THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

Ralph F. Cothran, Jr., Circuit Court Judge

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Appellate Case No. 2012-212819
Case No. 2011-CP-45-648

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Marion L. Driggers,

Appellant,

v.

Daniel Shearouse, Honorable Jean Toal, Honorable Costa Pleicones, Honorable Donald Beatty, and Honorable John Kittredge,

Respondents.

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# FINAL BRIEF OF RESPONDENTS

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## STATEMENT OF ISSUE ON APPEAL

Did the circuit court correctly dismiss the complaint when (1) the complaint fails to allege any facts establishing wrongdoing on the part of the individual justices of the Supreme Court of South Carolina, (2) Respondents are absolutely immune from suit in the performance of their judicial functions, (3) the circuit court does not have the authority to review decisions of the Supreme Court, and (4) the Supreme Court has provided Appellant with all the information he is entitled to receive regarding the denial of his petition for writ of certiorari?

## STATEMENT OF THE CASE

This case arises out of the denial of a petition for writ of certiorari. Marion L. Driggers (Appellant) is a litigant who lost his case in the South Carolina Court of Appeals and then petitioned the Supreme Court of South Carolina for a writ of certiorari. The Supreme Court denied the petition for writ of certiorari on January 6, 2011. Following the denial, Appellant wrote a series of letters to the Chief Justice of the Supreme Court of South Carolina asking the court to explain why the petition was denied. The Clerk of Court, Daniel E. (Dan) Shearouse, responded to each letter, explaining that the Supreme Court does not give reasons for denying petitions for writ of certiorari and that all the information that can be provided to Appellant has been provided. Dissatisfied with these responses, Appellant sued Dan Shearouse and the four justices of the Supreme Court who participated in the decision denying the petition (collectively, Respondents[1]), alleging that they have somehow violated the South Carolina Freedom of Information Act. (R. pp. 18 – 22.)

The complaint was filed on December 30, 2011. (*Id.*) Respondents moved to dismiss the complaint for failure to state a claim and lack of subject matter jurisdiction. (R. pp. 88 – 89.) Respondents filed the Affidavit of Dan Shearouse in support. (R. pp. 37 – 57.) The affidavit attaches the correspondence between Appellant and the Supreme Court leading up to the filing of the lawsuit. Appellant responded to the

[1] The cover page of Appellant's initial brief identifies Justice Kaye Hearn as one of the respondents. But Justice Hearn was not a party to the case below. Appellant chose not to sue Justice Hearn and cannot now add her to the case simply by including her name on the caption for the appeal. Justice Hearn is not a party to this case and her name should not appear in the caption.

motion to dismiss on February 10, 2012. (R. pp. 72 – 73.) On April 3, 2012, Respondents filed a memorandum in support. (R. pp. 23 – 36.)

A hearing was conducted on June 28, 2012. (R. pp. 2 – 17.) Appellant did not submit any counter-affidavits or other written materials to the court. After considering the materials submitted and the oral argument at the hearing, the circuit court granted the motion to dismiss. The circuit court ruled that the complaint failed to state a claim against the justices of the Supreme Court; the circuit court does not have the authority to review a denial of a petition for writ of certiorari; and the allegations in the complaint are moot because the Supreme Court has given Appellant all the information he is entitled to receive concerning his case. (R. pp. 61 – 70.) Appellant filed a motion to reconsider, and the motion was denied by order dated September 13, 2012. (R. pp. 76 – 77.) In the meantime, Appellant served the notice of appeal on August 23, 2012. (R. p. 58.)

## STANDARD OF REVIEW

"In reviewing a motion to dismiss, [the appellate court] applies the same standard of review as the trial court." *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal is improper." *Id.*

"A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint." *Id.* But "affidavits and other evidence outside the pleadings may, in certain circumstances, be considered in support of a motion to dismiss based on lack of jurisdiction." *Baird v.*

*Charleston Cnty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). "[T]the presentation of such evidence does not convert the motion to dismiss into one for summary judgment." *Id.* "Summary judgment is an adjudication on the merits of the case, whereas dismissal for lack of subject matter jurisdiction is not an adjudication on the merits." *Id.*

"Questions of law may be decided with no particular deference to the trial court." *Carolina Park Assocs.*, 400 S.C. at 6, 732 S.E.2d at 878.

## ARGUMENT

The circuit court decision should be affirmed for at least four reasons. First, the complaint fails to allege any facts showing that the justices of Supreme Court of South Carolina have done anything wrong. Second, Respondents are absolutely immune from suit in the performance of their judicial functions. Third, the circuit court does not have the authority to review the Supreme Court's denial of a petition for writ of certiorari. Fourth, this case is moot because Appellant has received all the information that he is entitled to receive concerning the denial of his petition for writ of certiorari.

In addition to the correctness of the circuit court decision, the decision should be affirmed because Appellant has failed to challenge any of the court's rulings on appeal. Rather than dispute the rulings below, Appellant has raised entirely new issues before this Court, none of which are preserved for review and all of which have been abandoned due to the lack of discussion or citation of authority. Appellant's failure to challenge the rulings of the court below means that those rulings are now the law of the case.

For these reasons, the circuit court decision should be affirmed.

## I. The circuit court correctly dismissed the complaint.

### A. The complaint does not allege facts showing that the justices of the Supreme Court have done anything wrong.

To begin, the circuit court decision should be affirmed because the complaint fails to allege any facts demonstrating that the individual justices of the Supreme Court have done anything wrong. Other than the caption, nowhere does the complaint identify the individual justices by name or say what they allegedly did to cause harm to Appellant.

"The purpose of a pleading is [to provide] fair notice to the opponent and the court." *Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). "A pleading which sets forth a cause of action . . . shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief . . . ." Rule 8, SCRCP. To survive a motion to dismiss, a complaint must allege facts entitling Appellant to relief under some theory of law. *Grimsley v. S.C. Law Enforcement Div.*, 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012).

Here, the complaint does not state any facts entitling Appellant to relief with regard to the individual justices. No allegations in the complaint have been directed against the individual justices and nowhere, other than the caption, does the complaint identify the individual justices by name. The complaint alleges simply that the Supreme Court "will not obey its own rules and release to me the information under the Freedom of Information Act (30-4-100)." But the individual justices are not the institution that is the Supreme Court. They are members of the Court, and the complaint does not explain what they did as members of the Court that would entitle Appellant to relief.

Even if the individual justices could be considered the equivalent of the Supreme Court, the complaint does not allege facts demonstrating that the justices have done anything that would entitle Appellant to relief under any theory of law. The complaint does not identify any rules that have been broken or any conduct that is inconsistent with the duties and functions of the Supreme Court. Instead, what the complaint alleges is that Appellant has not received "information regarding [his] Writ of Certiorari." (R. p. 20.) But the only information that is available regarding Appellant's petition for writ of certiorari is the fact that it was denied. There is no other information to be provided.

Given the absence of facts entitling Appellant to relief, the circuit court properly dismissed the complaint as to the individual justices.

**B. Respondents are absolutely immune from suit.**

Another reason that the circuit court order should be affirmed is that Respondents are absolutely immune from suit in the performance of their judicial functions.

"Judicial immunity is one of the basic common law tenets upon which the modern system of justice was built." *O'Laughlin v. Windham*, 330 S.C. 379, 384, 498 S.E.2d 689, 692 (Ct. App. 1998). This immunity is "vital for the continuation of an independent judiciary and for the preservation of judicial integrity." *Id.* "Judicial immunity serves as a bar to litigation against a judicial officer in certain circumstances." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192-93 (2007). Immunity also extends to clerks of court when exercising the duties and functions of their office. *Times Publ'g Co. v. Ake*, 660 So.2d 255, 257 (Fla. 1995).

There are, however, certain circumstances in which judges and other officials are not entitled to immunity. *Plyler*, 373 S.C. at 645, 647 S.E.2d at 193. "[J]udges and other officials are not entitled to judicial immunity if: (1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only." *Id.* (quoting *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 324, 566 S.E.2d 536, 541 (2002)). But "[w]hen a court undertakes any adjudicative act within its jurisdiction, regardless of allegations of malicious or corrupt motive, the act is considered a judicial function for which the court will have absolute immunity." *Plyler*, 373 S.C. at 646, 647 S.E.2d at 193 (citing *Forrester v. White*, 484 U.S. 219 (1988)).

Here, the conduct complained of in the complaint is that the Supreme Court denied Appellant's petition for writ of certiorari and did not provide Appellant with reasons for the denial. The act of ruling on a petition for writ of certiorari is within the jurisdiction of the justices of the Supreme Court, and by reviewing and ruling upon a petition for writ of certiorari, the justices were performing a judicial function for which they are absolutely immune from suit. The Clerk of Court enjoys this same level of immunity when performing functions on behalf of the Court. It is the practice of the Supreme Court to communicate denials of petitions for writ of certiorari by letter from the Clerk of Court. *See Haggins v. State*, 377 S.C. 135, 659 S.E.2d 170 (2008) ("As is the practice in this Court, parties are informed that their petitions for writs of certiorari have been denied by letter from the appellate court clerk's office.").

There are no allegations in the complaint that Respondents exceeded or acted outside of their authority. Respondents had the jurisdiction to act as they did and served

a judicial function in doing so. No exceptions to judicial immunity apply. In fact, the complaint seeks more than prospective, injunctive relief. According to the complaint, Appellant seeks to be "reimbursed in full for all of [his] expenses and losses." This is the very type of relief that is prohibited under the doctrine of judicial immunity.

Moreover, Appellant's contention that judicial immunity must be proven at trial should be rejected. A complaint may be dismissed on the basis of judicial immunity. *See Plyler*, 373 S.C. at 645, 647 S.E.2d at 192-93 (holding that the trial court did not err in granting a motion to dismiss based on common law judicial immunity). The case relied upon by Appellant, *Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012), does not provide otherwise. *Freemantle* dealt with a dismissal on the ground of legislative immunity, and the cases cited by the Supreme Court in support of its decision do not involve judicial immunity. 398 S.C. at 195-96, 728 S.E.2d at 45.

Because Respondents had the jurisdiction to act as they did and were performing a judicial function in doing so, the circuit court properly dismissed the complaint on the basis that Respondents are immune from suit.

**C. The circuit court lacks the authority to review denials of petitions for writ of certiorari or to review the conduct of the Clerk of Court in performing judicial functions on behalf of the Supreme Court.**

Another reason that dismissal was warranted in this case is that the circuit court lacks the authority to review a denial of a petition for writ of certiorari or to review the conduct of the Clerk of the Supreme Court in the performance of judicial functions on behalf of the Court.

Despite Appellant's best efforts to suggest that this is a case about the Freedom of Information Act, the complaint and Appellant's brief reveal otherwise. According to

the complaint, Appellant has requested information regarding his petition for writ of certiorari and the information has been denied. He has repeatedly asked the Supreme Court to provide him with information concerning the denial and the Supreme Court has told him time and again that no such information exists. Nonetheless, Appellant has forged on, going so far as to sue Respondents over the alleged denial of the information. Appellant continues to argue about the propriety of the denial in his brief to this Court. He argues that the petition for writ of certiorari met three of the five guidelines set forth in Rule 242, SCACR, and that two of the guidelines "were very crucial to the case." (Appellant's Br. 3.)

Courts look to the essence of the allegations, not the labels, when examining the substance of a complaint. *See Bramlett v. Young*, 229 S.C. 519, 532-33, 93 S.E.2d 873, 879-80 (1956) ("Where it is doubtful upon what theory the pleading was drawn, the Court will construe it according to the theory it deems most in accord with the facts alleged.") (quoting *Farmers' Union Mercantile Co. v. Anderson*, 108 S.C. 66, 93 S.E. 422, 424 (1917)); *Richland Cnty. v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) ("It is the substance of the requested relief that matters regardless of the form in which the request for relief was framed.") (internal quotation marks omitted).

Here, the circuit court properly saw this case for what it is: an attempt by a litigant to challenge the Supreme Court's denial of his petition for writ of certiorari. It is not about whether Respondents have complied with the Freedom of Information Act. Appellant wants to know the reasons why his petition for writ of certiorari was denied and is dissatisfied that reasons have not been provided.

The circuit court understood the essence of the allegations in the complaint and properly concluded that the circuit court did not have the authority to review decisions of the Supreme Court. *See* S.C. Const. art. V, § 11 ("The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law." ). The same is true of this Court. The Court of Appeals does not have the authority to review the Supreme Court's denial of a petition of writ of certiorari. *See* S.C. Const. art. V, § 9 ("The Court of Appeals shall have jurisdiction as the General Assembly shall prescribe by general law. The decisions of the Supreme Court shall bind the Court of Appeals as precedents.").

Likewise, neither this Court nor the circuit court has the authority to review the conduct of the Clerk of Court in the performance of judicial functions on behalf of the Supreme Court. The Supreme Court appoints and prescribes the terms and duties of the Clerk of Court, and it is the responsibility of the Supreme Court to ensure that the Clerk of Court is obeying the rules and procedures of the Supreme Court. The circuit court judges of this State and the members of the Court of Appeals do not sit as supervisors of the Clerk of Court of the Supreme Court. *See* S.C. Const. art. V, § 6 ("There shall be appointed by the Justices of the Supreme Court a Reporter and a Clerk of Court, whose terms and duties shall be prescribed by the Court."). *Cf.* S.C. Const. art. V, § 10 ("There shall be appointed by the Judges of the Court of Appeals a clerk of court, whose term and duties shall be prescribed by the Court of Appeals and shall be subject to the general administrative authority and supervision of the Chief Justice."). If Appellant has a legitimate complaint about the conduct of the Clerk of Court in the performance of

judicial functions, that complaint should be directed to the justices of the Supreme Court and not to the circuit courts.

Because the circuit courts of this State do not have the authority to review decisions of the Supreme Court and do not review or manage the conduct of the Clerk of Court in the performance of judicial functions, the circuit court properly dismissed the complaint.

**D. The allegations in the complaint are moot.**

Finally, the circuit court's dismissal of the complaint was proper because the allegations in the complaint are moot.

"Before any action can be maintained, a justiciable controversy must be present." *Sloan v. Greenville Cnty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003). "A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical, or abstract nature." *Id.* A court "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy." *Id.* (quoting *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1996)). In claims asserted under the Freedom of Information Act, "once the documents requested are produced, a justiciable controversy no longer exists." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006).

Appellant has been given all the information that he is entitled to receive regarding the denial of his petition for writ of certiorari. The Supreme Court is not required to give reasons for denying petitions for writ of certiorari. There is no statute or court rule to that effect. The statute cited by Appellant, S.C. Code Ann. § 14-8-250, does not apply to the Supreme Court. According to section 14-8-250, the Court of Appeals must provide reasons for its decisions on the merits, but need not address any points that are "manifestly without merit." S.C. Code Ann. § 14-8-250 (Supp. 2012). The Supreme Court, on the other hand, has a more expansive set of circumstances in which it is not required to provide reasons for decisions on the merits. *See* S.C. Code Ann. § 18-9-20 (1985) (outlining circumstances in which the Supreme Court need not provide reasons for affirming or reversing a judgment); *In re Memorandum Decisions by the Court of Appeals*, 322 S.C. 53, 47 S.E.2d 456 (1993) (providing that the Supreme Court may "issue memorandum opinions which do not give a reason for each issue involved in the appeal"). It is illogical to suggest that the Supreme Court must give reasons for denying a petition for writ of certiorari when there are several circumstances in which the Supreme Court need not give any reasons at all for affirming or reversing a decision on the merits.

There is nothing further to be done in Appellant's case. The petition for writ of certiorari has been denied and the case is over. Dan Shearouse has explained to Appellant time and again that there is no further information to be provided to him regarding his case and that the Supreme Court does not give reasons for denying a petition for writ of certiorari. (R. p. 38, ¶ 9; R. p. 45.) To the extent that Appellant seeks information beyond what has been provided, such as notes, memos, or communications

regarding or reflecting the deliberative process of the Supreme Court, the information is confidential and protected from disclosure. Documents regarding the Supreme Court's deliberative process are not public and are not subject to disclosure. (R. p. 40, ¶ 19.) *See Thomas v. Page*, 837 N.E.2d 483 (Ill. App. Ct. 2005) (recognizing the state judiciary's inherent authority to protect the integrity of its decision-making process and the communications between judges and the court's staff in the performance of judicial duties and official court business).

Moreover, the statute relied upon by Appellant regarding public inspection of court records, S.C. Code Ann. § 14-8-240, also does not apply to the Supreme Court. The correct statute is S.C. Code Ann. § 14-3-410, which provides that the Supreme Court "shall be a court of record, and the records thereof shall at all times be subject to the inspection of the citizens of the State or other persons interested." S.C. Code Ann. § 14-3-410 (1977). In any event, the deliberations of the Supreme Court are not part of the court record and have never have been subject to public inspection. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (explaining that "[t]he right to inspect and copy judicial records is not absolute" and "[e]very court has supervisory power over its own records and files"); *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006) (recognizing that although "[j]udicial proceedings and court records are presumptively open to the public under the common law," access may be restricted "based on a statute or the court's inherent power to control its own records and supervise the functioning of the judicial system"); *Buckley v. Shealy*, 370 S.C. 317, 635 S.E.2d 76 (2006) (suggesting that court records are items entered into the record of the court).

Finally, Appellant's contention that this is just an ordinary FOIA case and that the circuit court had a duty to hear it should be rejected. As explained above, this is not FOIA case. This is a case about a litigant who is dissatisfied that the Supreme Court has not provided reasons for denying his petition for writ of certiorari and who is trying to have other courts in this State review the denial. Even if this were a FOIA case, circuit courts do not have a duty to hear all cases brought pursuant to FOIA. The FOIA statute provides that the "court *may* order equitable relief as it considers appropriate" in an action brought pursuant to FOIA. S.C. Code Ann. § 30-4-100 (2007). Even in the context of FOIA, courts must consider well established principles of law regarding justiciability and mootness in deciding whether a case should proceed under FOIA. *See Sloan*, 369 S.C. at 26, 630 S.E.2d at 477 (providing that in a FOIA case, "once the documents requested are produced, a justiciable controversy no longer exists").

Because everything that can be provided to Appellant has been provided and this case fails to present a justiciable controversy, the circuit court properly dismissed the complaint as moot.

**II. The issues raised by Appellant have been abandoned and are not preserved for review.**

First, the issues raised by Appellant should be deemed abandoned because they are not supported by any discussion or citation of authority. *See* Rule 208(b)(1)(D), SCACR (providing that "the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority"); *Colleton Cnty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cnty.*, 371 S.C. 224, 241, 638 S.E.2d 685, 694 (2006) (holding that a conclusory statement without any supporting authority is insufficient to present any issue for the Court to review and is deemed waived); *Solomon*

*v. City Realty Co.*, 262 S.C. 198, 201, 203 S.E.2d 435, 436 (1974) (relying on the familiar rule that conclusory arguments are deemed abandoned); *State v. Jones*, 392 S.C. 647, 709 S.E.2d 696 (Ct. App. 2011) (providing that "short, conclusory statements made without supporting authority are deemed abandoned on appeal" and present nothing for review). Appellant's brief does not contain any discussion of the issues raised in the Statement of Issues on Appeal, nor does the brief provide any authority to support the propositions asserted. Accordingly, the issues raised by Appellant in his brief should be deemed abandoned.

Second, the issues raised are not preserved for review. This is the first time that Appellant has raised the issue of whether the Supreme Court of South Carolina is a public body for purposes of the Freedom of Information Act (Issue 1) or whether the Supreme Court goes into "executive session" when it reviews a petition for writ of certiorari (Issue 3). Appellant did not raise those issues below and cannot raise them for the first time on appeal. *See Herron v. Century BMW*, 395 S.C. 461, 465 719 S.E.2d 640, 642 (2011) ("It is axiomatic that an issue cannot be raised for the first time on appeal."). Similarly, the questions of whether the Supreme Court abides by state statutes (Issue 2), whether a circuit court can disregard a state statute (Issue 4), and whether a circuit court judge can refuse to hear a FOIA case and then dismiss it (Issue 5) were not raised to or ruled upon by the circuit court.

Even if the issues raised by Appellant have not been abandoned and are preserved for review, the outcome in this case would not be any different. The Supreme Court justices and the Clerk of Court enjoy absolute immunity in the performance of their judicial functions and cannot be held liable for denying a petition

for writ of certiorari. The complaint fails to state a claim against the individual justices and fails to present a justiciable controversy. Additionally, the circuit courts of this State lack the authority to review denials of petitions for writ of certiorari or conduct of Supreme Court staff in the performance of their judicial functions.

## III. The circuit court's rulings are the law of the case.

Finally, the circuit court's decision should be affirmed because the court's rulings have not been challenged by Appellant in his brief and have therefore become the law of the case. Alternatively, the decision should be affirmed because it is based on more than one ground and Appellant has not appealed all grounds.

"A ruling not challenged on appeal is the law of the case, regardless of the correctness of the ruling." *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 363 S.C. 67, 76, 610 S.E.2d 482, 487 (2005). Similarly, a decision should be affirmed if it is based on more than one ground and the appellant fails to appeal all grounds. *See, e.g., Anderson v. Short*, 323 S.C. 522, 476 S.E.2d 475 (1996).

Here, Appellant has failed to directly challenge any of the rulings of the circuit court. Appellant does not argue that the complaint states a claim against the individual justices; does not argue that Respondents are not immune from suit; does not argue that the circuit courts of this State have the authority to review decisions of the Supreme Court of South Carolina; and does not argue that the allegations in the complaint present a justiciable controversy. Instead, Appellant raises an entirely new group of issues before this Court, none of which directly challenges the rulings of the court below. Because Appellant has failed to challenge the circuit court's rulings on appeal, the rulings are now the law of the case and must be affirmed.

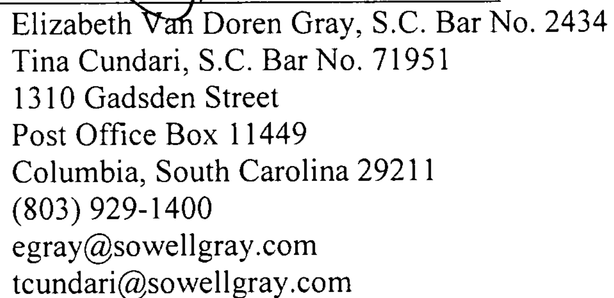
## CONCLUSION

The circuit court order should be affirmed. The circuit court correctly determined that the complaint fails to state a claim for relief and does not present a justiciable controversy. All information that can be provided to Appellant regarding the denial of his petition for writ of certiorari has been provided. Further, the circuit court correctly determined that it lacks the authority to review a denial of a petition for writ of certiorari by the Supreme Court of South Carolina and to review the conduct of the Clerk of Court in carrying out judicial functions. Finally, the circuit court correctly ruled that Respondents are absolutely immune from suit in the performance of their judicial functions.

In addition to the correctness of the rulings below, Appellant's failure to challenge the rulings on appeal means that those rulings are now the law of the case.

The circuit court decision should be affirmed.

SOWELL GRAY STEPP & LAFFITTE LLC



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Columbia, South Carolina
March 20, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

Ralph F. Cothran, Jr., Circuit Court Judge

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Appellate Case No. 2012-212819
Case No. 2011-CP-45-648

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Marion L. Driggers,

Appellant,

v.

Daniel Shearouse, Honorable Jean Toal, Honorable Costa Pleicones, Honorable Donald Beatty, and Honorable John Kittredge,

Respondents.

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**CERTIFICATE OF COUNSEL**

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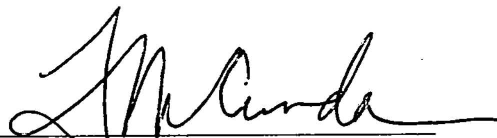
The undersigned certifies that this Final Brief of Respondents complies with Rule 211(b), SCACR.



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**PROOF OF SERVICE**

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I, the undersigned attorney of the law firm of Sowell Gray Stepp & Laffitte, LLC, attorneys for Respondents, certify that I have served the Final Brief of Respondents by placing a copy of same in the United States Mail, postage prepaid, on March 20, 2013, addressed to:

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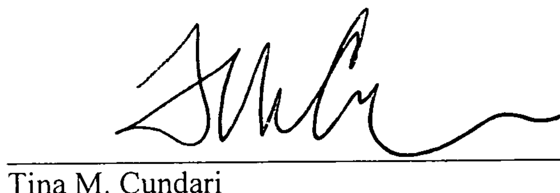

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