

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAR 12 2015
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.

MOTION TO RECALL REMITTITUR
AND LEAVE TO REINSTATE THE APPEAL

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

TABLE OF CONTENTS

	pg
STATEMENT OF THE CASE	3
ARGUMENT	6
CONCLUSION	7

TABLE OF AUTHORITIES

Williamsburg Rural Water And Sewer Co. Inc. v. Williamsburg County Water And Sewer Authority 367 S.C. 566, 627 SE2d 690,693 (2006)

Ness v. Eckered Corp 566 SE2d 193,195 (2002)

Wise v. S.C. Dept. Of Correction 372 S.C. 173, 642 SE2d at 551 (2007)

Rule 203(d)(1)(B)(vi) SCACR

Rule 240(d) SCACR

STATEMENT OF THE FACTS

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.

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, in which the Chief Adm. Judge Roger M. Young issued a docket Order that placed appellant'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, issued an Order to place the pleading on the (PCR) docket of the court in order to move the court for a (PCR) dismissal. 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, appellant 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 petition. **R p.4-7**

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 p.3** Appellant 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 / R p.8-10**

On December 2, 2014 in response to appellant's Rule 240(d) motion, the Court Of Appeals not only failed to rule on appellant'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 appellant to submit within (20) days an explanation to why the lower court's determination was not proper. **R p.11**

Because the December 2, 2014 Order pertained to appeals derived from a habeas corpus proceeding in the lower court, appellant 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. **R p.12-20 / R p.21-24**

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

The Court concluded in it's final Order that appellant 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. R p.25

Without submitting a petition to rehear the February 9, 2015 final Order, appellant prematurely assumed that his petitions for rehearing on the December 2, 2014 interlocutory Order was sufficient, thus on February 17, 2015 appellant submitted a petition for writ of certiorari to the S.C. Supreme Court to challenge the Court Of Appeals final Order. R p.26

On February 20, 2015 the S.C. Supreme Court abruptly dismissed the petition for certiorari due to the fact that there was no petition to rehear the February 9, 2015 final Order of the Court Of Appeals. R p.26

And because there was no petition to rehear the February 9, 2015 final Order, the Court Of Appeals sent the remittitur to the lower court. R p.27

Appellant's motion to recall remittitur and leave to reinstate appeal now follows:

ARGUMENT

The S.C. Supreme Court has ruled that when the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter, and no motion can be heard thereafter. The only exception to the rule is when the remittitur is sent down by mistake, error, or inadvertence of the appellate court. Wise v. Dept. Of Corrections 372 S.C. 173, 642 SE2d 551 (2007)

Appellant argues that since the Court Of Appeals in it's February 9, 2015 final Order construed and dismissed the appeal under Rule 203(d)(1)(B)(vi) SCACR R p.25, the court did not have jurisdiction to send the remittitur to the lower court in accordance. R p.27

Rule 203(d)(1)(B)(vi) SCACR states: [If a notice of appeal is from a habeas corpus hearing, 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

This Rule clearly pertains to appeals that derived from a habeas corpus proceeding in the lower court. R p.11 p.25 However, contrary to what the court of appeals concluded in it's final Order, the lower court actually conducted a mandamus proceeding in the lower court in this case. R p.4-7

And no where under Rule 203(d)(1)(B)(vi) SCACR does it state or infer that parties appealing a mandamus denial from the circuit court must submit an explanation as to why the lower court's determination is improper.

Therefore, for appellant to submit an explanation pursuant to a Rule that is not applicable to the appeal would be prejudicial to appellant's argument before the court.

The S.C. Supreme Court has ruled that the Court Of Appeals is limited to review only the evidence presented in the lower court, and matters included in the record on appeal. 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, the Court Of Appeals clearly operated outside of their jurisdictional authority by construing and dismissing the appeal contrary to the evidence presented to the lower court, and contrary to matters included in the record on appeal. Williamsburg at 693

In other words, because the Court Of Appeals construed and dismissed appellant's appeal under Rule 203(d)(1)(B)(vi) SCACR R p.25, the remittitur the Court Of Appeals sent to the lower court actually pertains to a proceeding that was never conducted in the lower court. R p.27 This is error.

CONCLUSION

Appellant lastly asserts that the Court Of Appeals is without excuse because even though appellant prematurely submitted his petitions for rehearing to the court's December 2. 2014 interlocutory Order as opposed to submitting the petitions to the final Order, nevertheless the petitions for rehearing put the court on notice that Rule 203(d)(1)(B)(vi) SCACR was an inapplicable Rule to the appeal. R p.12-20 p.21-24

And since it was a jurisdictional issue, the Court Of Appeals had the power to move on it's own motion to rectify the matter. Ness v. Eckered Corp. 566 SE2d 193,195 (2002) This is to ensure an orderly administration of justice.

Furthermore, because of the Court Of Appeals jurisdictional defective actions, the lower court cannot accept the remittitur the Court Of Appeals sent down, because the lower court conducted a mandamus proceeding. Thus, the appellate disposition of the lower court's mandamus judgment is still pending.
R p.4-7

Therefore this grave mistake by appellant does not relieve the Court Of Appeals of it's jurisdictional defective actions. Because the evidence presented to the lower court, and matters included in the record on appeal proves that a mandamus proceeding was conducted in the lower court. R p.4-7

In summary, when the Court Of Appeals construed and dismissed appellant's appeal under Rule 203(d)(1)(B)(vi) SCACR R p.25, the court erred by not having jurisdiction to send the remittitur to the lower court in accordance. R p.27 Because the lower court never conducted a habeas corpus proceeding in accordance to Rule 203(d)(1)(B)(vi) SCACR

This is clearly an exception to the remittitur rule due to the error of the Court Of Appeals. Therefore, the Court Of Appeals must bear the burden of recalling the remittitur back from the lower court and grant leave to reinstate appeal. Wise v. S.C. Dept. Of Corrections 372 S.C. 173, 642 SE2d 551 (2007)

Wherefore, appellant Sidney Fields now pray that this Honorable court call back it's remittitur it sent to the lower court, and grant leave to reinstate appellant's appeal in order to proceed under Rule 240(d) SCACR for a full appellate review of the mandamus petition that was denied initially in the lower court.

Respectfully submitted,


Sidney Fields # 254392

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

Monticello # 234

Columbia, S.C. 29210

Date: *March 9, 2015*

STATE OF SOUTH CAROLINA

IN THE 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.

NOTICE OF MOTION

To: The Office Of the Attorney General (attorney for the respondent) P.O. Box 11549 Columbia, S.C. 29210

In reference to the case above, this action has been brought before the S.C. Court Of Appeals. Appellant above named who is an inmate in the S.C. Dept. Of Corrections, is now before the Court Of Appeals (pro-se) by way of [Motion To Recall Remittitur And Leave To Reinstate Appeal], to move the court to call back the remittitur it sent to the lower court in reference to the above case.

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SC Court of Appeals

And since your office is the representing attorney for the respondent, (State Of South Carolina), you are hereby put on notice of this action against the State, and that you represent this entity in accordance to the appellate court Rules of this State.

Furthermore, this motion shall be heard upon such notice as the court may subscribe, and the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Respectfully Submitted,



Sidney Fields # 254392

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

Monticello # 234

Columbia, S.C. 29210

Date: *March 9, 2015*

Sidney Fields # 254392
B.R.C.I. 4460 Broad River Rd.
Monticello # 234
Columbia, S.C. 29210

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MAR 12 2015
SC Court of Appeals

Date March 9, 2015

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

RE: Filing Of Motion To Recall Remittitur And Leave To Reinstate Appeal
Sidney Fields # 254392 v. State Of South Carolina
Case # 2014-CP-10-305
Appellate Case # 2014-002150

Dear Mrs. Kitchings;

Enclosed for filing in your office, (one) original copy of my [motion to recall remittitur and leave to reinstate appeal] with record in support of. Also enclosed is proof of service and notice of motion to the respondent.

Also enclosed is an extra cover page of the motion to recall remittitur 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 the respondent)

PS: I now live in Monticello # 234. I no longer live in Wateree # 177.
Please change your records to reflect Monticello # 234

STATE OF SOUTH CAROLINA

IN THE 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.

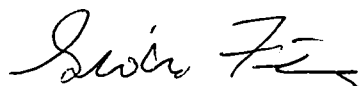
THE STATE OF SOUTH CAROLINA

RESPONDENT.

PROOF OF SERVICE

Appellant certify that he has served (one) copy of his [Motion To Recall Remittitur And Leave To Reinstate Appeal] upon Karen C. Ratigan Esq., Office Of The Attorney General (attorney for the respondent) P.O. Box 11549 Columbia, S.C. 29211 by depositing one copy in the United States mail postage prepaid to the address above.

Date: *March 9, 2015*



Sidney Fields # 254392

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

Monticello # 234

Columbia, S.C. 29210

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAR 12 2015
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.

RECORD IN SUPPORT OF
MOTION TO RECALL REMITTITUR
AND LEAVE TO REINSTATE THE APPEAL

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

TABLE OF CONTENTS

	pg
NOTICE OF APPEAL (FILED OCTOBER 8, 2014)	3
MANDAMUS ORDER OF DISMISSAL (FILED JUNE 11, 2014)	4
RULE 240(d) MOTION (FILED OCTOBER 22, 2014)	8
ORDER OF THE COURT OF APPEALS (FILED DECEMBER 2, 2014)	11
PETITION FOR REHEARING (FILED DECEMBER 12, 2014)	12
PETITION FOR REHEARING ENBANC (FILED DECEMBER 12, 2014)	21
FINAL ORDER OF THE COURT OF APPEALS (FILED FEBRUARY 9, 2015)	25
ORDER OF THE S.C. SUPREME COURT (FILED FEBRUARY 20, 2015)	26
REMITTITUR OF THE COURT OF APPEALS	27

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

J.C. Nicholson, Circuit Court Judge

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OCT 08 2014
SC Court of Appeals

2014-CP-10-305

STATE

RESPONDENT.

V.

SIDNEY FIELDS

APPELLANT.

NOTICE OF APPEAL

Appellant Sidney Fields appeals the Final Order of the Honorable J.C. Nicholson filed June 11, 2014. Along with the Final Order is Judge Nicholson's Order denying appellant's motion to reconsider filed

Date: *September 24, 2014*

Sidney Fields

Other Counsel Of Record:

Sidney Fields # 254392

Office Of The Attorney General

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

P.O. Box 11549

Wateree # 177

Columbia, S.C. 29211

Columbia, S.C. 29210

(attorney for the respondent)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Sidney Fields, #24592,
Plaintiff,

vs.

The State of South Carolina,
Defendant.

) IN THE COURT OF COMMON PLEAS
)
) NINTH JUDICIAL CIRCUIT
)

2014-CP-10-0305

ORDER

RECEIVED
MAR 12 2015
SC Court of Appeals

FILED
2014 JUN 11 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before this Court by way of a Petition for Writ of Mandamus filed by Mr. Fields and a Defendant's Motion to Dismiss by the State of South Carolina. These matters were heard by me on May 23, 2014, in the Court of Common Pleas for the Ninth Judicial Circuit in Charleston, South Carolina.

BACKGROUND

Mr. Fields has gone through a succession of actions for post judgment relief subsequent to entering pleas of guilty to murder and armed robbery on November 16, 1998. Mr. Fields was sentenced to confinement for life for the murder and for thirty (30) years for the armed robbery.

Mr. Fields filed a document titled "Application for (State) Habeas Corpus Pursuant to S.C. Code Ann. Section 17-17-10" (the "2007 Application") on August 31, 2007. In the brief attached to the 2007 Application, Mr. Fields asserts as his argument that "Petitioner was denied Due Process when (PCR) counsel's error denied Petitioner a sufficient and preserved evidentiary record for appellate review." Judge Roger M. Young entered his order filed June 25, 2008, wherein Judge Young ordered that "this matter [the 2007 Application] is transferred to the civil

roster as a Petition for Habeas Corpus, a Pro Se hearing will be set at the next available term, and Lisa A. Reynolds, Esquire is relieved as counsel for the plaintiff in this matter.”

Judge R. Markley Dennis, Jr. held an evidentiary hearing on November 3, 2008. Judge Dennis found in his Order of Dismissal filed November 26, 2008, that the 2007 Application “is the Applicant’s third PCR application and is thus a successive application.” Judge Dennis granted the State’s motion to dismiss and found that the application must be denied and dismissed with prejudice.

LaNelle Cantey DuRant, Appellate Defender, served a Johnson Petition for Writ of Certiorari on June 24, 2009, to the South Carolina Supreme Court. The issue presented in the petition is:

Did the PCR court err in not hearing petitioner’s PCR issue that he was denied due process of law when he was not able to have a fair and complete appellate review of his case because his first PCR attorney failed to file a rule 59(e) motion based on the deficiencies of the first PCR transcript.

The South Carolina Court of Appeals issued its order dated November 5, 2010, wherein it ruled that “After careful consideration of the entire record as required by Johnson v. State, 294 S.C. 310, 364 S.E. 2d 201 (1998), we deny the petition and grant counsel’s request to withdraw.”

CONCLUSIONS OF LAW

Mr. Fields has moved for a writ of mandamus ordering the circuit court to hold a habeas corpus hearing. The State of South Carolina opposed the motion for the writ of mandamus.

Mandamus is the highest judicial writ and is issued to compel a public official to perform a ministerial duty, not a discretionary duty, and only when there is a specific right to be enforced, a positive duty to be performed, and no other available legal remedy. Miller v. State, 377 S.C. 99, 101, 659 S.E.2d 492, 493 (2008). “A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty. Mandamus will issue only to compel a public official to

perform a mandatory legal duty. City of Rock Hill v. Thompson, 349 S.C. 197, 200, 563 S.E.2d 101, 102 (2002) (internal citations omitted). "To obtain a writ of mandamus requiring the performance of an act, the applicant must show 1) a duty of respondent to perform the act, 2) the ministerial nature of the act, 3) the applicant's specific legal right for which discharge of the duty is necessary, and 4) a lack of any other legal remedy" Holden v. Crib, 349 S.C. 132, 136, 561 S.E.2d 634, 636-7 (Ct. App. 2002), quoting Redmond v. Lexington County Sch. Dist. No. Four, 314 S.C. 431, 437, 445 S.E. 2d 441, 445 (1994).

Under the facts of this matter, Mr. Fields has no "specific legal right for which discharge of the duty [to hold a habeas proceeding in the trial court] is necessary." Mr. Fields is procedurally barred from petitioning the circuit court for a writ habeas corpus. "A person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in PCR application." Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). "Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court." *Id.* Judge Dennis denied Mr. Field's petition. The specific issue with regard to the record was raised by Petition for *Writ of Certiorari* which was denied by the South Carolina Court of Appeals on November 5, 2010.

In his Application for Post-Conviction Relief filed May 11, 2006, Mr. Fields stated the following in Paragraph 19 that requires the applicant to state clearly their relief sought:

A [sic] EVIDENTIARY HEARING TO ADJUDICATE THE SPECIFIC FACTS THAT SUPPORTS [sic] APPLICANT'S INEFFECTIVENESS OF COUNSEL CLAIM / NOT ONLY WAS [sic] THE FACTS NOT ADJUDICATED UPON, THE FACTS WAS [sic] OMITTED FROM THE TRANSCRIPT OF RECORD.

Judge Jefferson dismissed this application on June 27, 2006, by Conditional Order of Dismissal and by Final Order dated August 23, 2006.

As an additional ground, habeas relief is not appropriate where a grant of the relief would not entitle the applicant to release from prison. "It is not necessary for the Court to decide this question as a decision in Appellant's favor would not entitle him to his release from the State Penitentiary, where he is serving a life sentence imposed upon him in 1961. The writ of habeas corpus is therefore not available to him," Bowers v. State, 241 S.C. 282, 284 127 S.E.2d 881, 882 (1962).

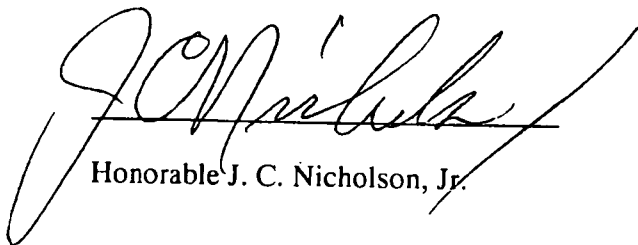
Mr. Fields has raised the issue with regard to the transcript of record in previous applications for post-conviction relief, regardless of how delineated, the issue has been raised and denied by petition for writ of certiorari by the South Carolina Court of Appeals, and even if Mr. Fields were successful, he would not be released from imprisonment. For these reasons, Mr. Fields has no specific right to be enforced so a mandamus is not appropriate. Also, as set forth in Keeler, his remedy since he is procedurally barred is a petition in the original jurisdiction of the South Carolina Supreme Court.



As additional grounds, Mr. Fields has failed to allege facts constituting a cause of action, the relief request is successive, and is barred by the applicable statutes of limitations.

NOW THEREFORE, it is hereby ordered that the State of South Carolina's Motion to Dismiss Mr. Field's Writ of Mandamus is granted.

AND IT IS SO ORDERED.

6/10, 2014
Charleston, South Carolina


Honorable J. C. Nicholson, Jr.


ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By 
DEPUTY CLERK

STATE OF SOUTH CAROLINA
IN THE 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.

MOTION TO BE RELIEVED FROM PAYING FILING FEE
PURSUANT TO RULE 240(d) SCACR

To The Court:

Rule 240(d) SCACR states that in extraordinary cases, a party may be relieved from paying the required filing fee. Appellant above named who is indigent asserts that this is an extraordinary case and that it warrants the relieving of a filing fee.

At the conclusion of appellant's (PCR) proceeding, 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. Appellant then submitted a writ of Habeas Corpus to address the deficiencies of the (PCR) record, in which the Chief Adm. Judge issued an Order placing the pleading on the Habeas Corpus docket. The Order also decreed that a hearing be set in accordance.

The respondent then submitted a motion to reconsider asking the Adm. Judge 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. The Adm. Judge denied the respondent's motion to reconsider. And since the respondent failed to appeal the denial of their motion to reconsider, the Habeas Order RIGHT or WRONG became the law of the case.

However at the hearing, the respondent moved before another Judge for a (PCR) dismissal and their motion was granted by the second Judge. Thus the second Judge illegally construed and dismissed appellant's Habeas pleading as a successive (PCR) application and proceeding.

After the denial of appellant's appeal, appellant submitted a mandamus in circuit court to compel the court to conduct a Habeas Corpus proceeding as mandated by the Adm. Judge's initial Order to do so. The court denied the mandamus. Now appellant is before this court to appeal the Order denying the mandamus petition.

This matter is extraordinary pursuant to Rule 240(d) SCACR because a circuit court Judge cannot countermand the Order of another circuit court Judge, especially when the Order is the law of the case. And especially when the respondent blatantly violated Rule 60 of the S.C. Circuit Court Rules Of Practice when the Adm. Judge denied the respondent's application for an Order, the respondent then deliberately made a second application for an Order based on the same set of facts before a second Judge who issued an Order based on the respondent's second application. Thus the second Judge's Order is void.

Also the respondent blatantly violated due process by failing to give notice of their motion before the hearing. In short, the Habeas Order issued by the Adm. Judge is still pending and the mandamus Judge who's Order appellant is now appealing, concedes to this fact on record.

Because of the way the procedural violations were committed in the circuit court by Judicial officers of this State, this matter is ripe for appellate review by this court to resolve this Justiciable controversy.

Attached is appellant's Initial Brief and Designation Of Matter along with proof of service for each. The Initial Brief itself will show this court the egregious actions committed against appellant that will Justify why it's imperative that this court review this extraordinary case.

Wherefore, appellant Sidney Fields now pray that this court relieve him from paying a filing fee in this matter pursuant to Rule 240(d) SCACR

Respectfully Submitted,

Date: *October 20, 2014*

Sidney Fields
Sidney Fields # 254392

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

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

EXTRA COVER PAGE TO BE FILED STAMPED AND RETURNED IN THE SELF-ADDRESSED
STAMPED ENVELOPE PROVIDED.

~~12~~

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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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
PURSUANT TO RULE 221 SCACR

Sidney Fields # 254392

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

Wateree # 177

Columbia, S.C. 29210

TABLE OF CONTENTS

TABLE OF CONTENTS	
TABLE OF AUTHORITIES	2
FACTS LEADING UP TO THIS PETITION FOR REHEARING	2
LAW OF THE CASE / RULE 60 S.C. CIRCUIT COURT RULES OF PRACTICE	3
DUE PROCESS	6
CONCLUSION	7
	8

TABLE OF AUTHORITIES

<u>City Of Rock Hill v. Thompson</u> 349 S.C. 197, 563 SE2d 101, 102 (2002)	8
<u>Lindsay v. Lindsay</u> 328 S.C. 329, 491 SE2d 583,588 (1997)	6
<u>Murdock v. Murdock</u> 338 S.C. 322, 526 SE2d 241,248 (1999)	7
<u>Sloan v. Herman</u> 983 F2d 102,110 (8th cir 1993)	8
<u>Walters v. Grossheim</u> 990 F2d 381,384 (8th cir 1993)	7,8
<u>White v. State</u> 263 S.C. 110, 208 SE2d 35, 38-39 (1974)	7
S.C. Code Ann. §15-35-180	8

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 lines 23-24 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 in 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 conducte 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 it's 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 it's 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*

EXTRA COVER PAGE TO BE FILED STAMPED AND RETURNED IN THE SELF-ADDRESSED
STAMPED ENVELOPE PROVIDED.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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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

Sidney Fields

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

The South Carolina Court of Appeals

Sidney Fields, #254392, Appellant,

v.

The State of South Carolina, Respondent.

Appellate Case No. 2014-002150

ORDER

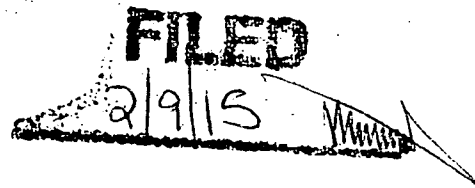
Appellant has filed several motions, which this Court construes together as an explanation for the appeal pursuant to Rule 203(d)(1)(B)(vi) of the South Carolina Appellate Court Rules (SCACR). Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(vi). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.

 AS
FOR THE COURT

Columbia, South Carolina

cc:

Karen Christine Ratigan, Esquire
Sidney Fields, #254392



The Supreme Court of South Carolina

Sidney Fields, #254392, Petitioner,

v.

The State of South Carolina, Respondent.

Appellate Case No. 2015-000290

Lower Court Case No. 2014-CP-10-305

ORDER

By order dated February 9, 2015, the South Carolina Court of Appeals dismissed the appeal in this matter.¹ No petition for rehearing has been filed with the Court of Appeals regarding this order. Petitioner has now filed a petition for a writ of certiorari dated February 17, 2015, seeking review of the decision of the South Carolina Court of Appeals in this matter.

Under Rule 242(a) of the South Carolina Appellate Court Rules (SCACR), this Court will only review a final decision of the Court of Appeals, and a decision is not final for the purposes of review until a petition for rehearing or reinstatement has been acted on by the Court of Appeals. Rule 242(c), SCACR. Since no petition for rehearing or reinstatement has been ruled on by the Court of Appeals regarding the dismissal order dated February 9, 2015, there is no final decision for this Court to review.

Accordingly, the petition for a writ of certiorari filed in this matter is dismissed. The motion to waive the filing fee is dismissed a moot.


C.J.
FOR THE COURT

Columbia, South Carolina
February 20, 2015

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

The Honorable Jenny Kitchings
The Honorable Julie J. Armstrong

¹ Before the Court of Appeals, the Appellate Case Number is 2014-002150.



27

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

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March 04, 2015

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

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SC Court of Appeals

REMITTITUR

Re: Sidney Fields, #254392 v. The State
Lower Court Case No. 2014CP1000305
Appellate Case No. 2014-002150

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Jenny A. Kitchings".

CLERK

Enclosure

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