

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

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NOV 13 2017

SC Court of Appeals

App. Case No. 2017-001460
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

Motion

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

For substantial justice affecting substantial rights, appellant respectfully submits this motion to recall remittitur due to mistake or inadvertence on the part of the appellate court clerk's office.

Facts

Pertinent facts include the following. Appellant's Petition for Rehearing was timely filed and served within 15 days of dismissal of the appeal, pursuant to the South Carolina Appellate Court Rules. In violation of Rule 221, SCACR, the remittitur was sent prior to the allotted time of 15 days. If a petition for rehearing is timely received as in this case, the remittitur shall not be sent pending disposition of the petition by the court. Rule 221(b), SCACR. Accordingly, the remittitur was sent by the clerk's office through mistake or inadvertence and should be recalled.

Standard of Review

The issue of interpretation of statutes is a question of law for the court. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). In a case raising a novel question of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference. *New York Times Co. v. Spartanburg County Sch. Dist. No. 7*, 374 S.C. 307, 309, 649 S.E.2d 28, 29 (2007). Further, Rule 240(j), SCACR, review is appeal to a panel which does not include the individual who issued the order under review and that review is de novo. Questions of law are reviewed de novo. S.C. Const. art. V, § 5. Moreover, the Rule 240(j), SCACR, motion herein is an appeal of an order by one individual and the proper legal standard is de novo. S.C. Code § 14-8-220. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single

person for self-evident reasons. See Local Rule 27(e), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided. The letter and spirit of Rule 240(j), SCACR, mandate appeal with panel review for decisions by one individual. The remittitur was sent in error and should be recalled.

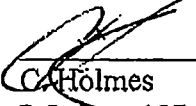
I. The remittitur was sent by the clerk's office through mistake or inadvertence and should be recalled.

Appellant's Petition for Rehearing was timely filed and served within 15 days, pursuant to the South Carolina Appellate Court Rules. In violation of Rule 221, SCACR, the remittitur was sent prior to the allotted time of 15 days. If a petition for rehearing is timely received as in this case, the remittitur shall not be sent pending disposition of the petition by the court. Rule 221(b), SCACR. Accordingly, the remittitur was sent by the clerk's office through mistake or inadvertence and should be recalled. *See Wise v. SC DOC*, 3720173, 642 551 (2007); *State v. Keels*, 39 S.C. 553, 17 S.E.2d 802 (1893).

CONCLUSION

It is fair to say that the State Constitution and our elected officials in the State legislature mandate even-handedness and fundamental fairness by the clerk's office of the Court of Appeals. For the foregoing reasons and for substantial justice affecting substantial rights, appellant respectfully requests that this Court grant this motion with abeyance.

Respectfully submitted,



C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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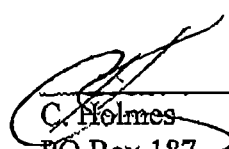
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and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the foregoing on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to Respondents on this date at 1201 Main St. #2200, Columbia, SC 29201.

Dated 11/13/17


C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

Fax: 803.734.1839

Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, SC 29201/29211

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SC Court of Appeals

Re: Holmes v. Becker et al
App. Case No. 2017-01460

Dear Jenny:

Enclosed for filing is the original with abeyance request in the above case. Also, enclosed are the following:

- 1) The filing fee,
- 2) Seven copies,
- 3) Proof of Service and a copy, and
- 4) SASE for return.

Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,