THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2005-CP-26-2710

Brad R. Johnson, Petitioner,

v.

Lewis W. Hall, Lewis V. Hall, L.W. Hall Enterprises, LLC, Cold Air A/C Service, Inc., Respondents.

PETITION FOR WRIT OF CERTIORARI

Brad R. Johnson, Ph.D., J.D.
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Petitioner, Pro Se

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S.C. Supreme Court
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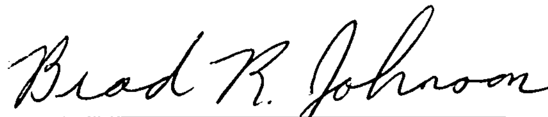
CERTIFICATION

I, Brad R. Johnson,[1] Petitioner-Appellant in the above-captioned civil action, hereby certifies that a *Petition for Rehearing* was filed with the South Carolina Court of Appeals in the above captioned civil action on December 27, 2011 (see Part IV of the Appendix) and said Petition was denied by Order of the South Carolina Court of Appeals dated January 30, 2012 (see Part V of the Appendix).

Dated: April 4, 2012



Brad R. Johnson, Pro Se Petitioner

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[1] Brad R. Johnson, Ph.D., J.D., is a tenured Associate Professor of Accounting at Francis Marion University, a South Carolina Institution of Higher Education.

QUESTION PRESENTED FOR REVIEW

NOW COMES Petitioner-Appellant, Brad R. Johnson, who appeals the denial, by J. Michael Baxley, Circuit Court Judge, of Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138]), by petitioning this Court for a Writ of Certiorari for the purpose of reviewing the following questions.

QUESTION

"Did the Trial Court err in denying Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138]?" *Appellant's Final Brief* (see Subpart A of Part II of the Appendix), p. 1; Appellant's *Petition for Rehearing* (see Part IV of the Appendix), p. 1.

ANCILLARY QUESTION # 1

Did the South Carolina Court of Appeals err in affirming the decision of the Trial Court (to deny Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138]) **pursuant to Rule 220(b)(1)**?

ANCILLARY QUESTION # 2

Did the holding of the South Carolina Court of Appeals to affirm the decision of the Trial Court, pursuant to Rule 220(b)(1), by merely citing a potpourri of cases without any legal analysis, offend the procedural due process clauses of the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution, respectively?

STATEMENT OF THE CASE

(1) **The date of the commencement of the action.**

Plaintiff's Original Complaint was filed on May 31, 2005 [R-1..41].

(2) **The nature of the action** [R-50,51].

The action arose out of an alleged conspiracy executed by the individual Defendants to invite Plaintiff onto the premises of defendants for the sole purpose of committing an assault and battery (with a deadly weapon, i.e., shotgun) on Plaintiff, resulting in severe physical, emotional, and economic injury to Plaintiff. Specifically, this action was brought under South Carolina common law.

(3) **The nature of the defense or of the response.**

Defense of others.

(4) **The action of the court or jury or the master.**

A directed verdict was granted in favor of all defendants, except for Lewis V. Hall [R-181..190]. After a jury trial, a jury found in favor of Defendant, Lewis V. Hall [R-134,135,191,192].

(5) **The date of trial.**

October 3-4, 2007.

(6) **The mode of trial.**

Jury trial.

(7) The amount involved on appeal.

$3,000,000+

(8) **The date and nature of the order of judgment appealed from** [R-134,135,191,192].

Judge Baxley's Administrative Order dated December 9, 2007 [R-139], denying Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

(9) **The date of the service of the notice of appeal.**

Notice of appeal served on February 29, 2008. Superseding amended notice of appeal is dated May 5, 2008 [R-140].

(10) **The date of and description of such orders, judgments, and proceedings in the court below as may have affected the appeal, or may throw light upon the questions involved in the appeal.**

* Plaintiff's written Pre-Trial Motion to Continue based upon SCRCP 40(b) filed October 3, 2007 [R-121..133].

* Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

* Judge Baxley's Administrative Order dated December 9, 2007 [R-139], denying Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

* The Pre-Trial Hearing on October 1, 2007 by Judge Baxley of Plaintiff's oral Pre-Trial Motion to Continue based upon SCRCP 40(b) [R-146..163], which

was memorialized in writing and filed October 3, 2007 [R-121..133], wherein Judge Baxley denied said motion [R-160..162].

(11) **Any changes made in the parties by death, substitution, or otherwise.**

None.

(12) **A concise history of the proceedings.**

On February 16, 2007, the trial court in the above case "STRUCK [THE CASE] FROM THE ACTIVE motion calendar" because "Plaintiff's MOTION TO AMEND TO ADD NEW PARTY(S) [WAS] GRANTED" (see Supplemental Record, p. 21, Subpart B of Part I of the Appendix).

On May 3, 2007, the 2007 Amendment to Rule 40(b), SCRCP **became effective.**

On May 18, 2007, Plaintiff-Appellant served his Amended Complaint on L.W. Hall Enterprises, LLC and Cold Air A/C Service, Inc.

In a Pre-Trial Hearing on October 1, 2007 [R-146..163], Judge Baxley denied Plaintiff's oral Pre-Trial Motion to Continue based upon SCRCP 40(b) [R-160..162]. Plaintiff-Appellant objected [R-121..133].

On October 3, 2007, Plaintiff filed a written Pre-Trial Motion to Continue based upon SCRCP 40(b) [R-121..133].

After a jury trial [R-134,135,191,192], Plaintiff filed a written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

On December 9, 2007 in an Administrative Order [R-139], Judge Baxley denied Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

The South Carolina Court of Appeals, in an Unpublished Opinion No. 2011-UP-447, submitted October 1, 2011 and filed October 11, 2011, affirmed the decision of the Trial Court (to deny Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138]), pursuant to Rule 220(b)(1), by merely citing a potpourri of cases without any legal analysis.

On December 27, 2011, a *Petition for Rehearing* was filed by Petitioner-Appellant.

On January 30, 2012, the South Carolina Court of Appeals denied the *Petition for Rehearing* filed by Petitioner-Appellant.

ARGUMENT

QUESTION
THE TRIAL COURT ERRED
IN DENYING PLAINTIFF'S WRITTEN POST-TRIAL MOTION
FOR A NEW TRIAL PURSUANT TO SCRCP 59
AND BASED UPON SCRCP 40(b), THE U.S. CONSTITUTION,
AMENDMENT FOURTEEN, AND THE SOUTH CAROLINA
CONSTITUTION

Relevant Procedural Facts

See Statement of the Case, above, incorporated by reference herein.

The Law

Rule 40, SCRCP (2011) [General Docket, Trial Rosters, and Call of Cases for Trial] provides, in part, as follows.

> "...
>
> **(b) General Docket, Transfer of Cases to Jury Trial Roster; Call of Cases Only From Jury Trial Roster; Order of Call.** The clerk initially shall place all cases in which a jury has been requested on the General Docket. A case may not be called for trial until it has been transferred to the Jury Trial Roster. Trial shall be had no earlier than 30 days from the date the case first appears on the Jury Trial Roster. Cases shall be called for trial in the order in which they are placed on the Jury Trial Roster, unless the court in a Scheduling Order has set a date certain for the trial, or, after the case has been set on the Jury Trial Roster, the court, upon motion, grants a continuance as provided in (i) below. The first 20 cases on the Jury Trial Roster at the opening of court on the first day of a term, excluding those previously dismissed, continued or otherwise resolved before the opening of that term of court, may be called for trial. For each additional judge sitting during that term of court an additional 20 cases are subject to call. All other cases may be called for trial in that term only upon no less than 24 hours notice. **Notwithstanding the foregoing, no action may be called for trial until 180 days after service of the last pleading which adds a new party to the action, unless all parties consent *in writing*.**" Bold and italics added.

A Note to 2007 Amendment states as follows.

> "The last sentence of Rule 40(b) establishes **a minimum period of time following the joinder of a new party during which the action may not be called for trial without the consent of all parties.** The 2007 amendment extends this period from 120 days to 180 days, and measures this period from the date the newly joined party is served with process, rather than the filing date of the pleading adding the new party. As before, the 180 day exclusion may be waived with the consent of all parties."

The 2007 Amendment became effective on May 3, 2007.

Analysis

On or about May 18, 2007, Plaintiff-Appellant served his Amended Complaint on L.W. Hall Enterprises, LLC and Cold Air A/C Service, Inc.

Although Appellant did not file and serve his Amended Complaint on L.W. Hall Enterprises, LLC and Cold Air A/C Service, Inc. until May 18, 2007, the trial court **deemed the Amended Complaint filed** in February 2007 [R-161], rather than on May 18, 2007, based upon the trial court's ORDER in February 2007 [R-161] to "[STRIKE] [THE CASE] FROM THE ACTIVE motion calendar" because "Plaintiff's MOTION TO AMEND TO ADD NEW PARTY(S) IS GRANTED" (see Supplemental Record, p. 21, Subpart B of Part I of the Appendix). The trial court reasoned that a February filing date would make the trial on October 3, 2007 fall outside of the statutory period required under Rule 40(b) [R-161]. **Such a ruling by the trial court is direct conflict with the letter, intent and spirit of Rule 40(b), SCRCP.**

Although Respondents argue that Plaintiff-Appellant has somehow waived his right to a 180-day waiting period before being forced to go to trial against the

newly served defendants, wherein Respondents speak of a *master roster meeting* and a *trial roster*, in their final briefs, Respondents produced **no evidence** of such a meeting or of such a roster [R-142-161] at trial. Further, the trial court did not find the *master roster meeting* and a *trial roster* relevant to the pre-trial issue at hand [R-161,162]. Instead, the trial judge deemed the Amended Complaint filed in February, 2007 (instead of May 2007), where the trial court reasoned that a February filing date would make the trial on October 3, 2007 fall outside of the statutory period required under Rule 40(b) [R-161]. But most importantly, the 2007 Amendment to Rule 40(b), SCRCP amended Rule 40(b), SCRCP to include that the consent be in writing, as follows.

> **"Notwithstanding the foregoing, no action may be called for trial until 180 days after service of the last pleading which adds a new party to the action, unless all parties consent *in writing*."**

It cannot be denied that Plaintiff-Appellant never gave his written consent to going forward with the trial in the above captioned case.

Finally, although Respondents state in their briefs that Plaintiff made only a verbal motion for a continuance at the beginning of the trial proceedings, where said motion was heard, pre-trial, on October 1, 2007 [R-146..163], this motion was memorialized in writing and filed and served upon all parties on October 3, 2007. [R-121..133].

Conclusion

The South Carolina Supreme Court has granted the so-called 180-day rule pursuant to Rule 40(b) as a procedural right to all parties in an action to insure that each party has a fair trial, i.e., that each party has adequate time to either prepare a claim or defense. It follows that having adequate time to prepare either a claim or defense pursuant to rule 40(b) is a procedural right that is protected against state deprivation under the Fourteenth Amendment of the U.S. Constitution, as well as the South Carolina Constitution.

Accordingly, when the trial court deprived Petitioner-Appellant of his procedural right under Rule 40(b), it deprived him of his guarantee of procedural due process under the Fourteenth Amendment of the U.S. Constitution, as well as the South Carolina Constitution. Clearly, such a deprivation is not harmless.

As an example of the harm suffered by Petitioner-Appellant, Defendants were dismissed from the action upon findings that no evidence supported Appellant's theories of respondeat superior and premises liability, precisely because the Plaintiff-Appellant had inadequate time to prepare for the case. [R-146..163]. Further Plaintiff-Appellant did not expect to be thrust into a trial at such an early date, at least with respect to the two new entity defendants [R-146..163], all in violation of Rule 40(b), a procedural right of Plaintiff-Appellant granted by the Supreme Court of South Carolina and guaranteed against deprivation by the U.S. Constitution and the South Carolina Constitution.

Accordingly, in denying Plaintiff's oral Pre-Trial Motion to Continue based upon SCRCP 40(b) in a Pre-Trial Hearing on October 1, 2007 [R-146..163], Judge Baxley forced Plaintiff-Appellant to go forward with said trial before the expiration of the period provided by SCRCP 40(b), in violation of (1) SCRCP 40(b) and (2) Plaintiff-Appellant's procedural due process rights under (a) the U.S. Constitution, Amendment Fourteen, and (b) the South Carolina Constitution. [R-121..133; 136..138], respectively. It is clear that under Rule 40(b) [R-126], the trial judge should not have allowed the trial in the above captioned action to commence over the objection of Plaintiff-Appellant [R-121..133; 146..163]. Further, because the 180-day rule under Rule 40(b) is a procedural right of the Plaintiff, the trial judge violated the procedural due process guarantee of the Plaintiff-Appellant under the Fourteenth Amendment of the U.S. Constitution, as well as the South Carolina Constitution. Plaintiff-Appellant must be granted his procedural right under Rule 40(b) [R-126] to adequately prepare for trial and not be forced prematurely by a state court to go forward with a trial in violation of said right [R-146-163].

It is in this manner that the Trial Court erred in denying [R-139] Plaintiff's written Post-Trial Motion for a New Trial pursuant to SCRCP 59 and based upon SCRCP 40(b), the U.S. Constitution, Amendment Fourteen, and the South Carolina Constitution [R-136..138].

ANCILLARY QUESTION # 1
THE SOUTH CAROLINA COURT OF APPEALS ERRED
IN AFFIRMING THE DECISION OF THE TRIAL COURT
PURSUANT TO RULE 220(b)(1), BECAUSE THE INSTANT CASE
PRESENTS A CASE OF FIRST IMPRESSION

ANCILLARY QUESTION # 2
THE HOLDING OF THE SOUTH CAROLINA COURT OF APPEALS
TO AFFIRM THE DECISION OF THE TRIAL COURT,
PURSUANT TO RULE 220(B)(1), BY MERELY CITING A POTPOURRI OF
CASES WITHOUT ANY LEGAL ANALYSIS,
OFFENDS THE PROCEDURAL DUE PROCESS CLAUSES
OF THE U.S. CONSTITUTION, AMENDMENT FOURTEEN, AND
THE SOUTH CAROLINA CONSTITUTION, RESPECTIVELY

The Law

Rule 220(b)(1), SCACR (2011) provides:

> "(b) Decision by the Court. **In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case**. This rule does not apply to the following:
>
> > (1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, **the Supreme Court determines that a published opinion would have no precedential value** and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears."

Analysis

In Unpublished Opinion No. 2011-UP-447, submitted October 1, 2011 and filed October 11, 2011, the South Carolina Court of Appeals rendered an "opinion" (but without any legal reasoning), which has no precedential value, affirming a Circuit Court's denial of Plaintiff's motions (1) for a continuance and (2) for a new trial. Plaintiff's motions were grounded in Plaintiff's guaranteed procedural rights pursuant to recently enacted Rule 40(b), SCRCP (which had just become effective May 3, 2007); the United States Constitution, Amendment Fourteen; and the South Carolina Constitution. The South Carolina Court of Appeals affirmed (in the absence of any legal reasoning):

> "pursuant to Rule 220(b)(1), SCACR, and the following authorities:
> - *Wayne Smith Constr. Co., Inc. v. Wolman, Duberstein, & Thompson*, 294 S.C. 140, 143, 363 S.E.2d 115, 117 (Ct. App. 1987) (finding the decision to grant or deny a motion for a continuance is within the sound discretion of the trial court and its decision will not be disturbed on appeal absent a showing of an abuse of discretion);
> - *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 49, 691 S.E.2d 135, 149 (2010) ('Whether to grant a new trial is a matter within the discretion of the trial [court], and this decision will not be disturbed on appeal unless it is unsupported by the evidence or is controlled by an error of law.');
> - Rule 40(b), SCRCP (providing 'no action may be called for trial until 180 days after service of the last pleading which adds a new party to the action, unless all parties consent in writing');
> - *Paschal v. Causey*, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App. 1992) (finding the 180-day period is 'a procedural right' that 'provides parties a period of time to prepare the case' and noting the right may be waived);
> - *Faith Holiness Church v. Church of God at Scranton*, 282 S.C. 487, 489, 319 S.E.2d 348, 349 (Ct. App. 1984) ('[A] party who fails to object to the trial of a case and affirmatively agrees to its trial at a designated time cannot later assert that the trial court erred in trying the case before the close of the statutory period.')."

Ancillary Question #1

The Court of Appeals Erred in
(1) Not Providing its Reasoning Pursuant to Rule 220(b)(1), SCRCP and
(2) Not addressing Plaintiff's Constitutional Arguments Pursuant to *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*
As the Instant case is a Case of First Impression

The 2007 Amendment to Rule 40(b), SCRCP, became effective on May 3, 2007. As such, this case is a case of first impression, with the trial court's holding in direct conflict with the 2007 Amendment to Rule 40(b), SCRCP. The Court of Appeals cannot rely on Rule 220(b)(1), SCRCP in rendering its decision. Accordingly, the Court of Appeals erred in (1) **not** providing its reasoning pursuant to Rule 220(b)(1), SCRCP and (2) **not** addressing Plaintiff-Appellant's constitutional arguments pursuant to *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.* , as the instant case is a case of first impression.

Ancillary Question #2

The South Carolina Court of Appeals has violated Plaintiff-Appellant's civil rights under the procedural Due Process Clause of the Fourteenth Amendment to the Constitution of the United States by (1) not providing its reasoning for its holding in the above captioned appeal pursuant to Rule 220(b)(1), SCRCP and (2) by not addressing Plaintiff's constitutional arguments under the South Carolina Constitution and the U.S. Constitution pursuant to *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*

The South Carolina Court of Appeals Erred in Somehow Applying *Paschal v. Causey* and *Faith Holiness Church v. Church of God at Scranton*

This is a case of first impression for recently modified Rule 40(b), SCRCP (which had just become effective on May 3, 2007, a date on which the instant case had been struck from the active motion calendar). As such (i.e., a case of first impression), due process demands that the South Carolina Court of Appeals provide its reasoning in applying Rule 40(b), SCRCP to the facts in the instant case. Further, due process demands that the South Carolina Court of Appeals be accountable for its decision by not declaring that this case is an unpublished opinion. It is in this manner that the South Carolina Court of Appeals has violated the procedural Due Process Clause of the Fourteenth Amendment to the Constitution of the United States when it issued an unpublished opinion in this case.

As a specific example, the South Carolina Court of Appeals cites to case law (*Paschal v. Causey* and *Faith Holiness Church v. Church of God at Scranton*) that cannot apply to Rule 40(b), SCRCP, since these cases precede the effective date of the 2007 Amendment to Rule 40(b), SCRCP. Further, Rule 40(b), SCRCP internally provides for its own process of waiver (i.e., an affirmative consent in writing). Accordingly, on this basis alone, *Paschal v. Causey* and *Faith Holiness Church v. Church of God at Scranton* cannot apply to the facts in the instant case, especially since the trial court did not find waiver in this case and no evidence was presented to support Plaintiff's waiver. In fact, the trial judge found that the trial date complied with the current enactment of Rule 40(b), SCRCP by counting 180 days from when Plaintiff's Amended Complaint was expected to be filed.

The South Carolina Court of Appeals Erred in Not Addressing Plaintiff's Constitutional Arguments
Under the South Carolina Constitution and the U.S. Constitution

With respect to Plaintiff's constitutional arguments under the South Carolina Constitution and the U.S. Constitution, this Court improperly held as follows.

> "We decline to address Johnson's arguments concerning the constitutional violations. These issues are not preserved for our review because Johnson did not raise these issues to the trial court. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (finding an issue must be raised to and ruled upon by the trial court in order to be preserved for appellate review)."

Notwithstanding the foregoing, it is proper to raise, at the appellate level, constitutional arguments under the South Carolina Constitution and the U.S. Constitution for violations of due process by a trial court, as long as the particular infirmity was objected to at trial by the appellant. Otherwise, as a condition of appealing the constitutional issue, the trial court would be expected to render a constitutional opinion upon its own alleged infraction – an absurd result. Moreover, under the analysis of the South Carolina Court of Appeals, a trial court can avoid all constitutionally appealable issues by simply not speaking to them - another absurd result.

More specifically, a party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. *State v. Russell,* 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (issue was preserved even though defendant did not use the exact words "corpus

delicti" in his request for directed verdict); *In re: Robert D.*, 340 S.C. 12, 530 S.E.2d 137 (Ct. App. 2000) (although party did not specifically mention any constitutional provision to the trial court the record reflected that he complained the testimony would violate his right of confrontation).

In Plaintiff-Appellant's Pre-Trial Objection and Motion for a Continuance [R-121..133] and in Plaintiff-Appellant's Motion for a New Trial [R-136..138], Appellant sufficiently preserved the issue of the trial court's deprivation of Plaintiff's procedural guarantee under Rule 40(b) for appeal.

In particular, in Plaintiff-Appellant's Pre-Trial Objection and Motion for a Continuance [R-122], "Plaintiff respectfully objected, objects, and will continue to object to the trial of this case going forward, at least until the 180-day period has expired under SCRCP 40(b)." Further, in Plaintiff-Appellant's Pre-Trial Objection and Motion for a Continuance [R-123], Plaintiff-Appellant argued:

> "'The 120 [180] day period dictated by Rule 40(b)(2), SCRCP, is a procedural right which may be waived. P*aschal v. Causey*, 309 S.C. 206, 420 S.E. 2d 863 (Ct. App. 1992) [see Exhibit IV, incorporated by reference herein, a true and correct copy].' *Donald S. Butler v. Beaufort County*, 316 S.C. 465, 451 S.E.2d 386 (1994). 'A party who fails to object to the trial of a case and affirmatively agrees to its trial at a designated time cannot later assert that the trial court erred in trying the case before the close of the statutory period. *Id. See also* Windham v. Honeycutt, 279 S.C. 109, 302 S.E. 2d 856 (1983).' *Id.*
>
> Here, Plaintiff elects to exercise the procedural right that the South Carolina Supreme Court has seen fit to grant him under SCRCP [40(b)] so that the above-entitled action will not be set for trial until 180 days after any NEW party is served with process. South Carolina Supreme Court Note to the 2007 Amendment of the SCRCP."

Moreover, in Plaintiff-Appellant's Motion for a New Trial [R-136,137], Plaintiff-Appellant complains as follows:

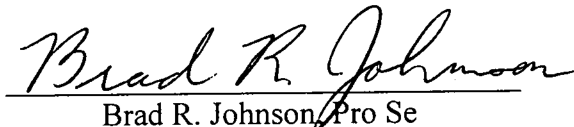
> "Plaintiff respectfully objected, objects, and will continue to object to said trial pursuant to SCRCP [40(b)]. Here, Plaintiff attempted to exercise an important procedural right that the South Carolina Supreme Court has seen fit to grant him under SCRCP [40(b)] so that the above-entitled action will not be set for trial until 180 days after any NEW party is served with process. South Carolina Supreme Court Note to the 2007 Amendment of the SCRCP."

For a party to raise an issue on appeal of a trial court's constitutional deprivation of procedural due process, it is sufficient to establish the procedure as a matter of right in the trial court. If the trial court then deprives the party of said right, after the right has been established, the trial court has deprived the party of the procedural right without due process of law. For an issue to be preserved on appeal regarding the trial court's deprivation of a party's procedural right without due process of law, a condition precedent cannot be that which the trial court should already know, i.e., deprivation of a procedural right without due process may be a constitutional due process violation.

CONCLUSION

Based upon the foregoing, Petitioner-Appellant prays that the South Carolina Supreme Court grant Petitioner-Appellant's *Petition for Writ of Certiorari*, and after careful review of the questions presented, reverse and remand this case back to the Horry County Court of Common Pleas for a new trial.

Dated: April 4, 2012



Brad R. Johnson, Pro Se

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CERTIFICATE OF SERVICE

I, Brad R. Johnson, Petitioner in the above-captioned action, hereby certify that I did this date serve:

PETITION FOR WRIT OF CERTIORARI

by placing a copy of the same in a United States Postal Service mail box, postage paid, and addressed as follows:

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Thompson & Henry, P.A. (Attorneys for Lewis W. Hall)
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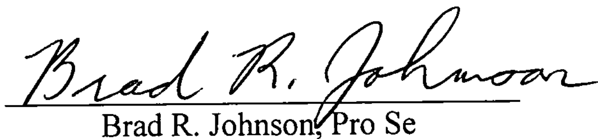
This 4th day of April, 2012.



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