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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from the Charleston County
Court of Common Pleas
Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2026-002021

Harold Simmons, Petitioner,

v.

City of North Charleston, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Respondent City of North Charleston ("City") submits the following Return in opposition to the Petition for Writ of Certiorari filed by Petitioner Harold Simmons in this appellate matter.

STATEMENT OF THE CASE

This case is before this Court on a petition for a writ of certiorari to review the Court of Appeals' decision that affirmed a municipal court order requiring Petitioner to serve a thirty-day jail sentence based on his willful failure to comply with the conditions of his suspended sentence imposed pursuant to his negotiated no contest plea agreement.

Petitioner owns and operates an automobile paint, body, and motor repair shop located at 3042 North Carolina Avenue in the City. The shop is in a residential neighborhood. Petitioner has a long history of parking inoperable and dismantled vehicles on his property and on the public streets and sidewalks surrounding his shop. He in effect created a mini-junk yard of inoperable and dismantled vehicles on his property, which overflowed onto the streets. The surrounding homeowners have complained about his use of the public streets as his personal storage facility.

In pertinent part, Section 9-67 of the Code of Ordinances of the City (R. p. 161) declares that the storage of inoperable or dismantled vehicles is a public nuisance:

> Sec. 9-67 - Nuisances declared.
>
> Without limitation upon and in addition to any conditions which may constitute common nuisances under section 9-66, the following are declared to be unhealthy and unsightly conditions constituting public nuisances and endangering the life, health, safety, welfare and property of the entire community: conditions which afford a breeding place for and/or attract insects, rodents or reptiles or otherwise create a substantial risk of danger to health and/or safety through disease, fire, safety hazards or other means, including, but not limited to:
>
> . . . .
>
> (4)(a) Trucks, cars, trailers, boats, and similar items that (i) fail to comply with state or federal safety regulations or are incapable of self-

propulsion (if the item in question is normally self-propelled), or are dismantled; and (ii) which are left in such state or condition for more than seventy-two (72) hours.

(b) Excepted from this subsection 9-67(4) declaration of nuisance, however, are:

(i) Such items when retained for purposes of repair or towing storage on the premises of a properly zoned repair or towing facility; provided that for any such vehicle retained more than ninety (90) days, the towing or repair facility must be able to document reasonable efforts that have been made to repair or return the vehicle and demonstrate reasonable cause for why repair or return has not been completed. Examples of reasonable cause for why repair or return has not been completed would include, but not be limited to, time statutorily required for compliance with state laws or back order time associated with parts required for repair.

Violation of Ordinance 9-67 constitutes a misdemeanor punishable by a fine of up to $500 and imprisonment for up to thirty days. *See* Ordinance 9-85 (R. p. 163) and Ordinance 1-10(a). (R. p. 160).

In the period from 2019 to 2023, the City repeatedly cited Petitioner for violations of the City's nuisance and zoning ordinances regarding the condition of his property and his continued use of his property and public streets as a storage facility for inoperable and dismantled vehicles. He was also cited for operating without a business license. But Petitioner willfully refused to comply. By 2023, Petitioner had been issued approximately 15 citations, and he requested a jury trial on the charges.

On August 9, 2023, Petitioner and his counsel appeared before the City's municipal court for a jury trial on the charges. During that proceeding, Petitioner, with the assistance of his counsel, negotiated a plea agreement with the City to resolve all of the pending charges. As reflected in the transcript of the plea agreement (R. p. 3), Petitioner pled *nolo contendere* (no contest) to two of

the charges in exchange for dismissal of all the other charges, including dismissal of approximately $14,000 in potential fines. (R. p. 33, line 19-p. 34, line 14).

Per the negotiated plea agreement, Petitioner pled no contest to the following two charges:

1. Removal of a condemnation sign from his building, which entailed a $50 fine; and

2. Violation of Section 9-67 of the City's nuisance ordinance regarding his storage of inoperable or dismantled vehicles on his property and streets. [1]

Petitioner paid the $50 fine for condemnation sign violation, and that violation is not an issue in this appeal. In exchange for his no contest plea[2] on the nuisance violation, the municipal court judge sentenced him to a fine of $1,087 and thirty days in jail, with the jail term suspended upon the condition that he bring his property into compliance with Section 9-67 within thirty days. The judge engaged in an extended colloquy with Petitioner and his counsel to ensure that Petitioner was freely and voluntarily entering the plea and understood what he needed to do to avoid having to serve the suspended jail sentence. (R. p. 14, line 10-p. 35, line 23). The colloquy specifically included a discussion of how he should provide copies of parts orders or other documentation of pending repair efforts for any inoperable or dismantled stored vehicles he contends are subject to the "pending repair" exception in Ordinance 9-67(4)(b)(i) for vehicles stored pending completion of repair work. (R. p. 24, line 15-p. 34, line 15).

Following the August 9, 2023 plea hearing, Petitioner paid the $1,087 fine, but he continued to store inoperable and dismantled vehicles on his property and on the streets

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[1] R. p. 6, lines 8-15.

[2] His no contest plea was equivalent to a guilty plea. *See* S.C. Code Ann. § 17-23-40 ("The defendant in any misdemeanor case in any of the courts of this State may, with the consent of the court, enter a plea of 'nolo contendere' thereto and upon so doing such defendant shall be dealt with in like manner as if he had entered a plea of guilty thereto."); *State v. Munsch*, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985) ("A plea of nolo contendere is for all practical purposes a plea of guilty in the case in which it is pled.").

surrounding his shop.[3] Therefore, on September 8, 2023, the City filed a "Motion for Hearing" to determine if Petitioner had complied with the conditions of his Court-ordered suspended sentence. (R. p. 38). On September 12, 2023, the municipal court notified Petitioner that the hearing on the City's motion was scheduled for September 19, 2023, but the hearing was subsequently continued until October 6, 2023. (R. pp. 37, 38, 96).

Petitioner attended the October 6, 2023 hearing with his counsel. During that hearing, the City presented evidence and testimony regarding Petitioner's continued use of his property and streets for storage of inoperable or dismantled vehicles. Petitioner, through his counsel, cross-examined witnesses and presented evidence, and he testified in his own defense. (R. pp. 96-97). As stated by the municipal court judge:

> The Court considered highly the testimony of [Petitioner], which he acknowledged [sic] that flat tires on his vehicle was a violation of the city ordinance and several photographs demonstrated flat tires on the Defendants' property on August 10, 2023, September 5, 2023, and also on September 19, 2023. (R. pp. 97-98)

At the conclusion of the hearing, the municipal court judge found Petitioner had failed to comply with the terms of his suspended sentence and imposed the thirty-day jail sentence. (R. pp. 96-97).

Petitioner, through his counsel, filed an appeal of the municipal court's decision to the circuit court, and the municipal court granted Petitioner's request for a personal recognizance appeal bond to stay his jail sentence. After receiving briefs from counsel and conducting a hearing on the appeal, the circuit court judge, The Honorable Roger M. Young, Sr., issued an order affirming the municipal court order. (R. p. 107). The circuit court denied Petitioner's motion to reconsider. (R. pp. 116, 136).

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[3] He also continued to operate without the required City business license.

Petitioner, through his trial counsel, then filed an appeal to the Court of Appeals. Petitioner's counsel thoroughly briefed the appeal. The Court of Appeals affirmed the circuit court in an unpublished decision. *Simmons v. City of North Charleston*, Unpublished Op. No. 2026-UP-353 (S.C. Ct. App. filed July 8, 2026). Petitioner's counsel then filed a motion to be relieved as counsel, which the Court of Appeals granted over Petitioner's objection. Petitioner filed a *pro se* petition for rehearing, which the Court of Appeals denied in an ordered filed on August 5, 2026. Petitioner then filed a *pro se* Petition for Writ of Certiorari to this Court.

ARGUMENT

It is well established that this Court's discretionary review should be granted only when there are special and important reasons for such further review. Such special and important reasons include consideration of the following factors:

1. Are there novel questions of law at issue?
2. Was there a dissent at the Court of Appeals?
3. Is the decision of the Court of Appeals in conflict with a prior decision of this Court?
4. Are there substantial constitutional issues directly involved?
5. Is there a factual question included and does the Court of Appeals decision conflict with a decision of the United States Supreme Court?

Rule 242(b), SCACR. No such factors exist here.

Petitioner was given great leniency and an opportunity to avoid the pending thirty-day sentence that he is attempting to further appeal here. The City agreed to waive thousands of dollars in fines for the numerous citations issued based on Petitioner's repeated failures to comply with City ordinances, and Petitioner was given time to clean up his property as he agreed to do in his negotiated plea agreement. Petitioner's sentence was imposed based on his stubborn refusal to comply with the terms of his plea agreement by removing the inoperable or dismantled vehicles

that he was storing on his property and public streets. The Petitioner is attempting to reargue and relitigate the facts presented to and decided by the municipal court, whose rulings were affirmed by both the circuit court and Court of Appeals. The circuit court and Court of Appeals both rejected Petitioner's arguments that were thoroughly briefed by his prior counsel, and there are no special and important reasons that warrant this Court's review of their decisions.

Moreover, the Petition for Writ of Certiorari fails to comply with Rule 242(d) of the South Carolina Appellate Court Rules. Petitioner did not file the Appendix required by Rule 242(e), SCACR. The Petition for Writ of Certiorari does not contain a coherent statement of the questions presented for review, and the Petition does not contain *any* argument in support of the numerous items listed. It is difficult—if not practically impossible—to understand and meaningfully respond to the questions or issues listed in the Petition.[4] Therefore, the Petition for Writ of Certiorari should be denied based on its "[f]ailure . . . to present with accuracy, brevity, and clarity the information and arguments that are essential to a ready and adequate understanding of the points requiring consideration[.]" Rule 242(d)(3), SCACR.

CONCLUSION

Petitioner filed the Petition for Writ of Certiorari in a continuing effort to avoid the consequences of his willful failure to comply with the terms of his no contest plea agreement and conditional suspended sentence. Petitioner's numerous attempted arguments to excuse his willful failure to comply with the terms of his suspended sentence were fully presented and thoroughly briefed by his prior counsel before the municipal court, the circuit court, and the Court of Appeals, all of which rejected those arguments. No new, special, or important issues or reasons are

[4] To the extent this Return does not specifically or directly respond to a particular assertion in the Petition, it is not intended to indicate acquiescence or agreement with the assertion.

presented here, and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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