

The Supreme Court of South Carolina

George Wilford Fickens, Petitioner,

v.

Medical University of South
Carolina, Respondent.

The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2006-CP-10-03714

ORDER

The South Carolina Court of Appeals filed its opinion in this matter on January 25, 2012. Therefore, under Rule 221, SCACR, any petition for rehearing had to be actually received by the Court of Appeals on or before February 9, 2012. The Court of Appeals sent the remittitur on February 10, 2012.

On February 15, 2012, the Court of Appeals received a petition for rehearing from petitioner. Petitioner was advised that no action would be taken on this petition for rehearing since the remittitur had been sent. Thereafter, petitioner filed a petition for reinstatement.

By order dated March 7, 2012, the Court of Appeals denied the petition of reinstatement.¹ In light of this denial, he was also advised that no action would be taken on his petition for rehearing.

Petitioner has now filed a notice of appeal following the issuance of the March 7, 2012, order. The notice of appeal, which is dated April 16, 2012, is hereby dismissed for several reasons.

First, decisions of the Court of Appeals are reviewed by serving and filing a petition for a writ of certiorari and an appendix. The content of these documents is specified by Rule 242(d) and (e). Petitioner has not provided proof that a copy of a petition and appendix complying with this rule has been served, and he has not filed a copy of these documents with this Court. The notice of appeal he has provided is not the equivalent of the petition and appendix required by Rule 242.

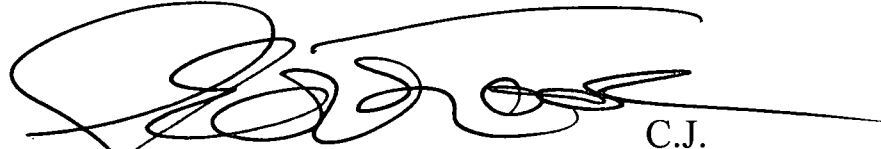
Second, petitioner has not paid the filing fee required by Rule 242(c), SCACR, nor has he filed a motion seeking to proceed without paying this fee. *See Ex parte Martin*, 321 S.C. 533, 471 S.E2d 134 (1995) (" . . . motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions."); *see also Sullivan v. South Carolina Department of Corrections*, 355 S.C. 437, 586 S.E.2d 124 (2003) ("The General Assembly is the body charged with the power to waive filing fees, and they have not created a waiver for this set of cases. Further, this is not a case involving 'fundamental rights,' so access to the courts is not constitutionally required in this case.").

Third, the order of the Court of Appeals denying the petition for reinstatement was filed on March 7, 2012. Therefore, any petition for a writ

¹ Since the remittitur had already been sent, it is assumed that the Court of Appeals treated the petition for reinstatement as a motion to recall the remittitur, the only motion that would then have been available to petitioner after the remittitur had been sent. *Cf. Wise v. South Carolina Department of Corrections*, 372 S.C. 173, 642 S.E.2d 551 (2007) (the sending of the remittitur ends appellate jurisdiction and no motion can be considered thereafter; "[t]he only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court.").

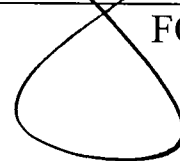
of certiorari from that order had to be served and filed by April 6, 2012. Rule 242(c). Even if the notice of appeal could be construed as being a petition for a writ of certiorari from the order of March 7, 2012, it would not be timely since it was not served and filed until April 16, 2012.

Accordingly, the notice of appeal is hereby dismissed.



C.J.

FOR THE COURT



Columbia, South Carolina

May 16, 2012

cc: Mr. George Wilford Fickens, #67671
Robin Lilley Jackson, Esquire
The Honorable Jenny Abbot Kitchings