

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

D. Graig Brown, Circuit Court Judge

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CASE NO. 2011-CP-21-2095

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CARMICHAEL T. FLOWERS .....Appellant

vs.

WILLIAM K. BOONE, CAPTAIN J. BRONSON,  
LEAH HARRIS, JOSEPH D. THOMPSON  
AND ANN AND/OR JOHN DOE .....Respondents

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**RETURN OF RESPONDENTS**

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**S.C. SUPREME COURT**

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## STATEMENTS OF QUESTION PRESENTED

Respondents submit that Petitioner's statement of questions presented is essentially accurate, but can be more precisely stated. In particular, Respondents assert that the issues presented are more precisely stated as follows:

1. Did the Court of Appeals commit reversible error when it dismissed Petitioner's Appeal based upon his failure to order a transcript of the underlying proceedings?
2. Did the Court of Appeals commit reversible error when it denied Petitioner's request for a rehearing?

## STATEMENT OF THE CASE

The underlying legal action was brought by *pro se* Petitioner Carmichael T. Flowers ("Petitioner"), an incarcerated inmate of the South Carolina Department of Corrections ("SCDC"), on August 9, 2011, in the Florence County Court of Common Pleas ("the trial court") (Original Complaint pp. 1-5). The Petitioner filed an Amended Complaint on November 22, 2011 (Amended Complaint pp. 1-5). In his Amended Complaint, the Petitioner alleged that the Respondents were somehow responsible for his personal property not being returned to him following his arrest and detention at the Florence County Detention Center (Amended Complaint pp.1-5). Subsequently, this case was removed to federal court by the Respondents, since the Amended Complaint appeared to allege federal causes of action.

However, the Petitioner thereafter filed several additional documents indicating that he did not intend to bring any federal claims in this lawsuit. Consequently, by Court Order

filed July 6, 2012, United States District Court Judge Timothy M. Cain Ordered that the case be remanded back to the Florence County Court of Common Pleas for disposition (Order of Remand pp. 1-2).

On January 23, 2013, Respondents filed both a motion for summary judgment and memorandum in support thereof (Respondents' Motion for Summary Judgment p.1; Respondents' Memorandum in Support of Summary Judgment pp. 1-7, with Exhibits attached thereto). A hearing was held on March 21, 2013. At that time, all parties were allowed to present oral argument concerning their respective legal positions.

By Court Order dated April 1, 2013, the Honorable D. Craig Brown, Presiding Judge for the Twelfth Judicial Circuit, granted Respondents' motion for summary judgement and dismissed the underlying case in its entirety, with prejudice (Order filed April 1, 2013 pp. 1-5). In particular, Judge Brown held that: (1) the individual Respondents were personally immune from suit pursuant to S.C. Code § 15-78-70 (a) - (b); and (2) Petitioner had voluntarily waived all claims against the Respondents and was equitably estopped from asserting such claims (Order filed April 1, 2013 pp. 1-5). The Petitioner appealed.

On or about September 11, 2013, the Petitioner informed Respondents that he "decided not to order the required transcript, pursuant to Rule 207 (SCACR)" and asked Respondents to agree to same (Correspondence from Petitioner dated September 11, 2013). Rather than awaiting for a response from Respondents, the Petitioner then chose to file his Initial Brief on or about the same date, without the required transcript.

On or about September 16, 2013, Respondents informed Petitioner that they were unable to consent to the Petitioner's request because "without the requested transcript ... the

Record on Appeal [would] not be complete” (Correspondence from Respondents dated September 16, 2013). Respondents sent a copy of that correspondence to the Clerk of Court. In response, Petitioner requested the transcript, but without sufficient arrangements for payment (Correspondence from Petitioner dated September 19, 2013). Without an Order from the Court and since the Clerk of Court improperly accepted, filed and/or did not return Petitioner’s Initial Brief, Respondents were required to file their Initial Brief within thirty (30) days after the Petitioner’s Initial Brief pursuant to Rule 208 SCACR, which they did on or about October 11, 2013, albeit without the required transcript having been filed. Respondents asserted in their Brief that the record was incomplete, judicial review was impossible, and that dismissal of the Appeal was appropriate, due to Petitioner’s continued failure to comply with Rule 207 SCACR.

On or about October 22, 2013, the Clerk of Court contacted Respondents’ office via telephone and asked if Respondents wanted to proceed without the transcript (Hargrove Aff. ¶ 3). Respondents’ office again informed the Clerk of Court that it was Respondents’ position that the transcript was necessary and the record was incomplete (Hargrove Aff. ¶ 4). Respondents’ referred to their Brief and stated that the filing of the Brief in no way implied agreement that the record was complete and the appeal was ready to be heard (Hargrove Aff. ¶ 6). To the contrary, Respondents’ Initial Brief expressly stated that the record was incomplete. The Clerk of Court’s office then stated that they would return all briefs with letters stating that the briefs were premature because the transcript had not been received (Hargrove Aff. ¶ 7).

However, on October 28, 2013, the Clerk of Court forwarded a letter indicating that

even though the transcript had not been received, both parties had filed their briefs and “the Court can only presume that the transcript previously ordered by the Petitioner is no longer needed” (Correspondence from Court of Appeals dated October 28, 2013 ). Respondents immediately replied to their correspondence and stated that the transcript remained “necessary for judicial review” and requested that they reconsider (Correspondence from Respondents dated October 29, 2013). In response thereto, on or about November 20, 2013, the Clerk of Court instructed Respondent to direct all requests to the Court “in the form of a motion” (Correspondence from Court of Appeals dated November 20, 2013). Accordingly, Respondents’ moved to dismiss the Petitioner’s Appeal, since he had undeniably failed to comply with Rule 207 SCACR (Respondents’ Motion to Dismiss).

On May 14, 2014, the Court of Appeals issued an Order clearly and succinctly explaining to the Petitioner that the Respondents had filed a motion to dismiss based upon his failure to order the transcript and requiring Appellant to provide proof that he made arrangements for the payment of the transcript with twenty (20) days. (Order dated May 14, 2014) Petitioner responded to that Court Order, but his response undeniably did not include proof that he made arrangements for the payment of the transcript, as Ordered.

On June 30, 2014, the Court of Appeals granted the Respondent’s motion to dismiss the appeal (Order dated June 30, 2014). In so holding, the Court of Appeals reasoned that:

Appellant filed the notice of appeal in this case on April 10, 2013. On May 14, 2014, which is over a year later, this Court issued an order (1) explaining that Respondents have filed a motion to dismiss based on Appellant’s failure to order [the] transcript, and (2) requiring Appellant to provide proof that he has made arrangements for a payment of the transcript within twenty days. Appellant provided this Court with a copy of a letter to the court reporter, wherein he requests to order a transcript, but it did not include proof he has

made arrangements for the payment of the transcript. The Court has further learned from Court Administration that Appellant never furnished the court reporter with the date of the hearing and he failed to respond to the court reporter's request for the date. Because over a year has passed and Appellant has still failed to satisfactorily order the transcript and Appellant failed to comply with this Court's May 14, 2014 order, Respondents' motion to dismiss is granted.

(Order dated June 30, 2014).

Subsequently, Petitioner filed both a Petition for Rehearing (Petition for Rehearing dated and Affidavit dated July 7, 2014) and an Amended Petition for Rehearing (Amended Petition for Rehearing dated July 10, 2014).

On October 20, 2014, the Court of Appeals denied Petitioner's Petition(s) for rehearing (Order dated October 20, 2014). Petitioner then filed the instant Petition for Writ of Certiorari (Petition for Writ of Certiorari). The Respondents' now file this Return in opposition thereto.

## **ARGUMENT**

1. The Court of Appeals Properly Dismissed Petitioner's Appeal, since He Failed to Satisfactorily Order the Transcript and Failed to Comply with this Court's May 14, 2014 Order.

Initially, Respondents assert that the Court of Appeals properly dismissed Petitioner's Appeal, since he failed to satisfactorily order the required transcript and failed to comply with the Court's May 14, 2014 Order. Indeed, the Court of Appeals did not commit any reversible error by dismissing Petitioner's Appeal.

Notably, the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals

in this State. Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992). As such, it is incumbent upon the parties to provide material that complies with the Rules and facilitates appellate review. Id. Rule 207 SCRAP also clearly and unambiguously provides that the appellant must order the lower court transcript “[w]here a transcript of the proceeding **must** be prepared by the court reporter” (emphasis added).

In this case, Petitioner undeniably did not comply with the legal requirements of Rule 207 SCRAP, since he did not order the transcript of the lower courts’s summary judgment proceeding, despite being afforded multiple opportunities in which to do so.<sup>1</sup> Without such, the record remained incomplete, judicial review was impossible, and the instant Appeal was properly dismissed by the Court of Appeals. No reversible error of law was committed in this regard.

Moreover, on May 14, 2014 the Court of Appeals also issued an Order clearly and succinctly explaining that the Respondents had filed a motion to dismiss based upon Appellant’s failure to order the transcript and requiring Appellant to provide proof that he made arrangements for the payment of the transcript with twenty (20) days. Plaintiff did not to respond, as required. Similarly, because Petitioner himself voluntarily chose to proceed *pro se* in this matter, it was his fault alone that the Court of Appeals’ Order was not followed. Petitioner alone elected to proceed *pro se* and is bound by the Appellate Court Rules. Faretta v. California, 422 U.S. 806, 834 n. 46 (1975) (“The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with

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In fact, to date, neither the Respondents and/or the Court of Appeals have ever been provided with a copy of the underlying transcript at issue.

relevant rules of procedural and substantive law.”); State v. Burton, 356 S.C. 259, 589 S.E.2d 6, 9 n. 5 (2003) (“A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.”).

Again, no proof was ever timely provided to the Court of Appeals that any arrangements had been made with the court reporter for payment of the transcript, as Ordered. In dismissing Petitioners’ Appeal, the Court of Appeals correctly and properly reasoned that:

Appellant filed the notice of appeal in this case on April 10, 2013. On May 14, 2014, which is over a year later, this Court issued an order (1) explaining that Respondents have filed a motion to dismiss based on Appellant’s failure to order [the] transcript, and (2) requiring Appellant to provide proof that he has made arrangements for a payment of the transcript within twenty days. Appellant provided this Court with a copy of a letter to the court reporter, wherein he requests order a transcript, but it did not include proof he has made arrangements for the payment of the transcript. The Court has further learned from Court Administration that Appellant never furnished the court reporter with the date of the hearing and he failed to respond to the court reporter’s request for the date. Because over a year has passed and Appellant has still failed to satisfactorily order the transcript and Appellant failed to comply with this Court’s May 14, 2014 order, Respondents’ motion to dismiss is granted.

(Order dated June 30, 2014).

No reversible error was committed in this regard. For this reason, Petitioner’s Petition for Writ of Certiorari should be denied.

2. The Court of Appeals Properly Denied Petitioner’s Request for a Rehearing.

Additionally, Respondents submit that the Court of Appeals also properly denied Petitioner’s Request for Rehearing, since no material fact or principle of law had been either

overlooked or disregarded. For this reason, Petitioner's Petition for Writ of Certiorari should also be denied.

In order to prevail on a petition for rehearing, a Petitioner must demonstrate that the Court overlooked or misapprehended his prior argument(s). Rule 221(a), SCACR. The Petitioner undeniably failed to meet his burden in this regard. As well, the purpose of a petition for rehearing is not to present points which the losing party may have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time," which is precisely what the Petitioner attempted to do. See eg., Jean H. Toal, Shahin Vafai & Robert Muckenfuss, Appellate Practice in South Carolina 309 (1999) (citing Arnold v. Carolina Power & Light Co., 168 S.C. 163, 167 S.E. 234 (1933)).

Significantly, as already explained herein, the Court of Appeals properly dismissed Petitioner's Appeal, since he failed to satisfactorily order the required transcript and failed to comply with the Court's May 14, 2014 Order. No reversible error was committed in these regards. Additionally, as correctly and properly explained in the Court of Appeals' Order denying Petitioner's Petition(s) for rehearing:

After careful consideration of the petition for rehearing, this Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

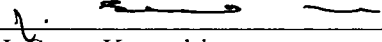
(Order dated October 20, 2014).

Again, no reversible error was committed in this regard. For this reason, Petitioner's Petition for Writ of Certiorari should also be denied.

## CONCLUSION

Based on the foregoing, Respondents respectfully request that the Petitioner's Petition for Writ of Certiorari should be denied.

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December 18, 2014  
Florence, SC

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

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**PROOF OF SERVICE**

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PERSONALLY appeared before me, J. Scott Kozacki, who being duly sworn, deposes and says that he has served the **Respondents' Return** on the Appellant, by depositing a copy of same in the United States Mail, postage prepaid, to:

Carmichael T. Flowers #335945  
Ridgeland Correctional Institution  
Post Office Box 2039, SB36  
Ridgeland, SC 29936

DATE OF MAILING: December 18, 2014

By: J. Scott Kozacki  
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