

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY

S.C. Supreme Court

COURT OF COMMON PLEAS

J.C. NICHOLSON, CIRCUIT COURT JUDGE

2014-CP-10-305

THE STATE OF SOUTH CAROLINA

RESPONDENT.

V.

SIDNEY FIELDS # 254392

PETITIONER.

PETITION FOR A WRIT OF CERTIORARI

Sidney Fields # 254392

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CERTIFICATE OF PETITIONER

PETITIONER CERTIFIES THAT THE PETITION FOR REHEARING WAS MADE AND WAS FINALLY
ADDRESSED BY THE COURT OF APPEALS ON JULY 16, 2015 **App.47**

QUESTION PRESENTED

EVEN THOUGH NO PETITION FOR REHEARING WAS FILED ON THE COURT OF APPEALS FEBRUARY 9, 2015 FINAL ORDER, DID THE COURT OF APPEALS SEND THE REMITTITUR IN ERROR TO THE LOWER COURT IN LIGHT OF THE FACT THAT THE COURT OF APPEALS NEVER OBTAINED JURISDICTION OVER THE SUBJECT MATTER?

STATEMENT OF THE FACTS

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

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

The respondent then submitted a motion to reconsider asking Judge Young to vacate his docket Order, and in turn, issue an Order to place the habeas corpus pleading on the (PCR) docket of the court. And since the respondent wanted the habeas corpus pleading to be construed as a (PCR) application, the respondent needed the pleading to be placed on the (PCR) docket.

After Judge Young denied the respondent's motion to reconsider, the respondent failed to 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 conducted a (PCR) proceeding on the (PCR) docket of the court.

And because the proceeding was conducted on the (PCR) docket, the respondent in violation of Rule 60 Of The S.C. Circuit Court Rules Of Practice moved the court for a second time for a (PCR) dismissal. Judge Dennis who was also in violation of rule 60 granted the respondent's motion, and in turn, construed petitioner's habeas corpus pleading as a (PCR) application and denied the application accordingly.

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

On October 8, 2014 petitioner filed a notice of appeal to the S.C. Court Of Appeals to appeal the order denying the mandamus petition. **App.3 / App.4-7** petitioner also submitted a motion pursuant to Rule 240(d) SCACR asking the court of appeals to relieve him from paying a filing fee and other related cost. Rule 240(d) states that parties may be relieved from paying a filing fee in extraordinary cases. **Rule 240(d) SCACR / App.8-10**

On December 2, 2014 the Court Of Appeals issued an interlocutory Order that construed the appeal as if the appeal derived from a habeas corpus proceeding in the lower court under Rule 203(d)(1)(B)(vi) SCACR. The Order also decreed that petitioner submit within (20) days an explanation to why the lower court's determination was improper. **App.11**

And because the December 2, 2015 interlocutory Order construed the appeal as if the appeal derived from a habeas corpus proceeding in the lower court, petitioner put the court on notice by way of petition for rehearing that his appeal derived from a mandamus proceeding in the lower court. **App.4-7 / App.12-20 / App.21-24**

Petitioner also informed the court in his petition for rehearing that the court was committing procedural error by construing the appeal under Rule 203(d)(1)(B)(vi) SCACR, and that it was improper to Order petitioner to submit an explanation under this inapplicable Rule. Petitioner asked the court to vacate the December 2, 2014 interlocutory Order and to rule on his Rule 240(d) motion. **App.12-20 / App.21-24**

In it's February 9, 2015 final Order, the court not only failed to rule on petitioner's Rule 240(d) motion for a second time, the court construed petitioner's petition for rehearing as explanations under Rule 203(d)(1)(B)(vi) SCACR. **App.25**

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

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

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. **App.26**

While appealing to the S.C. Supreme Court, the (15) day period to file a petition for rehearing on the Court Of Appeals February 9, 2015 final Order had expired. On March 4, 2015 the Court Of Appeals sent the remittitur to the lower court. **App.27 / App.28**

On March 12, 2015 petitioner submitted a motion to recall the remittitur to the Court Of Appeals due to the Court Of Appeals lack of subject matter jurisdiction. **App.29-36** On May 15, 2015 the court denied the motion. **App.37** On May 26, 2015 petitioner submitted a petition for rehearing to the Court Of Appeals. **App.38-46** On July 16, 2015 by letter of the court, the court refuse to entertain the petition for rehearing pursuant to Rule 240(i) SCACR. **App.47-48**

Petitioner's petition for a writ of certiorari now follows:

ARGUMENT

EVEN THOUGH NO PETITION FOR REHEARING WAS FILED ON THE COURT OF APPEALS FEBRUARY 9, 2015 FINAL ORDER, THE COURT SENT THE REMITTITUR IN ERROR BECAUSE THE COURT NEVER OBTAINED JURISDICTION OVER THE SUBJECT MATTER WHEN IT CONSTRUED AND DISMISSED THE APPEAL AS IF A HABEAS CORPUS PROCEEDING WAS CONDUCTED IN THE LOWER COURT PURSUANT TO RULE 203(d)(1)(B)(vi) SCACR DESPITE THE FACT THAT THE LOWER COURT'S ORDER ON APPEAL DECREED THAT A MANDAMUS PROCEEDING WAS CONDUCTED IN THE LOWER COURT.

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

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)

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**

Petitioner argues that this Rule clearly pertains to parties appealing the denial of a habeas corpus proceeding conducted in the lower court. And 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 **App.25**, the Court Of Appeals never obtained Jurisdiction over the subject matter.

This is because the lower court's Order on appeal shows that the lower court conducted a mandamus proceeding. **App.4-7** And nowhere under the appellate court Rules does it state or infer that parties appealing a mandamus denial from the lower court must submit any explanation as to why the lower court's determination was improper.

Therefore, because the appeal derived from a mandamus proceeding in the lower court **App.4-7**, it was Jurisdictionally impermissible for the Court Of Appeals to Order petitioner to submit an explanation pursuant to Rule 203(d)(1)(B)(vi) SCACR **App.11** And it was impermissible for the court to construe and dismiss the appeal under Rule 203(d)(1)(B)(vi) SCACR **App.25** Thus the Remittitur was sent in error to the lower court. **App.27 / App.28**

2. Jurisdiction Of The Court Of Appeals

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 lower court's Order on appeal shows that a mandamus proceeding was conducted in the lower court. **App.4-7** However, the Court Of Appeals clearly operated outside of their Jurisdictional authority by construing and dismissing the appeal as if a habeas corpus proceeding was conducted in the lower court pursuant to Rule 203(d)(1)(B)(vi) SCACR. **App.11 / App.25** Therefore the Court Of Appeals actions was contrary to the evidence presented to the lower court, and contrary to the record on appeal. **Williamsburg** at 693

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)

Petitioner argues that the lower court's Order on appeal decrees that the lower court conducted a mandamus proceeding. App.4-7 However, the Court Of Appeals construed and dismissed the appeal as if the lower court conducted a habeas corpus proceeding pursuant to Rule 203(d)(1)(B)(vi) SCACR.

And because of this discrepancy by the Court Of Appeals, the court never obtained Jurisdiction over the subject matter. And because Jurisdiction was never obtained, there was never an appellate disposition of the lower court's mandamus Judgment on appeal. Thus the mandamus Judgment is still pending in the lower court. App.4-7

Therefore, not only was the remittitur sent in error by the Court Of Appeals, it was jurisdictionally impermissible for the lower court to accept the remittitur. Christy at 4 / App.11 / App.25 / App.27 / App.28

Petitioner further asserts that 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 over the subject matter was not conferred to the Court Of Appeals, especially when the lower court's Order on appeal clearly shows that a mandamus proceeding was conducted in the lower court. App.4-7

And even though petitioner failed to submit a petition for rehearing on the February 9, 2015 final Order, this does not relieve the Court Of Appeals from the Jurisdictional error it committed because Jurisdiction of a court over the subject matter of a proceeding is fundamental. State v. Guthrie 352 S.C. 103, 572 SE2d 309,311 (2002)

And issues related to subject matter Jurisdiction can be raised at any time. Therefore, any actions of a court with respect to a matter to which it has no Jurisdiction are void. Brown v. State 343 S.C. 342, 540 SE2d 846,848-49 (2001)

A void Judgment is one that, from it's inception, is a complete nullity and is without legal effect. Katzburg v. Katzburg 410 S.C. 184, 764 SE2d 3,5 (2014) And when the court has no right to act, Judgment by the court cannot be affirmed. Hooks v. State 353 S.C. 48, 577 SE2d 211,214 (2003)

And even though petitioner wrongly submitted the petition for rehearing on the December 2, 2014 interlocutory Order as oppose to submitting the petition on the February 9, 2015 final Order, nevertheless the petition for rehearing put the court on notice that their actions was Jurisdictionally defective. And as said earlier, Jurisdictional issues can be raised at anytime. Brown at 848-49 / App.12-20 /App.21-24

And because it was a Jurisdictional issue and the fact that petitioner put the court on notice, the Court Of Appeals should have raised this Jurisdictional matter sua sponte before it rendered it's February 9, 2015 final Order. State v. Guthrie at 311 This would have ensured an orderly administration of justice. Ness v. Eckered Corp. 566 SE2d 193,195 (2002) Therefore, the Court Of Appeals is without excuse.

3. Order Denying Motion To Recall Remittitur

In denying petitioner's motion to recall remittitur, the Court Of Appeals concluded in it's order that since petitioner failed to make a strong showing that a mistake or inadvertence was made by the appellate court, the remittitur was properly sent. The court cited State v. Keels in support of it's conclusion. **App.37 / State v. Keels 39 S.C. 553, 17 SE 802 (1893)**

The court further concluded that because petitioner failed to timely file a petition for rehearing on the February 9, 2015 final Order, the remittitur was properly sent and the Court Of Appeals no longer has Jurisdiction over the case. **App.37**

Petitioner argues that the Court Of Appeals based it's conclusion on an outdated case law which mandated that an appellant make a strong showing of a mistake or inadvertence by the appellate court. Keels at 802

However, the current case law is Wise v. S.C. Dept. Of Corrections, which states that the remittitur can be recalled when it is sent down by mistake, inadvertence, or error of the appellate court. (Wise) being the current case law mentions the word "error" but (Keels) does not. Wise v. S.C. Dept. Of Corrections 372 S.C. 173, 642 SE2d 551 (2007)

The court further concluded that the remittitur was properly sent when petitioner failed to timely file a petition for rehearing on the February 9, 2015 final Order. Petitioner argues that the court's conclusion would have been legally valid if the court had Jurisdiction over the subject matter when it rendered it's February 9, 2015 final Order.

But in truth, the record on appeal clearly shows that the Court Of Appeals never obtained Jurisdiction over the subject matter, therefore this made the court's February 9, 2015 final Order void. Thus the remittitur that was sent in accordance was sent in error regardless whether a petition for rehearing was filed on the February 9, 2015 final Order. Wise at 551

In short, if the Court Of Appeals lack of Jurisdiction over the subject matter is not a strong enough showing to recall the remittitur from the lower court, then what is? Keels at 802

And to add insult to injury, the Court Of Appeals refused to rule on petitioner's petition for rehearing pertaining to his motion to recall remittitur. The Court Of Appeals based it's conclusion on Rule 240(i) SCACR which states: The court will not entertained petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal. Rule 240(i) SCACR / App.47-48

In the instant case, petitioner argues that "ANY ACTION" by a court with respect to a matter to which it has no Jurisdiction is void. Brown v. State 540 SE2d at 848-49 (2001)

Therefore the court's conclusion using Rule 240(i) SCACR has no legal effect on the instant case because the appeal is void. As stated earlier, a void Judgment is one that, from it's inception, is a complete nullity and is without legal effect. Katzburg 764 SE2d at 5 (2014) Thus any action or Judgment by a court that lacks Jurisdiction over the subject matter cannot be confirmed. Hooks 527 SE2d at 214 (2003)

The Court Of Appeals actions in this case is simply a masquerade to conceal the fact that the appeal was never valid in the first place. In other words, the court is simply trying to construe a void appeal as being a legitimate one, in which the court continues to commit procedural mis-steps to conceal this fact. In short, the only Justifiable action the Court Of Appeals could have taken was to recall the remittitur that it sent to the lower court.

The court also concluded that the remittitur was timely issued. **App.47-48** Petitioner argues that the remittitur being timely issued is not what's in question. What's in question is the court's issuance of the remittitur in error because of the court's lack of Jurisdiction over the subject matter.

Wise v. S.C. Dept. Of Corrections 642 SE2d 551 (2007)

Conclusion

Petitioner has clearly shown in this petition for writ of certiorari that the appeal derived from a mandamus proceeding in the lower court. **App.4-7** However, the Court Of Appeals construed and dismissed the appeal as if the appeal derived from a habeas corpus proceeding in the lower court under Rule 203(d)(1)(B)(vi) SCACR.

Therefore, the Court Of Appeals not only lacked subject matter Jurisdiction over the appeal, the appeal is MOOT because the February 9, 2015 final Order under Rule 203(d)(1)(B)(vi) SCACR had no practical effect on the existing controversy. **App.25**

Furthermore, by conducting the appeal as if the appeal derived from a habeas corpus proceeding in the lower court under Rule 203(D)(1)(B)(vi) SCACR **App.11 / App.25**, there was no meaningful relief the Court Of appeals could have given petitioner under the circumstances because the appeal derived from a mandamus proceeding in the lower court. **App.4-7 / Mathis v. State Highway Dept. 260 S.C. 344, 195 SE2d 713,714 (1973)**

In short, by construing the appeal contrary to what occurred in the lower court and contrary to the record on appeal Williamsburg 627 SE2d at 693 (2006), the Court Of Appeals never obtained proper Jurisdiction over the subject matter. Thus the remittitur was sent in error to the lower court. Therefore the remittitur must be recalled. Wise 642 SE2d at 551 (2007)

Wherefore, petitioner Sidney Fields now pray that this Honorable court Order that the remittitur be recalled from the lower court and have the appeal reinstated and transferred to this court pursuant to Rule 204 SCACR for a full appellate review of the lower court's mandamus denial under Rule 240(d) SCACR. Or in the alternative, have the appeal reinstated for a full appellate review by the Court Of Appeals under Rule 240(d) SCACR. Or on it's own motion, grant any other equitable relief the court deems proper for this matter.

Respectfully Submitted,


Sidney Fields # 254392

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Date August 12, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY

COURT OF COMMON PLEAS

J.C. NICHOLSON, CIRCUIT COURT JUDGE

2014-CP-10-305

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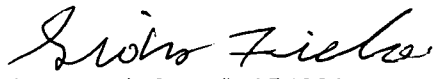
SIDNEY FIELDS # 254392

PETITIONER.

PROOF OF SERVICE

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

Date August 12, 2015


Sidney Fields # 254392

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f Record: