

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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FEB 19 2015

**S.C. Supreme Court**

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

J.C. NICHOLSON, CIRCUIT COURT JUDGE

2014-CP-10-305

THE STATE OF SOUTH CAROLINA

RESPONDENT.

V.

SIDNEY FIELDS # 254392

PETITIONER.

PETITION FOR A WRIT OF CERTIORARI

Sidney Fields # 254392

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

Monticello # 234

Columbia, S.C. 29210

Other Counsel Of Record:

Karen C. Ratigan Esq.

Office Of The Attorney General

P.O. Box 11549

Columbia, S.C. 29211

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CERTIFICATE OF PETITIONER

\* Petitioner certifies that the petition for Rehearing was made and finally ruled on by the Court Of Appeals on February 9, 2015 APP.12-20

\* Petitioner certifies that the petition for Rehearing Enbanc was made and finally ruled on by the Court Of Appeals on February 9, 2015 APP.21-24

*Date: February 17, 2015*

*Stony Fielder*

**QUESTION PRESENTED**

DID THE COURT OF APPEALS ERR WHEN THE COURT BASED IT'S DISMISSAL OF PETITIONER'S APPEAL ON AN APPELLATE COURT RULE THAT WAS NOT APPLICABLE TO PETITIONER'S APPEAL IN VIOLATION OF DUE PROCESS?

## STATEMENT OF THE FACTS

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

After a succession of pleadings, petitioner submitted a writ of habeas corpus in circuit court (Charleston) to address the deficiencies of the original (PCR) record, in which the Chief Adm. Judge Roger M. Young issued a Docket Order that placed petitioner's pleading on the habeas corpus docket of the court. The Order also decreed that a habeas corpus hearing be set in accordance.

The respondent then submitted a motion to reconsider asking Judge Young to vacate his docket Order, and in turn, issue an Order to place the pleading on the (PCR) docket of the court. Judge Young denied the respondent's motion to reconsider.

After the denial of their motion to reconsider, the respondent did not appeal Judge Young's docket Order, Thus the docket Order became the law of the case.

A hearing was held on this matter before Judge R. Markley Dennis. However, instead of conducting a habeas corpus proceeding on the habeas corpus docket as decreed by Judge Young's law of the case Order, Judge Dennis illegally conducted a (PCR) proceeding on the (PCR) docket.

And because Judge Dennis illegally conducted a (PCR) proceeding, this gave the respondent the opportunity to move the court for a second time to ask for a (PCR) dismissal. Judge Dennis granted the respondent's motion, and in turn, Judge Dennis construed the habeas corpus pleading as a (PCR) application and denied the application accordingly.

After a succession of pleadings to enforce Judge Young's docket Order, petitioner submitted a mandamus in circuit court (Charleston) to compel the court to vacate Judge Dennis's (PCR) Order pursuant to Rule 60 Of The S.C. Circuit Court Rules Of Practice, and to enforce Judge Young's law of the case docket Order. After a hearing was conducted, the circuit court denied the mandamus. **App.4-7**

On October 8, 2014 petitioner filed his notice of appeal to the S.C. Court Of Appeals to appeal the Order denying the mandamus petition. **App.3** Petitioner also submitted a motion pursuant to Rule 240(d) SCACR asking the court to be relieved from paying a filing fee, in which Rule 240(d) states that parties may be relieved from paying a filing fee in extraordinary cases. **Rule 240(d) SCACR / App.8-10**

On December 2, 2014 in response to petitioner's rule 240(d) motion, the Court Of Appeals not only failed to rule on petitioner's Rule 240(d) motion in it's Order, the court construed the appeal under Rule 203(d)(1)(B)(vi) SCACR. The court also Ordered petitioner to submit within (20) days an explanation to why the lower court's determination was not proper. **App.11**

Because the December 2, 2014 Order pertained to appeals derived from a habeas corpus proceeding in the lower court, petitioner subsequently filed a petition for rehearing, and a petition for rehearing Enbanc to the Court Of Appeals to vacate their invalid December 2, 2014 Order, and to give the court another opportunity to rule on his Rule 240(d) motion. **App. 12-20 / App.21-24**

On February 9, 2015 in response to the petitions for rehearing, the Court Of Appeals not only failed to rule on petitioner's Rule 240(d) motion for a second time, the court construed petitioner's petition for rehearing as explanations under Rule 203(d)(1)(B)(vi) SCACR. **App-25**

The court concluded in it's Order that petitioner failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(vi) SCACR. Thus the Court Of Appeals dismissed the appeal accordingly. **App-25**

Petitioner's Petition For Writ Of Certiorari now follows:

## ARGUMENT

WHEN PETITIONER FILED HIS APPEAL, THE COURT OF APPEALS VIOLATED PETITIONER'S DUE PROCESS RIGHTS BY CONSTRUING THE APPEAL UNDER AN APPELLATE COURT RULE THAT DID NOT APPLY TO PETITIONER'S APPEAL, THEN ABRUPTLY DISMISSED THE APPEAL BECAUSE PETITIONER FAILED TO MEET THE REQUIREMENTS OF THIS INAPPLICABLE RULE.

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### 1. Court Of Appeals December 2, 2014 Order

When petitioner submitted his Rule 240(d) motion to the court of appeals **App.8-10**, the court in it's December 2, 2014 Order not only failed to rule on petitioner's Rule 240(d) motion, the court in it's Order construed petitioner's appeal under an inapplicable appellate court Rule. **App.11**

The Rule in question states: [If a notice of appeal is from a 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**

Petitioner asserts that his appeal did not derive from a habeas corpus proceeding as the December 2, 2014 Order stipulates. Petitioner's appeal derived from a mandamus proceeding in the lower court. **App.4-7** Therefore, the Court Of Appeals based it's December 2, 2014 Order on an inapplicable appellate court Rule that does not apply to petitioner's appeal. **App.11**

Petitioner further asserts that since his appeal derived from a mandamus proceeding, no where 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, Rule 203(d)(1)(B)(vi) SCACR does not apply to parties appealing from a mandamus proceeding in the lower court. This Rule specifically pertains to parties appealing a habeas corpus proceeding.

### **2.2 Petition For Rehearing / Petition For Rehearing Enbanc**

Because the December 2, 2014 Order pertained to appeals derived from a habeas corpus proceeding in the lower court, petitioner filed a petition for rehearing and a petition for rehearing Enbanc to vacate the invalid December 2, 2014 Order and to give the court another opportunity to make a ruling on his Rule 240(d) motion. **App.12-20 / App.21-24**

In response to petitioner's petitions for rehearing, the court in its February 9, 2015 Order not only failed to rule on petitioner's Rule 240(d) motion for a second time, the court construed petitioner's petitions for rehearing as being explanations under Rule 203(d)(1)(B)(vi) SCACR and concluded that petitioner failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(vi) SCACR. **App.25**

Petitioner argues that the Court Of Appeals is without excuse because Rule 240(d) SCACR gives petitioner the right to plead his Rule 240(d) motion before the court. **App.Rule 240(d) SCACR**

And because the December 2, 2014 Order had the effect of dismissing or finally deciding petitioner's appeal, Rule 221(c) SCACR gave petitioner the right to plead his petitions for rehearing before the court. **App.221(c) SCACR**

Furthermore, because the December 2, 2014 Order was issued by a single Justice, Rule 240(J) SCACR allows the Order to be reviewed by a petition for rehearing. **Rule 240(J) SCACR**

Therefore in essence, the aforementioned appellate court Rules gave petitioner the right to plead before the court. Therefore petitioner had the right to have an adjudication on the merits of his pleadings, especially when petitioner gave the court a second opportunity by way of petitioner's petition for rehearing and petition for rehearing Enbanc. App.12-20 / App.21-24

In short, the Court Of Appeals deliberately misrepresented the facts of petitioner's appeal to avoid addressing the merits of petitioner's Rule 240(d) motion. And to add insult to injury, the court based their dismissal of the appeal on there own misrepresented facts they themselves imputed into the appeal. These are facts that has nothing to do with the petitioner's appeal, nor does it have anything to do with what petitioner is arguing.

### 3. Due Process

The Court Of Appeals handling of petitioner's appeal is a clear violation of due process. Due process states that when a right to appeal is granted, an appellant must be afforded due process in it's exercise. State v. lagerquist 176 SE2d 141,143 (1976)

And due process says that appellate procedure must be furnished with the tools necessary for a meaningful review. Evitts v. Lucey 469 U.S. 387, 392-94 (1985)

In the instant case, petitioner argues that because the Court Of Appeals failed to rule on petititioner's motion and petitions along with the fact that the court misrepresented the facts to justify their dismissal of the appeal, the appellate procedure was not furnished with the tools necessary for a meaningful review.

In short, the Court Of Appeals impromptu actions denied petitioner the sufficient tools necessary to gain meaningful access to the courts. Ross v. Moffitt 417 U.S. at 614-15

## CONCLUSION

This matter is ripe for review (via) petition for writ of certiorari by this court because the Court Of Appeals actions was not only in violation of appellate court rules, the Court Of Appeals decision is in conflict with past decisions rendered by this court.

The Supreme Court has ruled that the Court Of Appeals is limited to review only the evidence presented to the trial court and matters included in the record of appeals. Williamsburg Rural Water And Sewer Co. Inc. v. Williamsburg County Water And Sewer Authority 367 S.C. 566, 627 SE2d 690,693 (2006)

In the instant case, when the Court Of Appeals repeatedly failed to rule on the motion and petitions petitioner presented to the court **App.8-10 / App.12-20 / App.21-24**, but instead, rendered it's decision on an appellate court Rule that did not apply to petitioner's appeal, the Court Of Appeals clearly went outside of what was presented to the trial court and what was presented in the record on appeal.

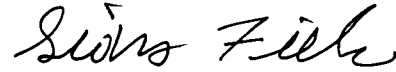
Based on the foregoing, petitioner has shown that the Court Of Appeals Order regarding this matter is not only erroneous, the Order of the court is not supported by the evidence. White v. State 263 S.C. 110, 208 SE2d 35, 38-39 (1974)

Petitioner lastly asserts that the record before this court shows that this appeal derived from a mandamus proceeding. **App.4-7** However, the Court Of Appeals armed with the same record deliberately misrepresented the facts to construe the appeal as being derived from a habeas corpus proceeding. **App.11 / App.25**

Therefore, because of the Court Of Appeals egregious actions in handling petitioner's appeal, the court's integrity is now questionable. Thus any further review by the Court of appeals regarding petitioner's appeal would be automatically put into question also.

**Wherefore,** petitioner Sidney Fields now pray that this court vacate the Court Of Appeals December 2, 2014 and the February 9, 2014 Order and have the appeal transferred to this court for a full appellate review. Or in the alternative, remand to the Court Of Appeals to rule on petitioner's Rule 240(d) motion. Or on it's own motion, grant any other equitable relief the court deems proper for this matter.

Respectfully Submitted,



Sidney Fields # 254392

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

Monticello # 234

Columbia, S.C. 29210

Date: February 17, 2015

STATE OF SOUTH CAROLINA

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THE STATE OF SOUTH CAROLINA

RESPONDENT.

V.

SIDNEY FIELDS # 254392

PETITIONER.

PROOF OF SERVICE

Petitioner certify that he has served one copy of his petition for Writ Of Certiorari and Rule 240(d) motion on Karen C. Ratigan Esq, Office Of The Attorney General (attorney for the respondent) P.O. Box 11549 Columbia, S.C. 29211, and to The Hon. Jenny A. Kitchings (clerk, S.C. Court Of Appeals) P.O. Box 11629 Columbia, S.C. 29211 by depositing one copy each in the United States mail, postage prepaid to the addressees above.

Date: *February 17, 2015*

*Sidney Fields*

Sidney Fields # 254392

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

Monticello # 234

Columbia, S.C. 29210

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FEB 19 2015

S.C. Supreme Court

Date February 17, 2015

Date \_\_\_\_\_

The Hon. Daniel E. Shearouse  
Clerk, S.C. Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

RE:                   Petitioning Supreme Court For Writ Of Certiorari  
                          Under Rule 240(d) SCACR  
                          Case # 2014-CP-10-305

Dear Mr. Shearouse;

On October 8, 2014 I submitted a notice of appeal to the S.C. Court Of Appeals to appeal the Order denying my petition for writ of mandamus from the lower court. I also submitted a motion pursuant to Rule 240(d) SCACR. This Rule states that parties may be relieved from paying a filing fee in extraordinary cases.

In response to my Rule 240(d) motion, the Court of Appeals in it's December 2, 2014 Order not only failed to rule on my Rule 240(d) motion, the court construed the appeal under Rule 203(d)(1)(B)(vi) SCACR, and Ordered that I submit an explanation within (20) days to show why the lower court's determination was improper.

Since Rule 203(d)(1)(B)(vi) SCACR pertains to parties appealing a habeas corpus proceeding from the lower court, and that this Order had the effect of dismissing or finally deciding the appeal, I submitted a petition for rehearing and a petition for rehearing Enbanc to vacate the invalid December 2, 2014 Order, and to give the court another opportunity to rule on my Rule 240(d) motion.

I needed the Rule 240(d) motion to be addressed and granted by the court in order to proceed with the appeal. Because I was unable to pay the filing fee and was unable to meet the requirements regarding the amount of copies needed for the appeal.

In response to my petitions for rehearing, the Court Of Appeals in it's February 9, 2015 Order, not only failed to rule on my Rule 240(d) motion for a second time, the court added insult to injury by construing both petitions for rehearing as explanations under Rule 203(d)(1)(B)(vi) SCACR, and concluded that I failed to give a sufficient explanation pursuant to Rule 203(d)(1)(B)(vi) SCACR and dismissed the appeal.

I am now before this court to proceed under Rule 240(d) to seek a writ of certiorari to vacate the Court Of Appeals Order. I have to proceed under Rule 240(d) before this court because not only is this matter extraordinary, the case that initiated the appeal from the lower court to the Court Of Appeals is extraordinary also. That's why I initially submitted a Rule 240(d) motion in the Court Of Appeals.

However, not only did the Court Of Appeals refuse to rule on my 240(d) motion, the court deliberately construed my appeal under an appellate court Rule that does not apply to my appeal. The court then had the audacity to dismiss the appeal because I did not meet the requirements of this inapplicable Rule.

Furthermore, I am proceeding under Rule 240(d) SCACR before this court because I am unable to meet the requirement under Rule 242 SCACR regarding filing fees and the amount of copies needed to perfect this appeal.

Therefore enclosed is my petition for writ of certiorari and my Rule 240(d) motion with proof of service. Also enclosed is an appendix that supports the petition for certiorari. The appendix also supports the 240(d) motion. Please submit the materials to the court for their consideration.

lasty, enclosed is an extra cover page of my petition for certiorari and 240(d) motion. please file stamp and return in the self addressed stamped envelope provided.

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Sincerely,

  
Sidney Fields # 254392

CC: Jenny A. Kitchings  
Clerk, S.C. Court Of Appeals  
CC: Karen C. Ratigan Esq.  
Office Of The Attorney General  
(attorney for the respondent)