

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY

COURT OF COMMON PLEAS

JAMES R. BARBER, III, CIRCUIT COURT JUDGE

LOWER COURT CASE NO. 2014-CP-23-05661

APPELLATE CASE NO. 2015-000697

George Cleveland, III,

v.

APPELLANT,

GREENVILLE COUNTY SHERIFF'S

OFFICE,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE BY PROSE APPELLANT

The South CAROLINA Court of Appeals' deputy clerk V. CLAIRE ALLEN declined to file my petition for reinstatement on an September 16, 2015 letter; therefore, my instant petition for a writ of certiorari is ripe for review by this court.

2.

QUESTION PRESENTED FOR REVIEW

2-1. Did the S.C. Court of Appeals' deputy clerk V. CLAIRE ALLEN err in not filing my petition for rehearing even though the petition was filed prior to the issuance of the remittitur in my case which is in conflict with STATE V. KEELS, 39 S.C., 553, 17 S.E., 803, S.C., (1893), which held remittitur mistakenly sent must be recalled?

IN THE INTEREST OF JUDICIAL ECONOMY AND SUBSTANTIAL CONSTITUTIONAL RIGHTS,

2-2. Whether S.C. Code of Law Ann. § 24-27-130 (Inmate Litigation) is unconstitutional under the equal protection of the laws clause

1.

under the United States Constitution Fourteenth Amendment section two because I lacked the funds to pay the filing and stenographic fees to appeal my filed tort claims for losses suffered by the Greenville County Sheriff's office, but S.C. Code of Law Ann.

§ 17-27-60 require court fees, stenographic printing and other legal services paid by the state for indigent P.C.R. Applicants?

2-3. Does the (separation of powers) clause of the S.C. Const. ART. I section 8 require Circuit Court Judge James R. Barber, III's judicial power be checked by an Appellate Court judge (s) or justice (s) in his judicial decision in my case or is it one of Autocracy, i.e., one with unlimited, unchecked power?

2-4. Did the Common Pleas Court err by reasoning Rule 4 (d)(6) S.C.R.C.P. Civil Process (Government

subdivision) that the summons and complaint could not be served by regular mail, despite no requirement in the particular language to do so, and an filed affidavit indicating the date, address, name of person served, and proper postage that the summons and complaint were filed together?

3.

STATEMENT OF THE CASE:

ON October 14, 2014, my complaint and summons were filed together in the Greenville County Court of Common Pleas under the South Carolina Tort Claims Act for the following torts:

FALSE ARREST;
ASSAULT;
BATTERY, AND
FALSE IMPRISONMENT;

ON November 17, 2014, my Amended complaint was filed. ON OR AROUND November 25,

3.

2014, the Defendant filed AN motion to DISMISS introducing A number of defenses, but the only defense relevant here is: "plaintiff failed to properly serve the named defendant."

ON JANUARY 27, 2014, AN motion to dismiss hearing WAS held in the Greenville County Common Pleas Court. The Honorable JAMES R. BARBER, III, presided.

Judge BARBER heard multiple ARGUMENTS, but ZEROED in on the ARGUMENT made by the Defense that serving the Greenville County Sheriff's office by United States First-Class-Mail WAS insufficient service of process.¹

¹ My ARGUMENT WAS AND still is: First-Class-Mail serving summons AND complaint is proper to a political subdivision. more on this ARGUMENT later. I respectfully Request this court to rule on this ARGUMENT AS well.

ON APRIL 27, 2015, THE SOUTH CAROLINA COURT OF APPEALS TIMELY FILED MY NOTICE OF APPEAL, AND MULTIPLE MOTIONS, BUT MY MOTION TO PROCEED IN FORMA PAUPERIS IS RELEVANT HERE.

ON JUNE 04, 2015, THE COURT OF APPEALS DENIED MY MOTION TO PROCEED IN FORMA PAUPERIS CITING EX PARTE MARTIN, 321, S.C., 533, 471, S.E., 2d 134 (1995), SEE PETITIONER'S ATTACHED APPENDIX (HEREINAFTER P.A.A.) AT P. 1, (COURT OF APPEALS ORDER).

ON JULY 10, 2015, THE COURT OF APPEALS DISMISSED MY APPEAL BECAUSE AS THE COURT REASONED: "Appellant has failed to pay the notice of appeal filing fee" . . . , see P.A.A. At p. 2 (ORDER OF DISMISSAL).

ON OR AROUND JULY 24, 2015, I MAILED THE FOLLOWING TO THE COURT OF APPEALS FOR FILING:

Appellant's Rule 221 Petition for Rehearing;
Appellant's Affidavit in support of Petition
for Rehearing ENBANC;

Appellant's Appendix IN support of Petition
for Rehearing, AND Appellant's Proof of Service.

All filings were stamped by the court
of Appeals on JULY 27, 2015, see P.A.A. At
pp. 3-7.

On July 28, 2015, the court of Appeals issued
the REMITTUR on JULY 28, 2015 after my Petition

for Rehearing and supporting Documents
were filed, see P.A.A. At p. 8

(Copy of July 28, 2015 Remittitur signed by
Deputy Clerk V. CLAIRE ALLEN).

Also, on July 28, 2015, the court of Appeals
mailed me a letter which stated the following
relevant part:

"... the court will not entertain Petitions

FOR REHEARING unless the motion of the court has the effect of dismissing or finally deciding a party's Appeal," see P.A.A. at p. 9 (Court of Appeals letter signed by clerk of the court JENNY ABBOTT KITCHINGS)

ON A letter dated August 04, 2015, I informed the court of Appeals the following relevant part:

. . . . "All stamped received on July 27, 2015; therefore, my [sic] petition for rehearing is timely," see P.A.A. at p. 10, *id.*, at PAR. 2 (letter filed on August 10, 2015).

I could not mail the court copies of my filed petition for rehearing, *id.*, because while assigned to MacDougall Correctional, the only day staff there made copies is on Thursday, and August 04, 2015 was on a Tuesday, see Petitioner's Affidavit (hereinafter P.A.) at PAR. 2, see also P.A.A. at p. 11 at PAR. 8 (my August 04, 2015 letter).

ON A letter dated August 12, 2015, MRS. Anne R. Culbreath; Attorney of Wilson Jones Carter and Baxley, P.A. of their Greenville, S.C. office; the firm representing the defendant stated the following relevant part to the court:

... "MR. Cleveland failed to file a petition for rehearing within the parameters of Rule 221 (A) AND; therefore, the clerk's office correctly sent the remittitur "... see P.A.A. At p. 12 .

ON August 23, 2015, the deputy clerk of the court of appeals v. Claire Allen stated the following relevant part: "... "ON July 28, 2015, the court sent the remittitur to the lower court; accordingly, the court no longer has jurisdiction over this appeal. See Wise v. S.C. Dep't of Corr., 372, S.C. 173, 174, 642 S.E. 551, 551 (2007) "... see P.A.A. At p. 13 .

ON September 08, 2015, I mailed by United States Mail, my petition for leave to reinstate under Rule 231 (A) S.C.A.C.R., supporting exhibits, and proof of service, see P.A.A. At pp. 14 - 20 (filed on 9-15-15).

ON September 24, 2015, I signed for and received from my prison mail-room, a letter dated September 16, 2015. The letter from the Court of Appeals' deputy clerk, Mrs. V. Claire Allen stated the same as in the August 27, 2015 letter citing the wise court, *id.*, as the reason why my petition for reinstatement would not be filed and ruled on by an appellate judge, see P.A.A. At p. 21.

This petition for a writ of certiorari to the Court of Appeals follows.²

2. The date my envelope was stamped by the Turbeville mail-room, and the date of my affidavit was the earliest I could mail the petition out at the state of emergency prevented an earlier filing, see P.A.A. At par. 3.

4.

ARGUMENT

THE DEPUTY CLERK ERRED BY NOT FILING MY PETITION FOR REHEARING:

Deputy clerk V. CLAIRe Allen ERRED in declining to submit my petition for a Rehearing to the Appellate judge (S) by overlooking my July 27, 2015 filing date (petition for Rehearing AND other filings), id, which make clear my petition for Rehearing was timely filed.

Further, the Remittitur by her own Admission, August 27, 2015 AND September 16, 2015 letters, id, which were signed by Deputy clerk V. CLAIRe Allen that the Remittitur was sent out on "July 28, 2015," id, AN entire day AFTER my petition for Rehearing was filed: July 27, 2015.

I have suffered prejudice from MRS. Allen for not taking the time to research my filings, AND the date they were stamped has caused my case to be dismissed for being AWARE of the fifteen (15) day deadline

to file my Petition for Rehearing, pursuant to Rule 221 (A) S.C.A.C.R. And instead of S.C.A.C.R. And instead of S.C.D.C. prison officials denying me access to the courts, it's, in this case, the South Carolina Court of Appeals' Deputy Clerk V. Claire Allen is in violation of my First Amendment (Access to the Courts) and Fourteenth Amendment (Due process interest of property) of the United States Constitution, with multiple court filings that are non-frivolous, and forced to hand write all my legal documents, see P.A. At par. 4, it's a huge task in itself, but to study the Rules of the Appellate Court, and presumptively thought Deputy Clerk V. Claire Allen did too.

Mistakes happen, but over two (2) months and multiple letters to the Court of Appeals, and a Petition for Reinstatement should serve as evidence that a Judge, not the Clerk of Court staff should determine if the

deadline has indeed passed, without extraordinary reasons,

My legal fight is with the Greenville County Sheriff's office, not an court's clerk which set-up to redress my grievances, but instead, I'm in a legal fight against the entity that I'm trying to seek the guidance of setting the two (2) arguments that differ.

5. LEGAL ANALYSIS:

The South Carolina Court of Appeals' Deputy Clerk v. Claire Allen improperly compared my case with Wise v. S.C. Dept' of Corr. 372, S.C., 173, 174, 642, S.E., 2d, 551, 551 (2007), but my instant case is distinguishable from that of the Wise, *id.*, case because in Wise, he "Failed to provide proof of service with his petition to Reinstate . . ." *id.* at 551.

This court further Reasoned:

"Whenever it appears that an Appellant has failed to comply with the requirements of the S.C.A.C.R., an order of dismissal shall be issue[d], Rule 231 (A) S.C.A.C.R., id.,

In my instant case, my petition for Rehearing was timely and properly filed with the proof my proof of service on July 27, 2015, id.,

The wise court cited State v. Keels, 39, S.C., 553, 17, S.E., 803, S.C. (1893) which is the principal case Reasoned the following Relevant part:

.... "A very strong showing would be required that the Remittitur was sent down through some mistake or inadvertence on the part of the [e] court". . . see State v. Keels, id., at 803.

the court of Appeals sent the Remittitur

in my case to the lower court³ by mistake because the remittitur was sent on July 28, 2015, id, and my petition for rehearing was timely filed; consequently, the South Carolina Court of Appeals had and still have jurisdiction on my case to rule on the merits, and pending motions.

5.

JUDICIAL ECONOMY ON THE
IMPORTANT CONSTITUTIONAL
QUESTIONS AND PROCESS
OF SERVICE;

IF it pleases the court, I respectfully petition this court to hear my other legal issues since doing.... "might establish a final or nearly final disposition"...) BLACK'S LAW DICTIONARY (7th Edition 863), save judicial resources, and settle the most fundamental constitutional right I'm seeking as an indigent inmate; are the inmate litigation and P.C.R. statute unconstitutional

3. The Greenville County Common Pleas Court.

under the equal protection clause of the United States Constitution because the inmate litigation statute does not allow the state to pay court filing and stenographic fees in my tort claim against the Greenville County Sheriff's office, but the state does pay court filings and stenographic fees in a P.C.R. case if the applicant is indigent, S.C. code of LAW ANN. §§ 17-27-60 compared to 24-27-130.

The first issue is Judge BARBER's ruling that the defendant Greenville County Sheriff's office cannot be served by first-class mail, see P.A.A. at p. 22 (the February 19, 2015 filed order).

My argument then and still is: the Greenville County Sheriff's office is an governmental subdivision and not the state of South Carolina, a state officer or state agency, thus, I did not have to mail a copy to the Attorney General by certified mail.

IN FACT, 4(d)(6) S.C.R.C.P. (Governmental subdivision) states the following relevant part:

"upon a . . . county or other governmental or political subdivision . . . by delivering a copy of the summons and complaint to chief executive officer (C.E.O.). the C.E.O. was: Sheriff Steve Loftis so he was served by United States first-class mail. I filed an affidavit of service with the Greenville County Common Pleas Court indicating the date they were served, see P.A.A. at pp. 23-24."

nowhere in Rule 4(d)(6) requires the defendant be served certified mail, or that the Attorney General be served, the rules are very clear that the Attorney General be served, the rules are very clear that the Attorney General be served a copy of the summons and complaint if the state is a party, (d), (4)(A), id., when unconstitutionality

of statute is asserted (d)(4)(B), id.,
state officer or state Agency; (d)(4)(5)
id.,...

To save judicial resources and settle
this argument by the defense, I respectfully
request this court grant my petition
to hear this substantial constitutional
right under the judicial economy that
will dispose of this issue.

Finally, if it pleases the court, in my
petition for rehearing I argued "A violation
of the (separation of powers) clause of
the S.C. const. ART. I section 8 requires
the appellate court to check the judicial
power of circuit court James R. Barber,
III's decision in my case. This court can
help settle my substantial constitutional
question.

6.
CONCLUSION!

The South Carolina Court of Appeals' Deputy

V. CLAIRE ALLEN HAS MISTAKELY SENT THE REMITTUR IN MY CASE TO THE GREENVILLE COUNTY CLERK OF COURT, AND HAS FAILED TO FIX HER MISTAKE BY RECALLING THE REMITTUR SHE SENT TO THE LOWER COURT DESPITE OVERWHELMING PROOF, MY PETITION FOR REHEARING WAS SENT; ACCORDINGLY, THIS COURT SHOULD GRANT MY PETITION FOR A WRIT OF CERTIORARI.

I PRAY FOR THE FOLLOWING RELIEF:

WHEREFORE; GRANT MY PETITION FOR A WRIT OF CERTIORARI ON THE FOLLOWING QUESTION:

6-1. DID THE S.C. COURT OF APPEALS' DEPUTY CLERK V. CLAIRE ALLEN ERR IN NOT FILING MY PETITION FOR REHEARING (EVEN THOUGH THE PETITION WAS FILED PRIOR TO THE ISSUANCE OF THE REMITTUR IN MY CASE WHICH IS IN CONFLICT WITH STATE V. KEELS, 39 S.C., 553, 17 S.E., 803, S.C. (1893) WHICH HELD REMITTUR MISTAKELY SENT MUST BE RECALLED?

GRANT the following questions under the
Judicial Economy doctrine:

6-2. Whether S.C. code of LAW ANN. § 24-27-130
(Inmate Litigation) is unconstitutional under
the Equal protection of LAWS clause under
the United States Constitution (fourteenth
Amendment; section two) because I lacked
the funds to pay the filing and stenographic
fees to appeal my filed TORT claims for
losses suffered by the Greenville County
sheriff's office, but S.C. code of LAW ANN,
§ 17-27-60 require court fees, stenographic
printing and other legal services paid by
the state for indigent P.C.R. Applicants?

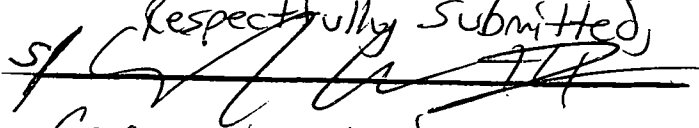
6-3. Does the (SEPARATION OF POWERS) clause
of the S.C. CONST. ART I SECTION 8 require
circuit court judge JAMES R. BARBER, III'S
judicial power be checked by an appellate
court judge (S) OR justice (S) in his judicial decision

IN MY CASE OR IS IT ONE OF AUTOCRACY
i.e. one with unlimited, unchecked
power?

6-4. Did the Common Pleas court ERR by
REASONING Rule 4 (D)(6) S.C.R.C.P., civil
PROCESS (Government subdivision) that the
SUMMONS AND COMPLAINT could not be
served by REGULAR MAIL, despite NO
Requirement in the PARTICULAR LANGUAGE
to do so, AND AN FILED AFFIDAVIT indicating
the date, ADDRESS, NAME OF PERSON SERVED,
AND PROPER postage that the SUMMONS AND
COMPLAINT were filed together.

6-5. ORDER A BRIEFING SCHEDULE FOR ALL QUESTIONS
GRANTED

6-6. ANY OTHER RELIEF THIS COURT DEEMS JUST
AND/OR PROPER.

Respectfully Submitted,

George Cleveland, III, #357770
TURBEVILLE CORRECTIONAL INST.
P.O. Box 252
20, TURBEVILLE, S.C. 29162

DATED: October 06, 2015