RECEIVED

FEB 13 2015

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Supreme Court Case No. 2015-000074
Civil Action No. 08-CP-42-00475

John Doe, ...Petitioner,

v.

City of Duncan, ...Respondent.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

NELSON MULLINS RILEY & SCARBOROUGH, LLP

William H. Foster, III
Post Office Box 10084
Greenville, SC 29601
(864) 250-2300

A. Mattison Bogan
Miles E. Coleman
Post Office Box 11070
Columbia, SC 29201
(803) 799-2000

WILLSON JONES CARTER & BAXLEY, P.A.

Charles F. Turner, Jr.
872 South Pleasantburg Drive
Greenville, SC 29607
(864) 672-3711

Attorneys for Respondent

INTRODUCTION

The Petition for Writ of Certiorari in this matter should be denied. None of the factors in Rule 242(b), SCACR exist to justify the issuance of the writ. There is no Court of Appeals dissent, no constitutional issue, no federal question, and no novel question of law. Further, the opinion of the Court of Appeals regarding issue preservation is correct and consistent with longstanding precedent. *See Lucas v. Rawl Family Ltd. P'ship*, 359 S.C. 505, 510-11, 598 S.E.2d 712, 715 (2004) (reiterating the rule that issues not raised to and ruled upon by the trial court will not be considered on appeal). Finally, no other "special and important" reason exists under Rule 242(b), SCACR warranting certiorari.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly hold that the sole issue raised on appeal was not preserved for appellate review because the trial court never ruled on it and the Petitioner failed to make a Rule 59(e) motion seeking a ruling on that issue?
2. Did the Court of Appeals correctly affirm the trial court's dismissal of this suit because the tolling provision of the Servicemember's Civil Relief Act does not apply to or excuse Petitioner's failure to ever serve the Respondent with a summons and complaint?

COUNTER-STATEMENT OF THE CASE

Doe filed a Complaint on January 28, 2008 asserting a single claim against the City of Duncan for negligent supervision giving rise to alleged sexual abuse that occurred at the City's Fire Department. (*See* Compl. ¶¶ 2, 4-11; R. 9-10.[1]) Doe never served the City with the Summons and Complaint. Doe's counsel acknowledged this in an email sent to the Spartanburg County Clerk of Court more than a year after filing, stating he

[1] On May 7, 2009, Doe filed a nearly identical Complaint in a related case arising from the same facts, *Doe v. Barry Frost*, Case No. 2009-CP-42-2662. (*See Doe v. Frost* Compl.; R. 52-54.) Frost was the Chief of the Duncan Fire Department at the time of Doe's alleged sexual abuse. (Compl. at ¶ 5; R. 9.)

would be submitting a voluntary dismissal. (*See* Meyers' Feb. 3, 2009 email; R. 51.) Doe, however, never submitted a stipulation of dismissal or took any other action to terminate the lawsuit he had filed but never served.

On February 21, 2012—more than four years after filing the Complaint—Doe filed a purported Amended Complaint, in which he again asserted a single claim against the City for negligent supervision based on alleged sexual abuse that occurred at the City's Fire Department. (*See* Amend. Compl. ¶¶ 6-14; R. 13-14.) Doe did not move to amend nor did he secure the City's written consent prior to filing the Amended Complaint. (*See* Order Granting City's Motion to Dismiss at 2; R. 2.) Six days after filing the Amended Complaint, Doe served the City with the Amended Complaint but *not* a Summons. (*Id.*)

On March 15, 2012, the City filed a Motion to Dismiss, arguing in part that Doe's failure to serve meant that no civil action had been commenced within the applicable statute of limitations. (*See* City's Motion to Dismiss ¶¶ 1-2; R. 16.) On May 16, 2012, the Honorable Derham J. Cole held a hearing on the City's Motion to Dismiss. (*See* Tr. of hearing; R. 34-50.) Doe argued at the hearing that the federal Servicemember's Civil Relief Act's ("SCRA") tolling provision excused both his failure to serve the original summons and complaint and his failure to *ever* serve a summons. (*See* R. 43-44.)

Judge Cole issued an Order on November 1, 2012 granting the Motion to Dismiss. (*See* Order Granting City's Motion to Dismiss; R. 1-3.) The Order neither mentioned nor ruled upon Doe's SCRA argument. Rather, the Order concluded that Doe's failure to timely serve a Summons and Complaint meant that no civil action had been commenced and thus the trial court lacked jurisdiction. (*Id.* at 3; R. 3.) Accordingly, the court granted the City's motion and dismissed Doe's suit. (*Id.*) In addition, the Order noted that Doe

could not file an Amended Complaint because there was no civil action to amend. (*Id.* at 3; R. 3.) Doe did not file a motion pursuant to Rule 59(e), SCRCP to alter or amend the trial court's Order or to seek a ruling on his SCRA argument.

Doe appealed the trial court's Order. On November 12, 2014, the Court of Appeals affirmed the trial court's dismissal of Doe's suit, noting that where a trial court fails to rule upon an issue and the losing party fails to file a Rule 59(e) motion, the issue is not preserved for appellate review. (*See* Court of Appeals' Unpublished Opinion; R. 104-05.) Doe subsequently sought rehearing from the Court of Appeals, arguing that the trial court had tacitly ruled upon Doe's SCRA argument. (*See* Doe's Pet. for Rehearing; R. 106-07.) The City responded, explaining that the trial court's ruling was based on a ground unrelated to the SCRA, thus the trial court had not implicitly ruled on Doe's SCRA argument, and thus Doe's sole argument on appeal was not preserved. (*See* City's Return to Pet. for Rehearing; R. 109-11.) The Court of Appeals denied Doe's request for rehearing. (*See* Court of Appeals Order of December 17, 2014; R. 114.) Doe subsequently filed the pending Petition for a Writ of Certiorari with this Court.

ARGUMENT

The South Carolina Appellate Court Rules provide that a "writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR; *see also State v. Lyles*, 381 S.C. 442, 443, 673 S.E.2d 811, 812 (2009) ("The Court has held it will grant certiorari to the Court of Appeals only where special reasons justify the exercise of that power.") (citations omitted). Typically, the granting of certiorari is limited to cases where: (1) there are novel questions of law; (2) there is a dissent in the decision of the Court of Appeals; (3) the decision by the Court of Appeals is in conflict with a prior decision of

this Court; (4) substantial constitutional issues are directly involved; or (5) a federal question is included, and the decision by the Court of Appeals conflicts with a decision of the Supreme Court of the United States. *See* Rule 242(b), SCACR; *see also Lyles*, 381 S.C. at 444 n.2, 673 S.E.2d at 812 n.2.

The Court of Appeals' ruling presents none of these factors and is consistent with longstanding precedent regarding issue preservation and the scope and applicability of the SCRA's tolling provision. In his petition for certiorari, however, Doe asserts "three independent grounds" that purportedly justify a writ of certiorari. (*See* Doe's Pet. for Writ of Cert. at 2-3.) As explained below, each of these grounds is meritless.

I. This case does not present a novel issue of law because it is well-settled that the SCRA does not toll time limits for serving a summons and complaint.

Contrary to Doe's assertions, this case raises no novel issue of law warranting a grant of certiorari. Doe is simply incorrect when he states that "the issues in this case are novel . . . [in that] the trial court refused to apply controlling federal law." (*See* Doe's Pet. for Writ of Cert. at 2.) The SCRA, however, is not controlling here because it does not apply to time limitations for service of process. Rather, the dismissal of Doe's suit for failure to serve is controlled by state law. Because there is no question that the SCRA does not toll the time for serving a summons and complaint, the trial court's failure to rule upon Doe's SCRA argument presents no "novel issue" or "federal question" upon which to grant certiorari.

The law is well settled that the SCRA does not toll or elongate the time period in which a plaintiff must serve the summons and complaint. Courts and commentators uniformly agree that the SCRA's tolling provision (50 U.S.C. App. § 526) only tolls the time limits for determining the date on which the servicemember must *file* a suit, and it

does *not* toll the time limits in which the servicemember must *serve* the defendant. *See, e.g., Puchek v. Elledge*, 160 F. Supp. 286, 287 (N.D. Ind. 1958) (noting that the SCRA had no relation to service of process); *Zarlinsky v. Laudenslager*, 167 A.2d 317, 320 (Penn. 1961) (noting the SCRA's tolling provision "expressly applies to the limitation of time for bringing an action, not to a limitation of time for the continuing of process in an action already brought and avails the plaintiffs nothing"); *Thornley v. Superior Court of San Francisco*, 201 P.2d 567, 568 (Cal. Ct. App. 1949) ("There is nothing in section 525[2] of the federal act which purports to suspend this mandatory requirement of service. Respondent argues that the word 'proceeding' in section 525 of the federal act should be construed as applying to the service of summons or any other procedural step taken in the prosecution of the action. This is not sound."); 36 A.L.R. Fed. 420 § 12 ("The tolling provision of the Soldiers' and Sailors' Civil Relief Act (50 App. U.S.C. § 525) is not applicable to, and cannot prevent the running of, time limitations governing the service of process in, or the prosecution of, actions already brought."); Am. Bar Ass'n SCRA Judges' Guide Checklist at 10, available at http://apps.americanbar.org/family/military/scrajudgesguidecklist.pdf (noting that § 526 stays the running of statutes of limitation, but "does not, however, affect time periods within a suit, such as time periods to avoid motions to dismiss for failure to prosecute an action") (last visited January 27, 2015).[3]

---

[2] Prior to December 19, 2003, the SCRA was known as the Soldiers' and Sailors' Civil Relief Act, and its tolling provision appeared in § 525. *Lowe v. United States*, 79 Fed. Cl. 218, 224 n.7 (Fed. Cl. 2007) ("In 2003, Congress amended the SCRA of 1940, and as part of a general revision, moved the tolling provision then in place at 50 U.S.C. app. § 525 . . . to the current 50 U.S.C. app. § 526."); *Baker v. England*, 397 F. Supp. 2d 18, 24 (D.D.C. 2005) (noting that § 525 is the "immediate predecessor and substantive equivalent" of § 526).

[3] In contrast to these uniform and ubiquitous authorities, Doe incorrectly argues—without citation to a single authority—that "the action by the SCRA to suspend state law time

In short, the law is well-established that the SCRA's tolling provision does not apply to timelines for service of process. Where, as here, a servicemember chooses to file suit during his time of military service, he cannot later rely on the SCRA to excuse his failure to serve the defendant. Because the SCRA does not apply here, the trial court's failure to rule upon or apply Doe's SCRA argument is not contrary to federal law nor does it present a novel question of law, and thus this suit presents no basis on which to grant certiorari.

II. An issue that was raised to but not ruled upon by the trial court must be preserved by a Rule 59(e) motion.

The second basis upon which Doe argues that certiorari is warranted is his assertion that he was not required to file a Rule 59(e) motion despite the fact that the trial court never ruled on his SCRA argument. *See* Doe's Pet. for Writ of Cert. at 3-6. Doe's argument is based on his assertion that the trial court tacitly ruled on his argument. As explained below, Doe is mistaken, and the Court of Appeals rightly concluded that Doe's SCRA issue was not preserved for appellate review.

The law of this state is well settled that when an issue is not explicitly ruled on in the final order, it must be raised by an appropriate post-trial motion to be preserved for appeal. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-80 (2004). Here, the trial court never ruled on the applicability and effect of the SCRA, either orally or in its written order (which did not even *mention* the SCRA), and Doe did not file a Rule 59(e) motion asking the trial court to rule on the issue. Accordingly, the issue is not preserved.

---

limits necessarily includes the time provisions under SCRCP 3." *See* Doe's Pet. for Writ of Cert. at 5.

Doe, however, argues that the trial court's Order "necessarily" and "implicitly" rejected his SCRA argument, and that this tacit ruling excuses his failure to file a Rule 59(e) motion. *See* Doe's Pet. for Writ of Cert. at 3, 5; Doe's Pet. for Rehearing at 2-3 (R. 106-07). This is incorrect. An issue is not ruled on where the "trial court's order is silent on the issue." *Foster v. Foster*, 393 S.C. 95, 99, 711 S.E.2d 878, 880 (2011). Furthermore, the trial court did *not* "implicitly" or "necessarily" reject Doe's argument. Rather, its ruling dismissing Doe's case was based on a ground unrelated to tolling and the SCRA. The trial court's Order of dismissal notes there is an absolute and mandatory duty to serve a summons and a complaint on a defendant, and that Doe *never* served the original summons and complaint filed in 2008 and that, even after filing a purported "amended complaint" in 2012, he *never* served the summons.[4] (*See* R. 1-2.) Accordingly, the trial court concluded that Doe "failed to commence this action" and the court thus dismissed the suit. (R. 2.) This ruling and its reasoning were independent from the question of whether the SCRA tolled any statute of limitations. In short, the trial court's ruling did *not* implicitly and necessarily reject Doe's argument regarding the SCRA because that issue and argument were irrelevant to the trial court's ruling. Doe's complete and utter failure to ever serve the City meant no suit was ever commenced and the trial court lacked jurisdiction over the City. This threshold jurisdictional problem mandated

[4] Doe's failure to serve a Summons is no small error. The service of the Summons is a critical jurisdictional issue. "A summons is not a mere notice, but a means for giving jurisdiction to the court, and unless it is waived, the court cannot otherwise obtain personal jurisdiction." *Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848 850 (1996) (citation omitted); *see also Fin. Fed. Credit, Inc. v. Brown*, 384 S.C. 555, 562, 683 S.E.2d 486, 490 (2009) ("A court generally obtains personal jurisdiction by service of a summons."); *Louden v. Moragne*, 327 S.C. 465, 468, 486 S.E.2d 525, 526 (Ct. App. 1997) ("Service of the summons brings the defendant within the court's jurisdiction."). Because Doe failed to serve a Summons on the City, the trial court correctly concluded that no civil action was commenced and thus it lacked jurisdiction.

dismissal of the suit with no need for the trial court to consider or rule on the SCRA argument.

In sum, the trial court did not rule on Doe's SCRA argument (either expressly or implicitly), and Doe failed to raise the issue in a Rule 59(e) motion. Accordingly, that issue—the sole issue he chose to raise on appeal—is not preserved for appellate review, and the Court of Appeals properly affirmed the dismissal of his suit. This Court should thus deny his Petition for a Writ of Certiorari.

III. The lower courts' rulings in this case do not conflict with the SCRA, the United States Constitution, or United States Supreme Court precedent.

In a final, grasping attempt to manufacture some basis upon which certiorari could be granted, Doe argues that the trial court's and Court of Appeals' rulings in this case conflict with the Supremacy Clause of the United States Constitution and with precedent of the United States Supreme Court. *See* Doe's Pet. for Writ of Cert. at 3. Doe's argument incorrectly assumes that the SCRA excuses his failure to timely serve the City with the summons and complaint. As explained below, however, even when the SCRA's tolling provision is applied to Doe's suit, it fails to justify Doe's failure to serve the summons and complaint prior to the expiration of the applicable statute of limitations.[5] Accordingly, even if the trial court had ruled on the SCRA's effect and applicability or even if Doe had preserved that issue through a post-trial motion, there

[5] Doe is incorrect when he asserts that "[n]o argument was even made that the Plaintiff was out of time to file, even in 2012." *See* Doe's Pet. for Writ of Cert. at 5. The City expressly argued to the trial court that Doe had failed to timely file and serve the summons and complaint. *See* City's Motion to Dismiss ¶ 2 (R. 16) ("Plaintiff's January 2008 Summons and Complaint was not filed and served within the applicable statute of limitations and should be dismissed.").

could be only one possible outcome to this suit: dismissal. Accordingly, the trial court's ruling is not contrary to federal law, the Supremacy Clause or controlling precedent.

Doe's erroneous belief that the SCRA excuses his failure to timely serve the city is premised on two incorrect assertions: (1) that the SCRA tolls *all* time spent in military service and (2) that the statute of limitations on his claim thus had not yet expired when the trial court dismissed his suit. *See* Doe's Pet. for Writ of Cert. at 4-5. As explained below, he is mistaken on both points. Even assuming the applicability of the SCRA, the statute of limitations applicable to his claim had expired long before the trial court dismissed his case, and thus South Carolina law and procedural rules mandated the dismissal of his suit as a result of his failure to timely serve the Summons and Complaint.

First, Doe is mistaken in his assertion that his entire 8.5-year time in military service tolls the applicable statute of limitations. *See* Doe's Pet. for Writ of Cert. at 5 n.1 (stating that "none of [this] time under the SCRA can be counted against his time to file"). In contrast to Doe's assertion, it is well established that the SCRA tolls the running of the statute only during periods of *active* duty. *See Boone v. United States,* 78 Fed. Appx. 108 (Fed. Cir. 2003) (noting the SCRA's tolling provision applies only to time in active duty); *Lazarski v. Archdiocese of Philadelphia*, 926 A.2d 459 (Penn. Super. Ct. 2007) (noting that a plaintiff servicemember's non-active duty time in the military did not toll the state statute of limitations on his sexual abuse claim).

Second, Doe is mistaken in his belief that the statute of limitations on his claim did not expire until February of 2013; an error likely caused by his reliance on the wrong statute of limitations. *See* Doe's Pet. for Writ of Cert. at 5 n.1. The applicable statute of limitations is not, as Doe asserts, the time period set out in S.C. Code Ann. § 15-3-555 for civil claims against sexual abusers. Rather, because Doe's suit is against a City—a

political subdivision of the State—and his sole cause of action alleges negligence by city employees (*see* Compl. ¶¶ 8, 10; R. 10), his suit is necessarily brought pursuant to the South Carolina Tort Claims Act ("SCTCA"). *See* S.C. Code Ann. § 15-78-70(a) (noting that the SCTCA is "the *exclusive* remedy for *any* tort committed by an employee of a governmental entity") (emphasis added); *id.* at § 15-78-200 (stating that the SCTCA "is the *exclusive* and sole remedy for *any* tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty") (emphasis added); *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 651 S.E.2d 305 (2007) (noting a negligent supervision claim against school district involving sexual abuse committed by a third party was brought pursuant to the SCTCA).

Because Doe's suit was necessarily brought under the SCTCA, the applicable statute of limitations is found in the SCTCA, which imposes a two-year time limit on any action against the State or a subdivision thereof. *See* S.C. Code Ann. § 15-78-110. Other courts confronting suits similar to Doe's have held that the applicable statute of limitations is the one in the Tort Claims Act, not the longer period provided in the statute of limitations for sexual abuse claims generally. *See, e.g., V.C. v. Los Angeles Unified Sch. Dist.*, 139 Cal. App. 4th 499 (Cal. Ct. App. 2006); *see also Kana v. United States*, No. 2:04-21947-CWH, 2006 U.S. Dist. Lexis 19849 (D.S.C. March 30, 2006); *K.J. v. Arcadia Unified Sch. Dist.*, 172 Cal. App. 4th 1299, 1238 (Cal. Ct. App. 2009); *Drahaus v. State*, 584 N.W.2d 270, 275 (Iowa 1998); *Teater v. State*, 559 N.W.2d 758 (Neb. 1997).

Here, Doe's cause of action for negligent supervision allegedly accrued while he was a minor, thus the SCTCA's statute of limitations did not begin to run until his 18th birthday. *See* S.C. Code Ann. § 15-78-110; *id.* at § 15-3-40. Accordingly, the statute

began to run in February of 2004. *See* Doe's Pet. for Writ of Cert. at 5 n.1 (noting Doe was born in February of 1986). Doe, however, had enlisted in the military prior to the time the statute of limitations began to run. Accordingly, as noted above, the SCRA tolled the running of the statute during any periods of *active* duty service. During his time of military service, Doe was on active duty for only a total of 5 years, 11 months, and 14 days. *See* FOIA response from the National Personnel Records Center (R. 66) (stating Doe was on active duty only from August 19, 2004 to October 8, 2004; from February 10, 2005 to May 23, 2006; and from January 29, 2007 to August 10, 2011).

Accordingly, by the time the City moved to dismiss Doe's suit, the SCTCA's two-year statute of limitations on his claim had expired,[6] and by the time the trial court dismissed the case, the statute of limitations was long gone.[7] Specifically, the SCTCA's two-year statute of limitations on Doe's cause of action expired on February 11, 2012, *see* note 6, *supra*, at which point the window of time closed to serve the documents. *See* Rule 3(a), SCRCP (requiring the summons and complaint be served either "within the statute of limitations" or within "one hundred twenty days after filing"); *see also* S.C.

---

[6] As noted above, the statute began to run on Doe's 18th birthday, which occurred on an unknown day in February of 2004. Assuming it began to run on February 29th, 5 months and 21 days had expired by the time Doe reached active duty status on August 19, 2004. The clock began to run again during Doe's first hiatus from active duty—from October 8, 2004 to February 10, 2005—which allowed another 4 months and 2 days to expire. The clock resumed its ticking during Doe's second period of inactive duty—from May 23, 2006 to January 29, 2007—during which another 8 months and 6 days expired. The clock began to run again when Doe left military service on August 10, 2011. Accordingly, by the time the City filed its Motion to Dismiss on March 15, 2012, an additional 7 months and 5 days had expired, meaning *a cumulative total of 25 months and 4 day of non-tolled time had passed* since Doe's cause of action accrued. In other words, by the time the City filed its motion, the statute of limitations had expired. Doe concedes the summons and complaint were not served within this time period.

[7] By the time the trial court filed its Order on November 1, 2012, a total of 32 months and 21 days of non-tolled time had passed since his cause of action accrued, far in excess of the SCTCA's two-year statute of limitations.

Code Ann. § 15-3-20(B) ("A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing."). Because neither document had been served on the City by that date, Doe had failed to commence a civil action prior to the expiration of the statute of limitations, thus dismissal with prejudice was warranted. *See Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848 850 (1996) (affirming dismissal with prejudice where plaintiff failed to serve the summons and complaint); *Estate of Corley*, 299 S.C. 525, 527, 386 S.E.2d 264, 266 (Ct. App. 1989) (affirming lower court's dismissal of case where defendant was not served with a summons); *see also Louden v. Moragne*, 327 S.C. 465, 486 S.E.2d 525 (Ct. App. 1997) (affirming trial court's grant of summary judgment where plaintiff failed to serve the summons within the statute of limitations, which subsequently expired).

Additionally, because Doe had not commenced a civil action, it was impossible for him to "amend" his Complaint, and because the statute of limitations had expired it was impossible for his purported Amended Complaint to initiate a new suit. *See Spence v. Spence*, 368 S.C. 106, 128, 628 S.E.2d 869, 881 (2006) ("Dismissal of a complaint does not bar a subsequent action brought *before the expiration of the statute of limitations*.") (citations omitted) (emphasis added); *Don Shevey & Spires, Inc. v. Am. Motors Realty Corp.*, 279 S.C. 58, 301 S.E.2d 757 (1983) (affirming trial court's dismissal where plaintiff, who had not filed and served the summons and complaint prior to expiration of the statute of limitations, sought to amend).

In sum, even when the SCRA's tolling provision is applied to Doe's suit, it fails to justify Doe's failure to serve the summons and complaint prior to the expiration of the applicable statute of limitations. Accordingly, even if the trial court *had* ruled on the issue

and even if Doe *had* preserved it through a post-trial motion, there could be only one possible outcome to this suit: dismissal. Thus the trial court's ruling and the Court of Appeals' affirmance of that ruling do not diverge from federal law, the Constitution, or controlling precedent, and thus the lower courts' rulings provide not basis upon which certiorari should be granted.

CONCLUSION

For the foregoing reasons, the City submits that the Court of Appeals' decision in this suit is consistent with precedent and presents none of the characteristics that justify a grant of certiorari. Furthermore, even if the issue Doe raised on appeal were preserved for appellate review, the outcome would be the same: affirmance of the trial court's dismissal of Doe's suit. Accordingly, this Court should deny Doe's Petition for a Writ of Certiorari.

[*SIGNATURE PAGE ATTACHED*]

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: A. Mattison Bogan

Miles E. Coleman
SC Bar No. 78264
E-Mail: miles.coleman@nelsonmullins.com
A. Mattison Bogan
SC Bar No. 72629
E-Mail: matt.bogan@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

William H. Foster III
SC Bar No. 66221
E-Mail: bill.foster@nelsonmullins.com
104 South Main Street / Ninth Floor
Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

WILLSON JONES CARTER & BAXLEY, P.A.

Charles F. Turner, Jr.
SC Bar No. 64996
E-Mail: cfturner@wjlaw.net
872 South Pleasantburg Drive
Greenville, SC 29607
(864) 672-3711

Attorneys for Respondent

Columbia, South Carolina
February 13, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000074
Case No. 08-CP-42-00475

John Doe, ... Appellant.

v.

City of Duncan, ... Respondent,

RECEIVED
FEB 13 2015
S.C. Supreme Court

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 all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Return to Petition for a Writ of Certiorari

Counsel Served:

Gregg E. Meyers, Esquire
Jeff Anderson & Associates, P.A.
366 Jackson Street
St. Paul, MN 29601

Lisa Whitehurst
Administrative Assistant

February 13, 2015

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5916
www.nelsonmullins.com

A. Mattison Bogan
Tel: 803.255.9589
Fax: 803.255.5916
matt.bogan@nelsonmullins.com

February 13, 2015

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RECEIVED
FEB 13 2015
S.C. Supreme Court

RE: John Doe v. City of Duncan
Appellate Case No. 2015-000074
Our File No. 15407.01504

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of Respondent's Return to the Petition for Writ of Certiorari in 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 counsel of record, we are serving them with a copy of this Return.

Very truly yours,

Matt Bog

A. Mattison Bogan

AMB:lpw
Enclosures
cc: Gregg E. Meyers, Esquire