

**RECEIVED**  
DEC 12 2014  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM CHARLESTON COUNTY  
COURT OF COMMON PLEAS

J.C. Nicholson, Circuit Court Judge

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2014-CP-10-305

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Sidney Fields # 254392

Appellant.

V.

The State Of South Carolina

Respondent.

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PETITION FOR REHEARING  
PURSUANT TO RULE 221 SCACR

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Sidney Fields # 254392

B.R.C.I. 4460 Broad River Rd.

Wateree # 177

Columbia, S.C. 29210

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### FACTS LEADING UP TO THIS PETITION FOR REHEARING

At the conclusion of appellant's original (PCR) proceeding, appellant informed his (PCR) counsel that no record was ever developed to substantiate the main allegation of appellant's (PCR) issue, nor was there a record developed to substantiate the exhibits marked into evidence. (R pp.138)

After a succession of pleadings, appellant submitted a writ of Habeas Corpus in circuit court (Charleston) to address the deficiencies of the original (PCR) record. (R pp.29-42) In which the Chief Adm. Judge Roger M. Young issued an Order that placed the pleading on the Habeas Corpus docket. The Order also decreed that a Habeas Corpus hearing be set in accordance. (R pp.10) From this point on, Judge Young's Order will be referred to as being (Judge Young's Habeas Order).

The respondent then submitted a motion to reconsider asking Judge Young to vacate his Habeas Order and place the pleading on the (PCR) docket in order for them to move the court for a (PCR) dismissal. (R pp.43-45) Judge Young denied the respondent's motion to reconsider. (R pp.11) After the denial of their motion to dismiss, the respondent did not appeal Judge Young's Habeas Order.

A hearing was held on this matter before Judge R. Markley Dennis. (R p.104-115) However, instead of conducting a Habeas Corpus proceeding under the Habeas Corpus docket as decreed by Judge Young's Order, Judge Dennis illegally conducted a (PCR) proceeding on the (PCR) docket under the (PCR) Statute. (R p.106 line 25 p.112 lines 15-24)

The respondent again moved the court for a (PCR) dismissal, this time before Judge Dennis. (R p.106 lines 12-15) Judge Dennis granted the respondent's motion. (R p.113 lines 13-14) And because Judge Dennis erroneously conducted a (PCR) proceeding (R p.106 line 25 p.112 lines 15-24),

Judge Dennis was in error to construe and dismiss appellant's Habeas pleading as if it was a (PCR) application and proceeding. (R pp.12-18)

After a succession of pleadings to enforce Judge Young's Habeas Order, appellant submitted a mandamus in circuit court to compel the court to vacate Judge Dennis's (PCR) Order pursuant to Rule 60 S.C. circuit Court Rules Of Practice, and enforce Judge Young's Habeas Order to conduct a Habeas Corpus proceeding as originally decreed. (R pp.55-77) The circuit court denied the mandamus. (R pp.24-27)

After the circuit court denied the mandamus, appellant submitted a motion to reconsider. (R. pp.93-103) Appellant's motion to reconsider was denied also. (R pp.28)

On October 8, 2014 appellant filed his notice of appeal to the S.C. Court Of Appeals to appeal the Order denying the mandamus petition. (R pp.24-27)

The court then notified appellant that his appeal lacked the required \$100.00 filing fee. On October 22, 2014 appellant submitted his initial brief along with a motion asking the court to be relieved from paying a filing fee pursuant to Rule 240(d) SCACR. In which Rule 240(d) states that parties may be relieved from paying a filing fee in extraordinary cases.

On December 2, 2014 by Order of the court, the court of appeals misconstrued appellant's 240(d) motion as a motion to proceed in forma pauperis, and Ordered appellant pursuant to Rule 203(d)(1)(B)(vi) SCACR to submit within (20) days an explanation to why the lower court's determination was not proper.

However, not only did the court in it's Order misapprehended the facts of appellant's appeal, the court based it's December 2, 2014 Order on an improper appellate court Rule that does not apply to appellant's appeal.

The Rule states that: if a notice of appeal is from Habeas Corpus proceeding, and the lower court has determined that Habeas Corpus relief was improper because the issues could have been raised in a timely application under the Post Conviction Relief Act, appellant shall submit an explanation to show why the lower court's determination was improper. Rule 203(d)(1)(B)(vi) SCACR

Appellant asserts that this case is not being appealed from a Habeas Corpus proceeding as the December 2, 2014 Order stipulates. Appellant is appealing the lower court's Order denying his petition for writ of mandamus. (R pp.24-27)

Appellant further asserts that there was never a Habeas Corpus proceeding conducted in this case. When Judge Young issued the Order that placed the pleading on the Habeas Corpus docket, Judge Dennis in violation of Judge Young's Order, illegally conducted a (PCR) proceeding on the (PCR) docket under the (PCR) Statute.

Not only did Judge Dennis violate Judge Young's law of the case Order to conduct a Habeas Corpus proceeding, Judge Dennis construed appellant's Habeas Corpus petition as if it was a (PCR) application before the court. (R pp.12-18)

In his mandamus petition, appellant sought to vacate Judge Dennis's (PCR) Order and to enforce Judge Young's Order to conduct a Habeas Corpus proceeding. (R pp.55-77) However, this court misconstrued the factual bases of this appeal and erroneously issued an Order pursuant to Rule 203(d)(1)(B)(vi) SCACR by mistakenly believing that this appeal derived from a Habeas Corpus proceeding in the lower court. When in fact, it did not.

**LAW OF THE CASE / RULE 60 S.C. CIRCUIT COURT RULE OF PRACTICE**

At the mandamus hearing appellant argued before Judge J.C. Nicholson that the respondent failed to appeal Judge Young's Habeas Order. (R pp.67) (R pp.88) (R pp.95) (R p.124 lines 23-24 p.132 lines 15-16 p.134 lines 7-9)

Therefore, Judge Young's Habeas Order Right or Wrong is the law of the case. Lindsay v. Lindsay 328 S.C. 329, 491 SE2d 583,588 (1997) (R pp.64-67) (R pp.86-88) (R pp.95-96) (R p.124 lines23-24 p.134 lines 5-10)

However, despite the fact that Judge Young placed the pleading on the Habeas Corpus docket, and despite the fact that Judge Young's Habeas Order is the law of the case, Judge Dennis at the Hearing illegally conducted a (PCR) proceeding on the (PCR) docket under the (PCR) Statute. (R p.106 line 25 p.112 lines 15-24)

The respondent again moved the court, this time before Judge Dennis for a (PCR) dismissal. (R p.106 lines 12-15) Judge Dennis granted the respondent's motion. (R p.113 lines 13-14) And it turn, Judge Dennis illegally construed and dismissed appellant's Habeas pleading as if it was a (PCR) application and proceeding. (R pp.12-18)

At the mandamus hearing, appellant argued that the respondent blatantly violated Rule 60 Of The S.C. Circuit Court Rules Of Practice by deliberately moving the court a second time for a (PCR) dismissal before Judge Dennis Knowing fully well that this very same motion was made and denied by Judge Young earlier in the litigation. (R pp.66) (R pp.87) (R pp.95) (R p.131 lines 5-25 p.132 lines 1-16)

And because Judge Dennis was in violation of Rule 60 when he granted the respondent's motion for a (PCR) dismissal (R p.113 lines 13-14), Judge Dennis's (PCR) Order is clearly null and void. (R pp.12-18) This assures that Judge Young's order to conduct a Habeas Corpus proceeding under the Habeas Corpus docket in circuit court is still pending. (R pp.10)

Even Judge Nicholson conceded to the respondent at the mandamus hearing that Judge Dennis was in error for countermanding Judge Young's Habeas Order. Judge Nicholson further conceded to the respondent that since they failed to appeal Judge Young's Habeas Order, the Habeas Order is the law of the case. (R p.134 lines 5-10)

Appellant asserts that Judge Nicholson's own words at the mandamus hearing is evident that the respondent's motion to dismiss the mandamus (R pp.78-84), and Judge Nicholson's Order denying the mandamus (R pp.24-27), is not supported by the evidence nor by law. White v. State 263 S.C. 110, 208 SE2d 35,38-39 (1974)

Furthermore, Judge Dennis Jurisdiction over the subject matter was further lost because the respondent gave no notice before the hearing. Due process says no notice, no Jurisdiction. No Jurisdiction no Order. Murdock v. Murdock 338 S.C. 322, 526 SE2d 241,248 (1999) (R pp.76) (R pp.91) (R pp.95) (R p.132 lines 1-9 p.134 lines 5-10)

#### **DUE PROCESS**

Furthermore, by refusing to conduct the Habeas proceeding as mandated by Judge Young's Order, the circuit court was in violation of appellant's due process rights because the moment the Habeas Order became the law of the case, appellant was given a "liberty interest" in the proceedings. Walters v. Grossheim 990 F2d 381,384 (8th cir 1993) In other words, because the Habeas Order was the law of the case, appellant had a "liberty interest" for it to be a habeas Corpus proceeding that's predicate under the Habeas Corpus laws of the State. Id at 384

Therefore, when the circuit court refused to conduct a Habeas proceeding, the circuit court deprived appellant of his "liberty" without due process of law. Walters v. Grossheim at 384 And whether or not the circuit court was in agreement with Order does not diminish appellant's "liberty interest" or make appellant's "liberty interest" less clear. Sloan v. Herman 983 F2d 107,110 (8th cir 1993) (R pp.74-76) (R pp.91-92) (R pp.96)

#### CONCLUSION

The primary purpose of a mandamus is to enforce an established right and a corresponding imperative duty created or imposed by law. City Of Rock Hill v. Thompson 349 S.C. 197, 563 SE2d 101,102 (2002) In the instant case, mandamus was sought in the circuit court to enforce Judge Young's law of the case Order that decreed a Habeas Corpus proceeding be conducted. However, at the mandamus hearing, Judge Nicholson wrongly excersised his discretion by deciding whether appellant could or could not receive Habeas relief. (R p.134 lines 5-10) (R pp.27)

When in fact, due process gave Judge Nicholson no room to exercise his discretion pertaining to this Habeas order. If the Habeas order in the instant is the law of the case, and was issued according to, pertaining to, and under Habeas law, the only recourse Judge Nicholson had was to enforce the Habeas Order by way of mandamus. S.C. Code Ann. §15-35-180 Judge Nicholson did not have the authority to decide whether appellant could or could not receive Habeas relief.

This petition for rehearing is before this court because the court improperly ruled on appellant's Rule 240(d) SCACR motion. In this motion, appellant asked the court pursuant to Rule 240(d) SCACR to be relieved from paying a filing fee because this case is extraordinary. Rule 240(d) SCACR states that parties may be relieved from paying a filing fee in extraordinary cases.

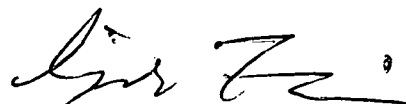
However, because the court misapplied an improper appellate court Rule to appellant's appeal, the court mistakenly construed appellant's 240(d) SCACR motion as an in forma pauperis motion in its December 2, 2014 Order.

Appellant further asserts that he wants to proceed under Rule 240(d) because this case is extraordinary. Appellant does not want to proceed in forma pauperis nor under Rule 203(d)(1)(B)(vi) SCACR as the December 2, 2014 Order stipulates.

Appellant lastly asserts that a full record was submitted with this petition for rehearing to insure that the court is privy to the underlying facts of this complex case. And also to insure that the court grant appellant's 240(d) SCACR motion. Rule 240(d) SCACR states that parties may be relieved from paying a filing fee in extraordinary cases. Appellant asserts that this is an extraordinary case.

**Wherefore,** since appellant Sidney Fields has already submitted his initial brief to the court along with his designation of matter, appellant now pray that this Honorable court vacate its December 2, 2014 Order and allow this appeal to proceed under Rule 240(d) SCACR, because this case is not only extraordinary, this case is a Justiciable Controversy that must be resolved.

Respectfully Submitted,



Sidney Fields # 254392

B.R.C.I. 4460 Broad River Rd.

Wateree # 177

Columbia, S.C. 29210

Date *December 11, 2014*

# The South Carolina Court of Appeals

Sidney Fields, #254392, Appellant,

v.

The State of South Carolina, Respondent.

Appellate Case No. 2014-002150

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## ORDER

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Appellant has appealed the circuit court's order, which determined habeas corpus relief was improper because the issues could have been raised in a timely application under the Post-Conviction Relief Act. Pursuant to Rule 203(d)(1)(B)(vi), SCACR, Appellant is required to provide a written explanation to this Court as to why the circuit court's determination was improper. Appellant shall provide this Court with his explanation within twenty days.

Appellant's motion to proceed *in forma pauperis* is granted. *Lakes v. State*, 333 S.C. 382, 386, 510 S.E.2d 228, 230-31 (1998) (finding an inmate was entitled to proceed *in forma pauperis* on a habeas corpus petition in the absence of factual findings that the petitioner engaged in frivolous, repetitive, and abusive filings).

C.J.  
FOR THE COURT

Columbia, South Carolina

cc:  
Sidney Fields, #254392  
Karen Christine Ratigan, Esquire

**FILED**  
12/2/14

Sidney Fields # 254392  
B.R.C.I. 4460 Broad River Rd.  
Wateree # 177  
Columbia, S.C. 29210

Date December 11, 2014

RECEIVED

DEC 12 2014

SC Court of Appeals

The Hon. Jenny A. Kitchings  
Clerk, S.C. Court Of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

Re: Sidney Fields # 254392 v. State Of South Carolina  
Petition For Rehearing Pursuant to Rule 221 SCACR  
Petition For Rehearing EN BANC Pursuant to Rule 219 SCACR  
Case # 2014-002150

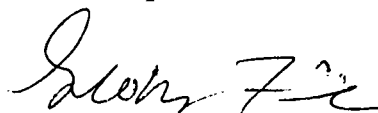
Dear Ms. Kitchings;

Enclosed for filing in your office, one original copy of my petition for rehearing (with record in support of). In this petition, I'm asking the court to vacate it's December 2, 2014 Order, and to rehear my 240(d) SCACR motion where I asked to be relieved from paying a filing fee because this is an extraordinary case. Appellant received the December 2, 2014 Order on December 5, 2014

Also enclosed is my petition for Rehearing En BANC, in which I am challenging the legality of the December 2, 2014 Order before a full panel court because the Order was issued contrary to appellate court rule and appellate Jurispudence.

Lastly, enclosed also is an extra cover page of the petition for rehearing, and rehearing EN BANC to be filed stamped and returned in the self-addressed stamped envelope provided.

Sincerely,

  
Sidney Fields # 254392

CC: Karen C. Ratigan, Esq.  
Office Of The Attorney General  
(attorney for respondent)

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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COURT OF COMMON PLEAS

J.C. Nicholson, Circuit Court Judge

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Sidney Fields # 254392

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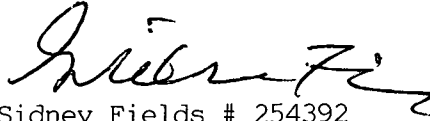
The State Of South Carolina

Respondent.

\_\_\_\_\_  
PROOF OF SERVICE  
\_\_\_\_\_

Appellant certify that he has served (one) copy of his Petition For Rehearing and (one) copy of his petition for rehearing EN BANC on Karen C. Ratigan Esq., Office Of The Attorney General (attorney for respondent) P.O. Box 11549 Columbia, S.C. 29211 by depositing one copy each in the United States mail postage prepaid to the address above.

Date *December 11, 2014*

  
Sidney Fields # 254392

B.R.C.I. 4460 Broad River Rd.

Wateree # 177

Columbia, S.C. 29210