

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas  
D. Craig Brown, Circuit Court Judge

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SEP 17 2018

S.C. SUPREME COURT

STEPHEN C. STANKO, #6022,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent

Appellate Case No. 2018-001623  
Lower Court Case No. 2008-CP-22-1466.

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RETURN TO PETITION FOR WRIT OF SUPERSEDEAS

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Petitioner seeks a writ of supersedeas following his appeal of a circuit court order compelling Petitioner's production of documents in discovery. Respondent makes the return to the petition served and filed Friday, September 7, 2018, and would respectfully show unto this Court:

**I. Background**

This capital post-conviction relief action is on limited remand for a hearing "to determine if petitioner was prejudiced by [his initial post-conviction relief counsel] attorneys' lack of qualifications" pursuant to S.C. Code Ann. § 17-27-160(B) and *Robertson v. State*, 418 S.C. 505, 795 S.E.2d 29 (2016). *Stanko v. State*, App. Case No. 2017-000211, S.C. Sup. Ct. Order dated Dec. 14, 2017. Now in the discovery stage, Petitioner has filed a notice of appeal from the

circuit court's order granting Respondent's motion to compel documents pursuant to Rule 26(b)(1), SCRCF. *Stanko v. State*, App. Case No. 2018-001623 (S.C. Sup. Ct. filed Sept. 7, 2018). In initiating this action, Petitioner asserts that the notice of appeal stays the action in the circuit court pursuant to Rule 205, SCACR, and that he has filed the instant petition for writ of supersedeas in the event this Court dismisses the notice of appeal.<sup>1</sup> See *Oncology and Hematology Assoc. of S.C., LLC, v. S.C. DHEC*, 387 S.C. 380, 381, n.1, 692, S.E.2d 920, 921, n.1 (2010).

## II. Petitions for Supersedeas Generally

To determine whether a writ of supersedeas should issue pursuant to Rule 241, SCACR, “the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR. “As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order . . . .” Rule 241(a), SCACR; Rule 205, SCACR. If an order is determined immediately appealable, a petition for writ of supersedeas may be denied as unnecessary. *Lebovitz v. Mudd*, 289 S.C. 476, 479, 347 S.E.2d 94, 96 (1986).

## III. Procedural Requirements for Supersedeas

“Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay *or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal.*” Rule 241(d)(1), SCACR

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<sup>1</sup> Respondent has on this same day filed a motion to dismiss the notice of appeal on the basis that the discovery order is not subject to interlocutory appeal. Respondent has also on this same day filed a motion seeking an extension of time in which to complete the return to the petition for writ of certiorari filed in conjunction with the petition for writ of supersedeas. Respondent recognizes either court could grant a stay of proceedings if original jurisdiction is granted. See generally Rules 205 and 241, SCACR.

(emphasis added). “The petition shall contain a showing that an application for this relief was made to the lower court . . . . If no application was made to the lower court or administrative tribunal, then the petition shall state the extraordinary circumstances which made it impracticable to make such an application.” Rule 241(d)(4)(C), SCACR. A petition for writ of supersedeas also must be verified by the client. Rule 241(d)(3), SCACR.

#### **IV. This Petition Does Not Meet the Procedural Requirements**

This Court has ordered a limited remand and, in doing so, has assigned the Honorable D. Craig Brown with jurisdiction over the case. *Stanko v. State*, App. Case No. 2017-000211, S.C. Sup. Ct. Order dated Dec. 14, 2017. Rule 241(d), SCACR, instructs that the present petition first be made to Judge Brown. Only after action by the lower court does this petition for supersedeas become ripe.<sup>2</sup> Rule 241(d)(2), SCACR. No extraordinary circumstance exists warranting the petition for supersedeas’ filing in the appellate court versus the lower court with jurisdiction over the case; nothing has occurred to indicate any delay by the circuit court in acting on any request for supersedeas. *See id.*; Rule 241(c)(2), SCACR. Nor has any court passed upon whether a stay of proceedings is automatic in line with Rules 205 and 241(a), SCACR. Moreover, the petition for writ of supersedeas is not accompanied by any client verification concerning the requested stay of proceedings.<sup>3</sup> Rule 241(d)(3), SCACR.

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<sup>2</sup> Petitioner has filed a petition for writ of certiorari which seeks guidance from the appellate court regarding the first impression application of *Robertson v. State*, 418 S.C. 505, 795 S.E.2d 29 (2016). (Pet. for Cert. filed Sept. 7, 2018). Respondent submits that a lower court order regarding the propriety of supersedeas at this juncture in the remand action would create a more complete record regarding the relief requested by Petitioner.

<sup>3</sup> Respondent recognizes that this is a capital post-conviction relief action and not an ordinary civil action wherein a client may not benefit from a delay caused by a grant of supersedeas. While the Court may excuse the verification here, Respondent points out the deficiency because petitioner verification is an important part of post-conviction procedure in addition to this rule. S.C. Code Ann. § 17-27-40 (a PCR proceeding “is commenced by filing an

In light of the forgoing, Respondent submits the petition is procedurally deficient and improperly filed. Respondent has, however, consulted with counsel for Petitioner prior to the preparation of this return in order to ascertain whether Petitioner would be filing any request concerning a stay or supersedeas within the circuit court. Petitioner informed Respondent he did not intend to file anything in the lower court at this juncture.

**V. Conclusion**

WHEREFORE, Respondent makes this return to the petition for writ of supersedeas and submits that the instant petition is not ripe for determination until passed upon by the circuit court judge vested with jurisdiction over this case. Further, that the petition requires supplementation with client verification concerning the requested stay of proceedings.


Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
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September 17, 2018

ATTORNEYS FOR RESPONDENT

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application verified by the applicant"); Rule 241(d)(3), SCACR.

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PROOF OF SERVICE

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I, Caroline Scramton, certify that I have served Respondent's *Return to Petition for Writ of Supersedeas* on counsel for Petitioner by depositing one copy of same in the United States mail, postage prepaid, to counsel for Petitioner, addressed as follows:

Lindsey S. Vann  
Justice 360  
900 Elmwood Ave., Ste. 200  
Columbia, SC 29201

Henry Morris Anderson, Jr.  
Anderson Law Firm, P.A.  
265 W. Evans St.  
Florence, SC 29501

This 17th day of September, 2018.



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