

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

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John C. Hayes, III, Circuit Court Judge

FEB 16 2016

S.C. SUPREME COURT

On Petition for Writ of Certiorari
To the Court of Appeals of South Carolina
Opinion No. 2015-UP-414

Appeal Case No. 2013-002580

Christopher A. Wellborn, Petitioner,

v.

The City of Rock Hill, Respondent.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF QUESTIONS ON APPEAL

- I. **THE WRIT OF CERTIORARI SHOULD BE GRANTED UNDER RULE 226(b).**
- II. **THE COURT OF APPEALS ERRED FINDING THAT THE ISSUE OF RECUSAL WAS NOT PRESERVED FOR APPELLATE REVIEW.**
- III. **DID THE COURT OF APPEALS ERR IN FAILING TO RULE ON WHETHER THE PETITIONER'S CONDUCT CAME WITHIN THE PURVIEW OF SECTION 22-3-950 OR SECTION 40-5-510 OF THE SOUTH CAROLINA CODE ANNOTATED?**

ARGUMENTS

- I. **THE WRIT OF CERTIORARI SHOULD BE GRANT UNDER RULE 226(b).**

The Respondent argues that no criteria is set forth in Rule 226(b) that justifies a granting of certiorari in this case. The criteria set forth in Rule 226(b) is neither controlling nor fully measuring the Supreme Court's discretion of power to grant the review. The criteria sets forth the character of the reasons which will be considered.

The Court of Appeals ruled that because the Municipal Court Judge's Contempt Order clearly and specifically stated how the Petitioner's conduct violated a court order, there was a sufficient record. The Court of Appeals' decision would appear to hold that a record of the proceeding in which the underlining contempt allegedly occurred is not required. This ruling is in conflict with prior decisions of the Supreme Court. In State v. King, 306 SC 335, 412 S.E. 2d 375 (S.C. 1991), the Court held that contemptuous conduct must be clearly and specifically reflected in the record. The record that the Court is referring to is the proceeding in which the underling contempt occurred. In King the Court noted that, "the record is devoid of any showing that Appellant's cursing was directed towards the complaining Judge or what words or action constituted Appellant's alleged argumentative or belligerent behavior". Because the decision of

the Court of Appeals conflicts with the holding of State v. King the criteria for a grant of certiorari is met under Rule 226(b)(3).

II. THE COURT OF APPEALS ERRED IN FINDING THAT THE ISSUE OF RECUSAL WAS NOT PRESERVED FOR APPELLATE REVIEW.

In its decision the Court of Appeals stated that the Petitioner argues that the Municipal Judge was required to recuse himself under the 6th Amendment of the United States Constitution and under Article I, Section 14 of the South Carolina Constitution are unpreserved because the Circuit Court did not rule on the issues. The Petitioner not only raised the issue of recusal in the context of the 5th and 6th Amendment but also raised the issue that the Trial Judge should have disqualified himself under Canon 3.E(1)(d)(IV) of the Code of Judicial Conduct, Rule 501 SCACR. This Rule provided that the Judge shall disqualify himself in a proceeding in which the Judge's impartiality might reasonably be questioned. The Trial Judge's impartiality may be questioned because of the Judge's knowledge he or she might be a material witness in the proceedings. As it has been previously set forth, there were no witnesses that testified against the Petitioner in the contempt proceedings. The Petitioner was found in contempt based on observations seen and heard by the Trial Judge, who also conducted the contempt proceedings. The Petitioner alleged that the Trial Judge could not be an impartial Judge of the contempt proceedings because there was a factual dispute as to what occurred between the Petitioner and the Trial Judge. The Judge could not be expected to rule against himself in factual dispute.

The Petitioner believes that there is issue of when a judge should recuse himself and a contempt proceeding when he is the witnesses to the alleged contempt and there is no underlying record. This is a novel question of law under Rule 226(b)(1) and should be addressed by this Court.

III. THE COURT OF APPEALS ERRED IN FAILING TO RULE ON WHETHER THE PETITIONER'S CONDUCT CAME WITHIN THE PURVIEW OF SECTION 22-3-950 OR SECTION 40-5-510 OF THE SOUTH CAROLINA CODE ANNOTATED.

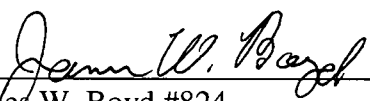
The Court of Appeals declined to address whether the Petitioner's conduct came within the purview of Section 22-3-950 or Section 40-5-510, because the Court held that the Municipal Judge has the inherent authority to hold the Petitioner for contempt. Section 22-3-950 sets forth the circumstances in which a magistrate may punish for contempt. Section 40-5-510 provides for circumstances in which the Court might find an attorney for contempt. If the Court has the authority to punish for contempt that comes outside the conduct of what is prescribed by Section 22-3-950 and Section 40-5-51, then such power make these Sections redundant and meaningless. The extent to which a court may consider conduct contemptuous covered by these sections is a novel question of law under Rule 226(b)(1).

The Respondent has raised the issue that because the Court of Appeals has declined to address the issue of Section 22-3-950 and Section 40-5-510, then only the validity of that declination can be considered on appeal. This Court can consider whether the Court of Appeals was incorrect in failing to rule on whether Section 22-3-950 and Section 40-5-510 applies and make such ruling as is appropriate.

CONCLUSION

For the all the above reasons the Petitioner prays that his Petition for a Writ of Certiorari be granted.

Respectfully submitted,


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February 12, 2016
Rock Hill, South Carolina

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PROOF OF SERVICE

I, James W. Boyd, certify that I served the within Reply to Return to Petition for Writ of Certiorari on Respondent by depositing a copies of the same in the United States mail, postage prepaid, addressed to its attorney of record, Christopher Barton, Senior Solicitor and Paula Knox Brown, Assistant Solicitor, 201 E. Main Street, 3rd Floor, Rock Hill, SC 29730.

I further certify that all parties required by Rule 226(b) to be served have been served.

February 12, 2016



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