

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857  
Court of Appeals Tracking No. 2013-000340

**RECEIVED**  
MAY 15 2014  
**SC Court of Appeals**

Lawrence Terry, ..... Appellant,

v.

Allen University, ..... Respondent.

**Respondent's Return to Appellant's Petition for Rehearing**

Pursuant to Rule 221(a) and 240(e) of the South Carolina Appellate Court Rules, Respondent Allen University files this return to Appellant's petition for rehearing as to the Panel's unpublished opinion in this matter (Terry v. Allen University, Op. No. 2014-UP-192 (S.C. Ct. App. filed May 7, 2014) (Shearouse Adv. Sh. No. 18)). The panel did not overlook or misapprehend any argument advanced by Appellant in rendering the opinion. Therefore, the petition for rehearing should be denied.

As an initial matter, petition for rehearing should be denied because Appellant cannot use a petition to ask the Panel to reconsider arguments previously presented. The Supreme Court has held that a petition for rehearing cannot be used to present previously made and considered appellate arguments. See Kennedy v. South Carolina Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (holding it is not "the

purpose of a petition for rehearing to have the case tried in the appellate court a second time”). Appellant raises one argument in the petition for rehearing. The argument advances the same argument presented to the Panel in Appellant’s appellate briefing. See, e.g., Petition p. 2 (“As I stated in my Final Brief . . .”). Thus, the Panel previously had the opportunity to review and weigh the merits of the argument raised in the petition. Accordingly, this argument cannot constitute a basis for rehearing. The petition for rehearing should be denied on this basis alone.

Second, Appellant argues that the Panel misapprehended his “first argument” ruled on by the Panel because “Allen University did not have a motion to dismiss on the docket,” and, therefore, the circuit court could not dismiss the action. See Petition p. 1. Appellant’s argument lacks merit. The Panel did not overlook his argument. The opinion addresses this very argument in paragraph one. Moreover, Appellant’s argument is a fabrication. Allen’s operative motion to dismiss was included in the Record on Appeal. See Amended Record p. 40-45 containing Allen’s Motion to Show Cause, for Sanctions, and to Dismiss.<sup>1</sup>

Lastly, the Panel did not overlook or misapprehend any facts or issues in issuing the unpublished opinion in this matter. The Panel considered each argument advanced by Appellant and rejected each claim. Thus, the Panel did not overlook any argument advanced by Appellant. The Panel also did not misapprehend Appellant’s arguments.<sup>2</sup>

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<sup>1</sup> While this Court did strike other motions filed by Allen from the Record, the motion to dismiss applicable to the order on appeal was included in the Record on Appeal.

<sup>2</sup> As noted in the opinion, Appellant raised five issues on appeal. The Panel ruled on all five in the opinion. However, Appellant’s petition for rehearing only advances argument related to one of the issues raised, namely the motion to dismiss argument. Appellant raises no arguments related to his other four issues addressed in the opinion. Therefore, those arguments are abandoned, and this Court cannot grant

Based on the foregoing, the Panel should deny the petition for rehearing.

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May 15, 2014

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**PROOF OF SERVICE**

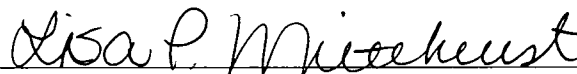
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served a copy of the pleading(s) hereinbelow specified by mailing a copy of the same (1) by United States Mail, postage prepaid, and (2) via Certified Mail, Return Receipt Requested, to the following address(es):

Pleadings:

Respondent's Return to Appellant's Petition for Rehearing

Counsel Served:

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P.O Box 24138  
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Lisa P. Whitehurst  
Administrative Assistant

May 15, 2014

# Nelson Mullins

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May 15, 2014

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RE: Lawrence Terry v. Allen University  
Civil Action No. 2010-CP-40-02301  
Court of Appeals Tracking No.: 2013-000340  
Our File No. 31667/01501

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondent's Return to Appellant's Petition for Rehearing in regard to the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier.

By copy of this letter to Mr. Terry, we are serving him with a copy of this pleading.

Very truly yours,



Debbie Whittle Durban

DWD:lpw

Enclosures

cc: Lawrence Terry (Plaintiff Pro Se) (w/enc.)

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