

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
ROBERT E. HOOD, CIRCUIT COURT JUDGE

Case No. 2016-CP-40-6916
Appellate Case No. 2017-002577

Charles Eugene Carpenter,.....Appellant,

v.

South Carolina Department of Corrections and
The State of South Carolina, Respondents.

**INITIAL BRIEF IN REPLY TO
RESPONDENT STATE OF SOUTH CAROLINA**

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SEP 07 2018

SC Court of Appeals

Desa Ballard
Harvey M. Watson III
BALLARD & WATSON
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR APPELLANT

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SUPPLEMENT TO STATEMENT OF THE CASE

Subsequent to the filing of Appellant's Brief, but prior to the filing of the brief of Respondent State of South Carolina, the South Carolina Supreme Court issued an order denying Appellant's separate petition for original jurisdiction and habeas corpus. The order, dated June 12, 2018, also denied Appellant's motion to certify the appeal pursuant to Rule 204(b), SCACR.

ARGUMENT IN REPLY TO RESPONDENT STATE OF SOUTH CAROLINA

Denial of Appellant's separate petition in the original jurisdiction does not act as a bar to continuance of this appeal under proper application of res judicata.

As has been discussed in depth in Appellant's briefs in this appeal, Appellant contends that his petition for habeas corpus and declaratory judgment action are appropriately before the circuit court for full consideration, with that court's ability to afford the full relief requested. Appellant was content, nevertheless, for the State Supreme Court to consider the matter in its original jurisdiction if it were so inclined to do so (and as the trial judge erroneously concluded ruled must be done) in response to Appellant's petition and motion to certify the appeal. That Court has declined to do so, however, and rejected the petition that sought such an exercise in original jurisdiction.

The procedures for petitions in the original jurisdiction of the Supreme Court are set forth in Rule 245, SCACR. If such a petition is granted, only then does the matter fully commence in the Supreme Court via acceptance of the filing of a complaint and start of period during which the Respondent may file an answer. Rule 245(c), SCACR. Additionally, the Supreme Court "may provide for discovery, fact finding and/or a briefing schedule as necessary." *Id.* Acceptance of pleadings and entertainment of the facts set forth therein, or as supplemented in the Court's

discretion, would constitute adjudication on the merits, a necessary element prior to the application of res judicata. See *Plum Creek Development v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106 (1999)(“To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.”). As it stands, the Supreme Court never got that far into the substantive issues.¹

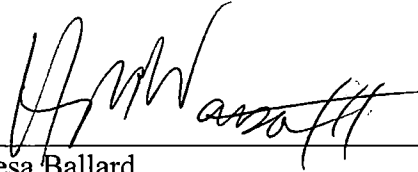
Additionally, this argument from Respondent State was of course never raised to the trial court prior to issuance of the two orders from which Appellant maintains this appeal, since issuance of the referenced Supreme Court order occurred *after* the circuit court’s final orders were completed. The designations of matter for inclusion in the Record on Appeal filed by the State at the time its brief was filed in this appeal omits reference to this recent Supreme Court order, as it should, since that order was not part of the proceedings below). Rule 210(c), SCACR (“The Record shall not... include matter which was not presented to the lower court or tribunal.”). Nonetheless, Respondent’s brief cites to that order as if it were part of the Record on Appeal. By raising this argument now, Respondent State is attempting to apply the doctrine of res judicata backwards. Rather than raising res judicata as a ground to terminate a subsequent action, Respondent is trying to quash the lower court’s earlier-in-time adjudication of the issues with a subsequent order from the Supreme Court.

CONCLUSION

The Supreme Court’s declination of the opportunity to exercise its original jurisdiction was not an adjudication on the merits. As such, and for the other reasons set forth in Appellant’s

¹ The return to the petition filed by Respondent State of South Carolina (hereafter “State”) in the Supreme Court requested time to file a “substantive return” to the petition which confirms the heart of the issues were not explored by either side as part of that petition.

opening Brief and Reply to the Respondent SC Department of Correction's brief, the trial court orders should be reversed, with remand of the matter back to the trial court for further proceedings.



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR APPELLANT

September 6, 2018

STATE OF SOUTH CAROLINA
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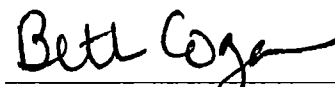
South Carolina Department of Corrections and
The State of South Carolina..... Respondents.

PROOF OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, do hereby certify that on September 6, 2018, I served a copy of the **Appellant's Initial Brief in Reply to Respondent State of South Carolina**, in the above-captioned case on the following individuals by electronic mail and by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Clay Mitchell, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

Damon Wlodarczyk, Esquire
Riley Pope & Laney, LLC
Post Office Box 11412
Columbia, South Carolina 29211



Beth Cogan, Paralegal

September 6, 2018



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph: 803.796.9299 | fx: 803.796.1066 | desaballard.com

September 6, 2018

Via U.S. Mail

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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Re: *Charles Eugene Carpenter v. SC Department of Corrections, et. al.*
Appellate Case No.: 2017-002577

Dear Ms. Kitchings:

Please find enclosed for filing an original and one copy of the **Appellant's Initial Brief in Reply to Respondent State of South Carolina and Proof of Service** in the above-referenced matter. After both have been filed, please return the clocked copies to our office in the enclosed, self-addressed, stamped envelope.

Please do not hesitate to contact our office if you should have any questions. With warm personal regards, I am,

Sincerely yours,

Desa Ballard/MCC

Desa Ballard
desab@desaballard.com

cc: *Via U.S. Mail*

Damon Wlodarczyk, Esquire – counsel for SC Dept. of Corrections
Clay Mitchell, Esquire – counsel for the Attorney General

BALLARD & WATSON, ATTORNEYS AT LAW
226 STATE STREET
WEST COLUMBIA, SC 29169

To:
Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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