

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

RECEIVED

MAY 26 2015

SC Court of Appeals

May, 21, 2015

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

RE:                   Petition For Rehearing Pursuant To Rule 221 SCACR  
                      Sidney Fields # 254392 v. State Of South Carolina  
                                  Appellate Case # 2014-002150

Dear Mrs. Kitchings;

On May 15, 2015 the Court Of Appeals denied my motion to recall remittitur. Enclosed for filing in your office is one original copy of my petition for rehearing pursuant to this denial. Also enclosed is proof of service to the respondent.

Lastly, I've I've enclosed an extra cover page of my petition for rehearing. Please file stamp and return in the self-addressed stamped envelope provided.

Sincerely,

  
Sidney Fields # 254392

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

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 petition for rehearing on karen C. Ratigan, 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 May 21, 2015

*Sidney Fields*

Sidney Fields # 254392

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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.

Monticello # 234

Columbia, S.C. 29210

## TABLE OF CONTENTS

I. PROCEDURAL HISTORY	3
II. ARGUMENT	5
1.Rule 203(d)(1)(B)(vi) SCACR	5
2.Jurisdiction Of The Court Of Appeals	7
III. CONCLUSION	9

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## TABLE OF AUTHORITIES

<u>Brown v. State</u> 540 SE2d 846,848 (2001)	7,8
<u>Christy v. Christy</u> 317 S.C. 145, 452 SE2d 1,4 (1994)	5,6,8
<u>State v. Keels</u> 39 S.C. 553, 17 SE 802 (1893)	8
<u>Ness v. Eckered Corp</u> 566 SE2d 193,195 (2002)	7
<u>Williamsburg Rural Water And Sewer Co. v. Williamsburg County Water And Sewer Authority</u> 367 S.C. 566, 627 SE2d 690,693 (2006)	6,7,8
<u>Windham v. Sanders</u> 282 S.C. 120, 337 SE2d 205,206 (1986)	6
<u>Wise v. S.C.Dept Of Corrections</u> 372 S.C. 173, 642 SE2d at 551 (2007)	7,8
Rule 203(d)(1)(B)(vi) SCACR	3,5,6
Rule 240(d) SCACR	3

\*The record in support of appellant's motion to recall remittitur also supports this petition for rehearing and will be referred to throughout this petition for rehearing.

### PROCEDURAL HISTORY

On October 8, 2014 appellant filed his notice of appeal to the S.C. Court Of Appeals to appeal the Order denying his mandamus petition in circuit court. R p.3 / R p.4-7 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 240(d) motion, The Court Of Appeals not only failed to rule on appellant's 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 to vacate their invalid December 2, 2014 Order, and to give the court another opportunity to rule on his 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 240(d) motion for a second time, the court construed appellant's petitions for rehearing as explanations under Rule 203(d)(1)(B)(vi) SCACR R p.25

The court concluded in it's February 9, 2015 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 for rehearing on 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 for rehearing on the February 9, 2015 final Order of the Court Of Appeals. R p.26

And because there was no petition for rehearing on the February 9, 2015 final Order, along with the fact that the petition for certiorari was denied, the Court Of Appeals on March 4, 2015 sent the remittitur to the lower court. R p.25 p.27

On March 12, 2015 appellant submitted a motion asking the Court Of Appeals to recall the remittitur and asked to reinstate the appeal. On May 15, 2015 the Court Of Appeals denied the motion to recall the remittitur.

Appellant's petition for rehearing challenging the Court Of Appeals denial Of appellant's motion to recall remittitur now follows:

**ARGUMENT****1. Rule 203(d)(1)(B)(vi) SCACR**

After dismissing appellant's motion to recall remittitur, appellant is now before this court by way of petition for rehearing to argue the points supposed to have been overlooked or misapprehended by this court. **Rule 221(a) SCACR**

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**

Appellant argues that the Court Of Appeals in it's February 9, 2015 final Order construed and dismissed his appeal under Rule 203(d)(1)(B)(vi) SCACR. This Rule pertains to appeals that derived from a habeas corpus proceeding conducted in the lower court. **R p.25**

However, contrary to the Court of Appeals final conclusion, appellant's appeal derived from a mandamus proceeding and dismissal in the lower court. **R p.4-7**

It is well settled that once an appellate court sends down the remittitur and it is filed in the lower court, this ends the case and the lower court has jurisdictional authority to enforce whatever judgment consistent with the appellate court's ruling. Until that time, the case is still pending. **Christy v. Christy 317 S.C. 145, 452 SE2d 1,4 (1994)**

In the instant case, the Court Of Appeals erroneously went outside of it's jurisdictional authority by construing and dismissing the appeal contrary to what occurred in the lower court, and contrary to what was included in the record on appeal. Williamsburg Rural Water And Sewer Co. v. Williamsburg County Water And Sewer Authority 367 S.C. 566, 627 SE2d 690,693 (2006)

Therefore the lower court cannot accept the Court Of Appeals February 9, 2015 final judgment nor it's remittitur because the February 9, 2015 final Order construed and dismissed the appeal as being a habeas corpus proceeding in the lower court pursuant to Rule 203(d)(1)(B)(vi) SCACR R p.25 However, the lower court's Order on appeal decrees that a mandamus proceeding was conducted and dismissed in the lower court. R p.4-7

And because the Court Of Appeals erroneously construed the lower court's proceeding as being a habeas corpus proceeding pursuant to Rule 203(d)(1)(B)(vi) SCACR, there is no appellate disposition of the lower court's mandamus judgment. In other words, the lower court's mandamus judgment is still pending. Christy at 4 / R p.4-7

Furthermore, even if the Court Of Appeals was given the benefit of the doubt, the appellate record must still affirmatively show the proper taking of the necessary steps and the existence of all facts necessary to confer jurisdiction on the appellate court. Windham v. Sanders 282 S.C. 120, 337 SE2d 205,206 (1986)

In the instant case, since there existed no evidence in the record on appeal that a habeas corpus proceeding was conducted in the lower court pursuant to Rule 203(d)(1)(B)(vi) SCACR, jurisdiction was not conferred to the Court Of Appeals to construe and dismiss appellant's appeal in accordance to Rule 203(d)(1)(B)(vi) SCACR. Thus the Court Of appeals February 9, 2015 final Order along with the remittitur was sent to the lower court in error. R p.25  
p.27

## 2. Jurisdiction Of The Court Of Appeals

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. S.C. Dept Of Corrections 372 S.C. 173, 642 SE2d 551 (2007)

In the instant case, not only did the Court Of Appeals defied a S.C. Supreme Court ruling Williamsburg 627 SE2d at 693, the Court Of Appeals defied their own rulings, in which both courts concluded in those cases that an appellate court must be confined to the record in deciding issues on appeal. Tims v. Tims 286 S.C. 291, 333 SE2d 74,75 (1985) / Richland County v. Carolina Chloride Inc. 382 S.C. 634, 677 SE2d 892,902 (2009)

Therefore because the Court Of Appeals actions was jurisdictionally defective, coupled with the fact that the court's actions was hypocritical in nature by defying their own past rulings along with the ruling of the Supreme Court, this is clearly an exception to the remittitur rule. Thus the Court Of Appeals must bear the burden of recalling the remittitur back from the lower court and grant leave to reinstate the appeal.

And even though appellant failed to submit a petition for rehearing on the February 9, 2015 final Order, this does not relieve the court from the jurisdictional error it committed because any actions of a court with respect to a matter to which it has no jurisdiction are void. Brown v. State 540 SE2d 846,848 (2001) And because it is a jurisdictional issue, the court can and must on it's own motion rectify the matter. This will ensure a orderly administration of justice. Ness v. Eckered Corp. 566 SE2d 193,195 (2002)

The Court Of Appeals was put on notice of their jurisdictional error when appellant mistakenly submitted his petition for rehearing on the December 2, 2014 interlocutory Order as opposed to the February 9, 2015<sup>Final order</sup>. Nevertheless, the court was put on notice that their actions was jurisdictionally defective, therefore the court is without excuse.

Lastly, in it's order denying appellant's motion to recall remittitur, the Court Of Appeals concluded that appellant failed to make a strong showing to recall remittitur citing State v. Keels 39 S.C. 553, 17 SE 802 (1893)

Appellant argues that since the Court Of Appeals never obtained proper jurisdiction over the appeal in the first place, the court's February 9, 2015 final Order is void. Brown v. State 540 SE2d at 848. Thus the remittitur sent in accordance to the lower court is in error. Wise v. S.C. Dept Of Corrections 642 SE2d at 551 And because the remittitur was sent in error, the lower court's Order is still pending. Christy 452 SE2d at 4

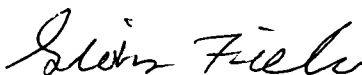
CONCLUSION

Appellant finally asserts that if a court lack of jurisdiction over the appeal is not a strong enough showing to recall the remittitur, then what is? In short, the remittitur was never properly sent because the Court Of Appeals never obtained proper jurisdiction over the appeal. Williamsburg 627 SE2d at 693 (2006)

Wherefore, appellant Sidney Fields now pray through this petition for rehearing that this honorable court recall it's remittitur and reinstate the appeals and that appellant proceed under Rule 240(d) SCACR for a full appellate review of the mandamus denial from the lower court

Respectfully Submitted,

Date May 21, 2015

  
Sidney Fields # 254392

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

# The South Carolina Court of Appeals

Sidney Fields, #254392, Appellant,

v.

The State of South Carolina, Respondent.

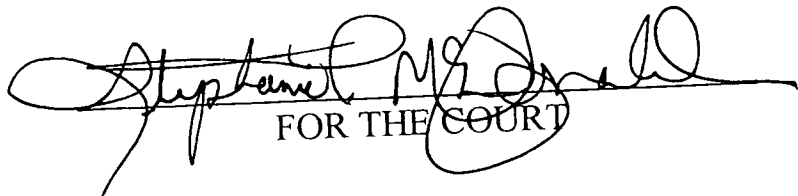
Appellate Case No. 2014-002150

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## ORDER

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This appeal was dismissed on February 9, 2015. No petition for rehearing was filed as of March 4, 2015, and this Court sent down the remittitur on that day. Appellant has now filed a motion requesting that this court recall the remittitur and reinstate the appeal. A remittitur cannot be recalled except upon "a very strong showing . . . that remittitur was sent down through some mistake or inadvertence on the part of this Court or its officer." *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893). Appellant has failed to make such a showing. Because Appellant failed to timely file a petition for rehearing with this Court, remittitur was properly sent, and this Court no longer has jurisdiction over the case. Appellant's motion, therefore, is denied.

  
FOR THE COURT

Columbia, South Carolina

cc:  
Sidney Fields, #254392  
Karen Christine Ratigan, Esquire  
Julie J. Armstrong

**FILED**  
5/15/15