

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County
Edward W. Miller, Circuit Court Judge

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DEC 1 2015

S.C. Supreme Court

NORMAN J. HAYES,

Respondent,

v.

THE STATE,

Petitioner

APPELLATE CASE NO. 2015-002294

**MOTION TO STRIKE PORTION OF PETITION FOR WRIT OF CERTIORARI
AND HOLD FILING DEADLINES IN ABEYANCE**

Respondent moves to strike a portion of Petitioner's Petition for Writ of Certiorari, specifically the paragraph beginning "Although unpublished" and ending "original sentence" on page 11 of the Petition. Respondent respectfully requests that all other deadlines be held in abeyance pending resolution of Respondent's motion. This motion is based on the following:

1. The paragraph at issue contains citation and argument related to Martin v. SCDC, Op. No. 2010-UP-367 (Ct. App. July 14, 2010) (Shearhouse Adv. Sh. No. 28 at 6), which is an unpublished Court of Appeals opinion.

2. As is sometimes the case, the one-page unpublished opinion cited by Petitioner lacks the factual background and legal analysis contained in the Court of Appeal's opinion in

Respondent's case. Compare Martin v. SCDC, Op. No. 2010-UP-367 (Ct. App. July 14, 2010) (Shearhouse Adv. Sh. No. 28 at 6) with Hayes v. State, 413 S.C. 553, 777 S.E.2d 6 (2015), *rehearing denied* Oct. 8, 2015.

3. Rule 220(a), SCACR, provides in relevant part: "memorandum opinions shall not be published in the official reports and shall be of no precedential value." See also Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000), rehearing denied, certiorari granted, affirmed as modified 349 S.C. 356, 563 S.E.2d 331 (noting that Rule 220(a), SCACR, applies to unpublished opinions of the Court of Appeals).

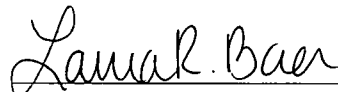
4. Rule 268(d)(2), SCACR, provides in relevant part: "Memorandum opinions and unpublished orders have no precedential value and **should not** be cited except in proceedings in which they are directly involved." (emphasis added).

5. This Court recognizes the important distinction between published and unpublished opinions. Since June 2014, this Court has issued published opinions in which it ordered the Court of Appeals to depublish eleven of its opinions. See Beckman v. Sysco Columbia, LLC, 2015 WL 7283600 (S.C. Nov. 18, 2015); Rivera v. Newton, 413 S.C. 26 773 S.E.2d 913 (2015); Horton v. City of Columbia, 413 S.C. 25, 773 S.E.2d 912 (2015); MicroClean Technology, Inc. v. Envirofix, Inc., 412 S.C. 608, 773 S.E.2d 579 (2015); Duke Energy Carolinas, L.L.C. v. South Carolina Dept. of Health and Environmental Control, 412 S.C. 125, 771 S.E.2d 635 (2015); State v. Starks, 412 S.C. 123, 771 S.E.2d 345 (2015); Spriggs Group, P.C. v. Slivka, 411 S.C. 636, 770 S.E.2d 392 (2015); State v. Mimms, 411 S.C. 428, 769 S.E.2d 242 (2015); State v. Fripp, 411 S.C. 93, 767 S.E.2d 202 (2014); Keeter v. Alpine Towers Intern., Inc., 410 S.C. 445, 766 S.E.2d 375 (2014); State v. Miller, 409 S.C. 47, 760 S.E.2d 802 (2014).

WHEREFORE, Respondent respectfully requests:

- a. That the paragraph of Petitioner's Petition citing to an unpublished opinion be stricken;
- b. That Petitioner file an Amended Petition in which the last paragraph on page 11 is removed; and
- c. That all deadlines in this case be held in abeyance pending resolution of this motion.

Respectfully submitted,



Laura R. Baer

S.C. Bar No. 101076

Appellate Defender

ATTORNEY FOR RESPONDENT

This 1st day of December, 2015.

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CERTIFICATE OF SERVICE

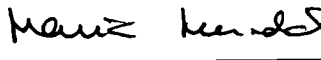
I certify that a true copy of Respondent's Motion to Strike Portion of Petition for Writ of Certiorari and Hold Filing Deadlines in Abeyance has been served upon Daniel Gourley, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of December, 2015.



Laura R. Baer
S.C. Bar No. 101076
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 1st day
of December, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.