

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
DEC 12 2014
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

J.C. Nicholson, Circuit Court Judge

2014-CP-10-305

Sidney Fields # 254392

Appellant.

V.

The State Of South Carolina

Respondent.

PETITION FOR REHEARING EN BANC
PURSUANT TO RULE 219 SCACR

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

To the court:

On October 8, 2014 appellant filed his notice of appeal to appeal the Order denying his petition for writ of mandamus in circuit court. The court then notified appellant that his appeal lacked the required \$100.00 filing fee.

On October 22, 2014 appellant submitted his initial brief and designation of matter 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 granted appellant's 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.

Appellant asserts that the court based it's December 2, 2014 Order on an inapplicable appellate court Rule. The Rule in question states:
If a notice Of appeal is from a Habeas Corpus proceeding and the lower court has determined that Habeas Corpous 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

This Rule clearly stipulates that it pertains to parties appealing matters derived from a Habeas Corpus Proceeding in the lower court. However appellant argues that there was never a Habeas Corpus proceeding conducted in this case.

Appellant asserts that he is appealing the denial of his petition for writ of mandamus. Appellant sought mandamus in circuit court because the circuit court's Chief Adm. Judge by Order of the court, placed appellant's Habeas Corpus pleading on the Habeas Corpus docket of the court. This Order became the law of the case. However, at the hearing, the hearing Judge in violation of the Chief Adm. Judge's Order, conducted a (PCR) hearing on the (PCR) docket under the (PCR) Statute.

Appellant sought mandamus in circuit court to vacate the (PCR) Order and enforce the Chief Adm. Judge's Order to conduct a Habeas Corpus proceeding. The mandamus Judge denied appellant's mandamus petition. And now appellant is now before this court to appeal the denial of his petition for mandamus.

And since this case is appealed from a mandamus proceeding, nowhere under Rule 203(d)(1)(B)(vi) SCACR does it state or infer that parties appealing a mandamus denial must submit an explanation as to why the lower court's determination is improper. In other words, this Rule does not apply to parties appealing from a mandamus proceeding in lower court.

Therefore if the December 2, 2014 Order is based on an inapplicable appellate court Rule, then the Order is improper and its legal standing before this court cannot be upheld.

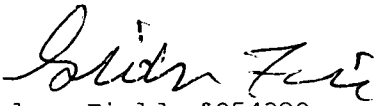
A rehearing EN BANC is warranted in this matter because consideration by the court's full panel is needed to insure and preserve the uniformity and legality of the decisions rendered by this court.

And since the December 2, 2014 Order was issued in accordance to an inapplicable appellate court Rule, the court's integrity is now questionable. Therefore, this matter involves a question of exceptional importance pursuant to Rule 219 SCACR. (see petition for rehearing and record in support of, that's also before this court)

Wherefore, appellant now pray that this court grant this petition by vacating the court's December 2, 2014 Order to allow appellant to be relieved from paying a filing fee pursuant to Rule 240(d) SCACR. Because this appeal derives from an extraordinary case.

Respectfully Submitted,

Date *December 11, 2014*


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Date December 11, 2014

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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

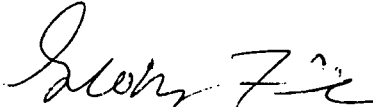
Dear Ms. Kitchings;

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)

The South Carolina Court of Appeals

Sidney Fields, #254392, Appellant,

v.

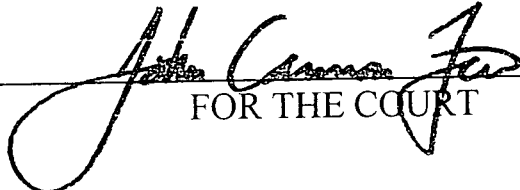
The State of South Carolina, Respondent.

Appellate Case No. 2014-002150

ORDER

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

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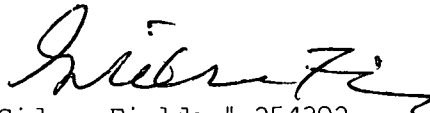
The State Of South Carolina

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

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