plaintiff's Motion For Writ of Mandamus.  
 : Page 8 of States "Order of Dismissal"

**RECEIVED**  
 NOV 18 2024  
 S.C. SUPREME COURT

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### \* § 6.1. Declaratory Relief Before Supreme Court \*

The Supreme Court can render a declaratory judgment when a justifiable controversy setting legal rights of the parties exists. Town of Hilton Head V. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E. 2d 801 (1992).

The Court has expressly urged interested individuals to bring a declaratory judgment action in the Supreme Court's original jurisdiction to determine if questionable activity constitutes the unauthorized practice of law.

RE: Unauthorized Practice of Law Rules Proposed by the South Carolina Bar, Order (SC Sup. Ct. Filed \_\_\_\_\_ 1992) (Davis Adv. Sh. No. 21).

### \* Relevant Facts \*

Mr. Roberts was given the Faretta warnings in the PCR court by Judge Griffin and it was ordered that I may proceed pro se to which Mr. Roberts has throughout the duration of his proceedings. Subsequent to this order Denise Swope, Esquire was appointed as standby counsel over Mr. Roberts' adamant objection[s] and in violation of Rule 6D. of the Circuit Courts. Denise Swope has not once appeared on behalf of Mr. Roberts nor had she performed in any particular function on his behalf yet her name appears as "counsel of record" effectively precluding Mr. Roberts from making motion to the court

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or addressing the court in any meaningful way as my attempts to do so have been rejected. For example, Mr. Roberts attempted to have filed by the clerk his timely submitted Rule 59(c); Rule 60(b)(4); Rule 60(b)(3)(6) dated 9-10-24 - to this, Mr. Roberts a forementioned motions was "returned" to him without being filed by Leah Guerry Dupree (Clerk), stating: "All correspondence should be to your attorney", this correspondence was dated 9-13-2024 and returned to me on 9-20-24.

Mr. Roberts petitioned for a Writ of Certiorari for a ruling on issues pursuant to § 17-27-80 which had been construed as an appeal. Mr. Roberts also petitioned for a Writ of Mandamus dated Sept. 23, 2024. In the Petition for a Writ of Mandamus Mr. Roberts asks that the PCR court be compelled to comply with statutory law regarding § 17-27-80 and S.C. Code Ann. § 17-27-40 regarding Leah Guerry Dupree (Clerk) ministerial duties concerning my prose filings. Mr. Roberts had submitted his Rule 59(c) under the governing time limitations and his Rule 59(c) was rejected, effectively infringing his right to Appellate review and his due process to preserve his issues duly raised but not ruled on by PCR court because of its non-compliance with statutory law pursuant to § 17-27-80 (Emphasis). In Respondent's "Return To Plaintiff's Motion For Writ of Mandamus" dated 10-18-2024, Respondent states: "Pursuant to South Carolina Code of Laws

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§ 14-7-1630-1640, the State Grand Jury had jurisdiction over this matter; therefore, Defendant, as Clerk of Court for Berkeley County, had no jurisdiction to accept filings from Plaintiff." Contrary to Respondent's assertions...

"The South Carolina Rules of Civil Procedure apply to postconviction matters". S.C. R. Civ. P. 71.1(A).

Mr. Roberts points out that only a declaration of his rights, and statute will remedy the circumstance as a "fraud upon the court" by state actors is evident and also on-going. Mr. Roberts right to Appellate review and preservation of issues are being squandered by the [Unauthorized Practice of Law]; Denise Swope, Esquire appointment was in violation of Rule 60 of the Circuit Courts and she is being used to distort the system and complicit in a "fraud upon the court"; and Assistant Attorney Generals (Danielle Dixon) are also complicit as Danielle Dixon has complete knowledge of the law and remains silent regarding Mr. Roberts right to the "preservation of duly raised issues in regards to Rule 59(e) and PCR courts duty pursuant to § 17-27-80 of the South Carolina Code (2014) and Rule 52(A) of the South Carolina Rules of Civil Procedure.

Mr. Roberts asserts that there exists questionable activity in the PCR court and state actors including but not limited to Assistant Attorney General Danielle Dixon, Denise Swope, and Leah Guerry Dupree (Clerk of Berkeley County) that constitutes the unauthorized practice of law, and Mr. Roberts seeks Declaratory Judgment as to his rights, statutes and other legal relations.

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Assistant Attorney General, Joshua Underwood and David Fernandez are both involved in the "unauthorized practice of law. For example, on Page 8 of States "Order of Dismissal" dated September 5, 2024 (Enclosed), it states: "At the PCR hearing, Underwood explain the State Grand Jury had a contract with Creel Reporting for transcription, which was [separate] from Court Administration, and the [method] for obtaining that transcript would be to go directly to the Court Reporter with Creel Reporting to obtain copies. (PCR 122-23). Based on Underwood's foregoing testimony, which this Court finds credible, this Court finds the letter from Court Administration is "NOT" proof that a transcript of this State Grand Jury proceeding did not exist. Rather, Court Administration "did not have the transcript" because Court Administration "does not handle transcripts of State Grand Jury proceedings." Contrary to Underwood's assertions, section 14-7-1700 states in pertinent part: "Transcripts of the recorded testimony or proceedings [must] be made when requested by the Attorney General or his designee. Subject to the limitations of Section 14-7-1720(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure, a copy of the transcript of the recorded testimony or proceedings requested by the Attorney General or his designee [shall] be provided to the defendant by the court reporter, upon request, at the transcript rate [established] by the [Office of Court Administration] (Emphasis). Underwood's testimony is contrary to statutory law (section 14-7-1700) and is

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Also contrary to Rule 607. SCACR, see, Re: Request to Engage a Non-SC Judicial Branch Court Reporter, in pertinent part: "The party requesting to use a non-SC Judicial Branch court reporter shall submit a written request to [South Carolina Court Administration] (Court Administration) using form SCCA 801 A -- Request to Engage a Non-SC Judicial Branch Court Reporter." ... The written request shall include confirmation that both parties consent to the use of a non-SC Judicial Branch court reporter and at least one of the following...

... A) A court reporter or court monitor employed by the South Carolina Judicial Branch is unable to render the particular service required.

... B) The hearing is outside of regularly scheduled terms of court.

Upon receipt of the written request, "Court Administration" shall review the request and forward it to the Chief Justice of the Supreme Court of South Carolina for his consideration.

Upon notification of approval from "Court Administration," the judge assigned to the proceedings shall require the party engaging the non-SC Judicial Branch court reporter and the non-SC Judicial Branch court reporter (or company designee) to sign form SCCA 801 B - Non-SC Judicial Branch Court Reporter Agreement, which must include the following information...

(f) That the record, which includes the non-SC Judicial Branch court reporter's notes, backup audio recording, and [prepared transcript], if ordered, [must] be delivered to [Court Administration] within 60 days of

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the conclusion of the proceedings. Per Donald W. Beatty, Chief Justice of South Carolina. (Emphasis).

Underwood's contentions regarding his testimony (on Page 8 of States "Order of Dismissal" dated September 5, 2024) (Enclosed) is totally contrary to Rule 508, SCACR as well.

Section 14-7-1700 "clearly" outlines the duties of the Attorney General and his designee pursuant to statutory law. Joshua Underwood's testimony (on Page 8 of States "Order of Dismissal) and conduct is contrary to justice, honesty or morality;

at Mr. Roberts trial, Underwood [suppressed] the non-existence of the State Grand Jury Impanelment documents (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16 (Emphasis) because they don't legally exist as evidenced by South Carolina Court Administration (Court Administration) (Emphasis).

At trial, Mr. Roberts inquired to the trial judge about who he would have to write to obtain a transcript of State Grand Jury proceedings (Tr. July 24-28, 2017, Page 17, lines 14-15), trial judge stated: "You would have to know the name of the court reporter. And if you ask [Court Administration], they will give you that..." (Tr. July 24-28, 2017, Page 17, lines 16-18) (Emphasis).

Any assertions by Underwood or claims that "Court Administration" would have no involvement or guidance or knowledge as to how to [ascertain] the name of court reporter or if a court reporter had been assigned or not demonstrates the on-going fraud upon the court.

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\* Questions Presented \*

- 1.) Whether the Supreme Court may properly issue a declaratory judgment to declare the duties of Clerk of Courts ministerial duty to docket filings pursuant to S.C. Code Ann. § 17-27-40 and Rule 59(e)?
- 2.) Whether the Supreme Court may properly issue a declaratory judgment action so Mr. Roberts may obtain declaration of PCR courts statutory obligation regarding § 17-27-80 concerning his ineffective assistance of counsel claims relating to counsel's "failure to object to the violation of Mr. Roberts Sixth Amendment right to Confrontation concerning "lab reports" read into the record as "testimonial hearsay" by unavailable declarants and out-of-court statements (PCR Brief 4-Page 2, Question # 5); (PCR Brief 4-Page 3, Question # 8), and declaratory judgment relating to Rule 52(A) of the South Carolina Rules of Civil Procedure?
- 3.) Whether the Supreme Court may properly issue a declaratory judgment action to declare the right of Mr. Roberts to seek appellate review of the denial of PCR which is expressly authorized by state law pursuant to S.C. Code Ann. § 17-27-100(1985); Supreme Court Rule 50(9)?
- 4.) Whether the Supreme Court may properly issue a declaratory judgment action declaring the statute and rights of Mr. Roberts relating to "Rule 60. of the Circuit Courts" and prose status?

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- 5.) Whether the Supreme Court may properly issue a declaratory judgment and declare the right of Mr. Roberts relating to his Sixth Amendment right to "Confrontation" concerning lab reports and out-of-court statements by unavailable declarants regarding (PCR Brief 4-Page 2, Question # 5); and (PCR Brief 4-Page 3, Question # 8)?
- 6.) Whether the Supreme Court may properly issue a declaratory judgment regarding whether "the court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar"?
- 7.) Whether the Supreme Court may properly issue a declaratory judgment and declare the [rights] of Mr. Roberts relating to §§ 14-7-1700, 14-7-1720(A) and (D) and Rule 5, SCRCP, and the [operation] of the Statute as a whole?
- 8.) Whether the Supreme Court may properly issue a declaratory judgment and declare whether Assistant Attorney General Joshua Underwood was involved with the unauthorized practice of law relating to § 14-7-1700?

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Discussion: Pursuant to South Carolina's Uniform Declaratory Judgments Act (the Declaratory Act), "[C]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. § 15-53-20.

"Any person... whose rights, status or other legal relations are [affected] by a statute... may have determined any question of construction or validity arising under the statute... and obtain a declaration of rights, status or other legal relations there under." Id. § 15-53-20.

"To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." Sunset Cay, L.L.C. v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E. 2d 462, 466 (2004). "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." Id. (quoting Power v. McNair, 255 S.C. 150, 154, 177 S.E. 2d 551, 553 (1970)); see also Peoples Fed. Sav. & Loan Ass'n of S.C. v. Res. Planning Corp., 358 S.C. 460, 477, 596 S.E. 2d 51, 60 (2004) (quoting Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co., 279 S.C. 64, 66, 301 S.E. 2d 761, 762 (1983)).

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It is Mr. Roberts contention that he has a justiciable controversy "real and substantial" which is appropriate for judicial determination. For example, 1.) Whether the Supreme Court may properly issue a declaratory judgment action to obtain declaration of PCR court duties regarding... the Clerk of PCR court ministerial duty to docket filings pursuant to S.C. Code Ann. § 17-27-40 and Rule 59(e); 2.) Whether the Supreme Court may properly issue a declaratory judgment action so Mr. Roberts may obtain declaration of PCR courts statutory obligation regarding § 17-27-80 concerning his ineffective assistance of counsel claims relating to counsels "failure to object to infringement of Mr. Roberts Sixth Amendment right to Confrontation" concerning lab reports read into the record as "testimonial hearsay" by UNAVAILABLE declarants and out-of-court statements (see PCR Brief 4-Page 2, Question #5); (PCR Brief 4-Page 3, Question #8), and Rule 52(a) of the South Carolina Rules of Civil Procedure; 3.) Whether the Supreme Court may properly issue a declaratory judgment action to obtain declaration of Mr. Roberts "right to seek appellate review of the denial of PCR which is expressly authorized by state law pursuant to S.C. Code Ann. § 17-27-100(1985); Supreme Court Rule 50(9)... to which has thus been infringed by the PCR courts refusal to accept and file his prose Rule 59(e) that was timely submitted under governing time limitations

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And PCR court's refusal to comply with § 17-27-80.

The Court should liberally construe the Declaratory Judgment Act so as "to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships." Graham V. State Farm Mut. Auto. Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995).

"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.

Accordingly, Mr. Roberts has been denied "meaningful opportunity to be heard" regarding § 17-27-80 and denied "judicial review" relating to the rejection by Clerk of court (Berkeley County) to "accept and file" my Rule 59(e), effectively precluding judicial review on issues duly raised in PCR application, Briefs, and proceedings. This represents a justiciable controversy real and substantial which is appropriate for judicial determination as Mr. Roberts contends.

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### \* Standing \*

The purpose of a declaratory judgment action is to settle and afford relief from uncertainty and insecurity to a party with respect to that party's rights, statutes, and other legal relations. S.C. Code Ann. § 15-53-130 (1976). A party whose rights, statutes, or other legal relations are affected by a statute may seek a court's determination of any question of construction or validity of the statute and obtain a declaration of the party's rights, statutes, or other legal relations thereunder. S.C. Code Ann. § 15-53-30 (1976).

When a party has a question regarding its rights or obligations under the law, the party may bring an action under the Declaratory Judgment Act to have the question resolved by a court. South Carolina Lottery Commission v. Glassmeyer (S.C. 2021)

433 S.C. 244, 857 S.E.2d 889 - Inasmuch, Mr. Roberts ask his rights to be declared and/or obligation under the law regarding 1.) the submitting of a [belated] Rule 59(e) and where to submit it?; 2.) PCR court's statutory obligation pursuant to § 17-27-80; 3.) Mr. Roberts right to seek appellate review of the denial of PCR which is expressly authorized by state law pursuant to S.C. Code Ann. § 17-27-100; Supreme Court Rule 50(9), and whether appellate review on issues duly raised would be precluded because PCR court refuses to comply with § 17-27-80?

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Pursuant to S.C. Code Ann. § 15-53-130 (1976), the purpose of a declaratory judgment action is to settle and afford relief from uncertainty and insecurity to a party with respect to that party's [rights], statutes, and other legal relations... Accordingly, S.C. Const. Art. 1, § 14 states: "The right... to be confronted with the witnesses against"; There can be no doubt that a defendant has a constitutional right to be confronted by the witnesses against him. Art. 1, Section 18, of the 1895 Constitution of South Carolina provides: "In all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him; This constitutional right is restated in Section 17-506 of the 1952 Code of Laws of South Carolina, which provides: "Every person accused shall, at his trial, have a right to meet the witnesses produced against him face to face." The defendant cannot be denied the right to cross-examine the witnesses against him. State v. McNinch, 12 S.C. 89. The personal presence of a witness is required so that the accused may cross-examine him. State v. Bigbam, 133 S.C. 491, 131 S.E. 603. [Affidavits] and [depositions] are inadmissible in evidence in a criminal case. State v. Hester, 137 S.C. 145, 134 S.E. 885; State v. Murphy, 48 S.Ct. 1, 25 S.E. 43.

In Crawford, the court held that, absent a prior opportunity for cross-examination, "a testimonial

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statement" by an unavailable witness, offered against a defendant to prove the truth of the matter asserted, is categorically barred by the Confrontation Clause. Trial counsel's failure to object to "testimonial hearsay statements" regarding "lab reports" and out-of-court statements violated defendant's [right] to Confrontation and was "ineffective assistance because it was objectively unreasonable and resulted in prejudice to defendant, and had a substantial and injurious effect on jury's determination of guilt (Tr. July 24-28, 2017, page 703, lines 6-12; page 710, lines 15-23; page 713, lines 4-12) (see PCR Brief 4-Page 2, Question #5); see also (Page 736, lines 17-18; lines 19-22; Page 737, lines 1-9) (Strong Emphasis); see also (Tr. July 24-28, 2017, Page 658, lines 11-15; Page 659, lines 20-24; Page 660, lines 21-25; Page 675, lines 9-12; Page 675, lines 16-18), when counsel [refused] to object to lab reports and [out-of-court] statements by unavailable [lab technicians] in violation of Crawford v. Washington, 541 U.S. 36 (see PCR Brief 4-Page 3, Question #8). Accordingly, a party whose rights, statutes, or other legal relations are affected by a statute may seek a court's determination of any question of construction or validity of the statute and obtain a declaration of the party's rights, statutes, or other legal relations thereunder. S.C. Code Ann. § 15-53-30 (1976). Mr. Roberts suffers from uncertainty and insecurity as to

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his rights regarding "Confrontation" and applicable statutes aforementioned, and asks this Court for a declaration of Mr. Roberts rights, status, or other legal relations thereunder pursuant to S.C. Code Ann. §15-53-30(1976). Mr. Roberts contends that he has a justiciable controversy real and substantial which is appropriate for judicial determination.

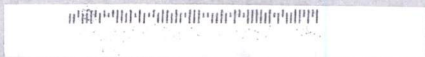
Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

### \* Conclusion \*

Declaratory judgment claims are creatures of statute, and individual's [right] to pursue declaratory judgment derives from that statutory authority.

S.C. Code Ann. §15-53-20.

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