

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SUMTER COUNTY  
Clifton Newman, Circuit Court Judge

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Opinion No. 2015-UP-395  
(S.C. Ct. App. filed August 12, 2015)

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**RECEIVED**

DEC 21 2015

**S.C. Supreme Court**

Brandon W. Hodge, ..... Petitioner,

v.

Sumter County, ..... Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## STATEMENT OF THE CASE

This action rises out of a police pursuit that occurred on February 27, 1999. According to the allegations of the Complaint, the Petitioner Brandon Hodge was a "small child" on that date and was a passenger in a vehicle driven by his father. (R. 5). The Petitioner alleges that Deputy Sheriff Anthony L. Horton engaged in a "high speed chase" of the vehicle driven by his father. (R. 6). During that pursuit, Deputy Horton allegedly lost control of his vehicle and struck the vehicle in which Hodge was a passenger, and that collision allegedly resulted in injuries to Hodge. (R. 6). The Petitioner alleges that Deputy Horton was negligent in his operation of the vehicle during the pursuit. He further alleges that "Headquarters" failed to exercise proper control over Deputy Horton during the pursuit. Lastly, he alleges the negligent failure to properly train Deputy Horton. (R. 6-8).

In his Complaint, the Petitioner brought suit only against the Respondent Sumter County. The Petitioner erroneously pled that all employees of the Sumter County Sheriff's Office, including Deputy Horton, were employed by Sumter County. (R. 5).

The Respondent Sumter County filed a Motion to Dismiss contemporaneously with the filing of its Answer. Sumter County asserted that the County is not a proper party under the South Carolina Tort Claims Act because

under South Carolina law it is well settled that a sheriff and his deputies are not county employees. (R. 13). The County's motion to dismiss was heard by Circuit Court Judge Clifton Newman on June 17, 2013. By Order filed July 16, 2013, Judge Newman granted Sumter County's motion and dismissed the County as a party-defendant. (R. 1-4).

The Petitioner then filed an appeal to the South Carolina Court of Appeals which issued an unpublished opinion on August 12, 2015, affirming the order of Judge Newman. A subsequent petition for rehearing was denied.

## ARGUMENTS

### **I. The decision of the South Carolina Court of Appeals does not warrant the issuance of a writ of certiorari.**

Rule 242(b), SCACR, sets forth general factors considered by this Court in determining whether issues require review on certiorari. The Petitioner Brandon Hodge makes no mention of these factors in his petition. Sumter County submits that, aside from the merits which are addressed below, there are several factors that demonstrate that a writ of certiorari is entirely unwarranted in this case.

First, the decision of the three-judge panel in the Court of Appeals was unanimous; there was no dissenting opinion. Second, the opinion of the Court of Appeals was unpublished and a *per curiam* opinion issued in accordance with Rule 220(b)(1), SCACR, and thus the opinion has no precedential value. Third, the decision of the Court of Appeals does not conflict with any existing decisions of this Court. To the contrary, it relies on well-established precedent from this Court. Finally, this case does not involve any issue of first impression nor any issue of great public interest or importance. The *per curiam* opinion has no precedential value, and as a result, the Court of Appeals' decision will have no application to other cases.

Based upon these considerations, there is simply no need for this Court to review the decision of the Court of Appeals.

**II. The Court of Appeals was correct in applying precedent from this Court and in ruling that employees of the Sumter County Sheriff's Office are not county employees as a matter of state law and thus Sumter County cannot be liable for the alleged negligence of a deputy sheriff.**

In his Complaint, the Petitioner Hodge alleged that Sumter County was negligent for a motor vehicle collision that occurred during a police pursuit on February 27, 1999. The Petitioner alleges that the County is liable based upon the conduct of Deputy Sheriff Anthony Horton and other unidentified employees with the Sumter County Sheriff's Office. Circuit Judge Clifton Newman ruled that the employees of the Sheriff's Office are not county employees as a matter of state law and thus the County cannot be liable for Hodge's injuries. That ruling was correctly affirmed by the Court of Appeals.

The dispositive question is an issue of law. That issue of law has previously been decided by this Court and has been reaffirmed on numerous occasions. Contrary to the Petitioner's assertions, there is no novel issue of law raised in this litigation, and it remains well settled that a sheriff and his deputies are state officials and not county officials.

In *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992), this Court examined and found persuasive prior federal court case law which had concluded that "in South Carolina sheriffs and deputies are state, not county, officials." 417 S.E.2d at 525, citing *Gulledge v. Smart*, 691 F. Supp. 947 (D.S.C. 1988), *aff'd* 878

F.2d 379 (4th Cir. 1989). As the *Cone* Court recognized, the federal district court in *Gulledge* had specifically found that "(1) the South Carolina constitution establishes the office of sheriff and the term of office, S.C. Const. art. V, § 24; (2) the duties and compensation of sheriffs and deputies are set forth by the General Assembly; (3) their arrest powers are related to state offenses; and (4) the Governor of South Carolina has the authority to remove a sheriff for misconduct and fill the vacancy." 417 S.E.2d at 525. Based upon those factors, the Supreme Court agreed with the conclusion reached by the court in *Gulledge* that a sheriff and his deputies are state, not county, officials.

This Court in *Cone* also looked at prior state court precedent including *Heath v. County of Aiken*, 295 S.C. 416, 368 S.E.2d 904 (1988), where this Court held that deputy sheriffs are not county employees and thus are not covered by county personnel policies.

Since *Cone* was decided in 1992, it has been cited favorably in several state appellate cases. Most recently, in *Edwards v. Lexington County Sheriff's Department*, 386 S.C. 285, 688 S.E.2d 125 (2010), this Court, citing *Cone*, reaffirmed that "under South Carolina law, the sheriff and sheriff's deputies are State, not county, employees." 688 S.E.2d at 127, n.1. This Court described this principle as "settled law" and declined to address what the Court described as "the legally settled distinction between a county government and a sheriff's office for

liability purposes." *Id.* See also, *Henry v. Horry County*, 334 S.C. 461, 514 S.E. 122, 123 (1999) (explaining that "[s]ince the 1800s, the Sheriff has been a constitutional officer in South Carolina").

Despite the conclusive authority from this Court, the Petitioner cites to two statutes, neither of which in actuality support his position. He cites to Section 23-13-20, which sets forth an oath for a deputy sheriff that describes the officer as a "county deputy." That oath, however, does not make the deputy a county employee rather than a state employee as a matter of law. At most, that term "county deputy" is intended to describe the deputy's scope of jurisdiction. Similarly, the Petitioner cites to Section 23-13-70 which is a statute that describes the deputy's duties to patrol the entire county. It is one of several statutes by which the General Assembly has established the duties of the sheriff and his deputies, which is precisely one of the factors cited by this Court in *Cone* in support of its finding that a sheriff and his deputies are state rather than county employees. See, *Cone*, 417 S.E.2d at 525. In sharp contrast, the Petitioner does not cite any statute that gives a county or its governing body the authority to establish the duties of a deputy sheriff.

The Petitioner also appears to suggest that the existing case law, including *Cone*, is distinguishable from the present case because *Cone* was a Section 1983 action rather than an action brought under the South Carolina Tort Claims Act.

However, that is a distinction without a difference. The Petitioner does not offer any plausible explanation as to why a sheriff or deputy sheriff should be considered a state employee for purposes of a federal cause of action but a county employee for purposes of a state tort claim. Moreover, *Edwards*, which is the most recent case reaffirming *Cone*, is a Tort Claims Act case. In short, there is no valid basis for treating a sheriff and his deputies as county employees under the Tort Claims Act and treating them as state employees for Section 1983 actions.

Furthermore, Section 15-78-70(c) of the Tort Claims Act, which governs the Petitioner's negligence action against Sumter County, specifically provides that "a person, when bringing an action against a governmental entity under the provisions of this chapter shall name as a party defendant only the agency or political subdivision *for which the employee was acting.*" S.C. Code Ann. § 15-78-70(c). (Emphasis added). Similarly, in construing this language from the Tort Claims Act, this Court explained in *Faile v. South Carolina Department of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002), that "only the entity employing the employee whose act gives rise to the claim may be sued." 566 S.E.2d at 543. Clearly, the Sumter County Sheriff's Office -- and not Sumter County -- was the proper entity under South Carolina law to be sued for the acts or omissions of the Sheriff or his deputies in conducting the pursuit at issue. Sumter County's motion to dismiss was thus properly granted.

In sum, the Petitioner has not presented a viable argument to reverse such cases as *Cone*, *Heath*, *Henry*, and *Edwards*. Thus, there is no basis for the issuance of a writ of certiorari.

**III. The Court of Appeals was correct in ruling that the employment status of a deputy sheriff under existing South Carolina law is an issue of law that may properly be adjudicated on a Rule 12 motion.**

The Petitioner further argues that the employment status of a deputy sheriff is a factual question that should not have been decided on a Rule 12 motion. The Court of Appeals correctly addressed that issue. The Court of Appeals cited to the case of *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 699 S.E.2d 699 (Ct. App. 2010), wherein the Court ruled that "on a Rule 12(b)(6) motion, the court is required to presume all well pled *facts*, not propositions of law, to be true." 699 S.E.2d at 705. (Emphasis in original). The Court in *HHHunt* further explained that a plaintiff "cannot transform an unsupported proposition of law into a statement of fact merely by stating that they are informed and believe it to be so." *Id.* In the present case, it is immaterial whether the Petitioner pled that Deputy Horton was an employee of Sumter County. The employment status of a deputy sheriff is an issue of law, and as the Court of Appeals correctly explained, issues of law are not "well pled facts" that must be accepted as true. Instead, the employment status of Deputy Horton was an issue of law that is governed by such

cases as *Cone*, *Heath*, and *Edwards*, and thus, the Petitioner's allegations contrary to law do not control and do not prevent the dismissal of this case on a Rule 12 motion. Again, a writ of certiorari is not warranted to address any issue raised by the Petitioner.

### CONCLUSION

Based on the foregoing discussion, the Respondent Sumter County respectfully requests that this Court deny the Petitioner's petition for writ of certiorari.

Respectfully submitted,

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December 21, 2015

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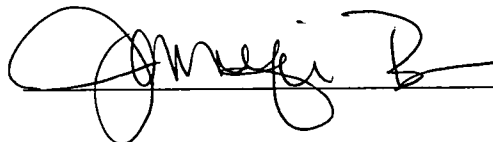
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**CERTIFICATE OF SERVICE**

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The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent Sumter County, does hereby certify that service of the **Return to Petition for Writ of Certiorari** in the above-captioned matter was made upon all counsel of record by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 21st day of December 2015:

Gary L. Cartee, Esquire  
3251 Landmark Drive - Suite 136  
North Charleston, South Carolina 29418

  
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