

The Supreme Court of South Carolina

David Scot Lynd, Petitioner,

v.

Isle of Palms, Dawn Caldwell, individually and in her capacity as an officer of the Isle of Palms Police Department, and South Carolina Law Enforcement Division, Respondents.

Appellate Case No. 2019-000339

ORDER

On March 22, 2018, the South Carolina Court of Appeals issued an order dismissing the Isle of Palms and Dawn Caldwell in her official capacity as parties in this appeal. *Lynd v. Isle of Palms*, Appellate Case No. 2016-002024. In the same order, the court of appeals denied motions to dismiss filed by Dawn Caldwell in her individual capacity and SLED and ordered Petitioner to serve and file an amended brief within thirty days. *Id.*

On May 9, 2018, this Court dismissed Petitioner's attempt to seek review of the court of appeals' March 22, 2018 order, noting his request was not properly before this Court because the court of appeals had not yet ruled on a pending petition for rehearing, so there was no final decision by the court of appeals for this Court to review.¹ *Lynd v. Isle of Palms*, Appellate Case No. 2018-000817.

After the court of appeals denied rehearing regarding its March 22, 2018 order, Petitioner filed a petition for a writ of certiorari, which this Court denied by order dated November 9, 2018. *Lynd v. Isle of Palms*, Appellate Case No. 2018-001485. On November 28, 2018, the court of appeals sent the remittitur regarding its March 22, 2018 order.

¹ The Court's May 9, 2018 order also denied Petitioner's motion to certify the appeal and denied Petitioner's request to review actions taken by the clerk of the court of appeals.

In the meantime, the court of appeals dismissed the remaining part of the appeal involving Dawn Caldwell in her individual capacity and SLED on August 24, 2018, based on Petitioner's failure to file an amended brief as directed. *Lynd v. Caldwell*, Appellate Case No. 2016-002024. Although Petitioner filed a petition for rehearing regarding this order, he did not pay the motion filing fee. The court of appeals advised Petitioner of this deficiency by letter dated September 20, 2018, and it gave Petitioner ten days to pay the motion filing fee. *Lynd v. Caldwell*, Appellate Case No. 2016-2024.

On September 27, 2018, this Court received a petition for a writ of certiorari and appendix from Petitioner seeking review of the August 24, 2018 order from the court of appeals. Because the court of appeals had not ruled on the petition for rehearing, this Court dismissed the petition for a writ of certiorari by order dated October 9, 2018. *Lynd v. Caldwell*, Appellate Case No. 2018-001754. This dismissal was made without prejudice to Petitioner's ability to timely serve and file a petition for a writ of certiorari if a *proper* petition for rehearing was ruled on by the court of appeals. *Id.*

By letter dated October 19, 2018, the court of appeals again advised Petitioner that he had to provide the required filing fee for the petition for rehearing. Petitioner was warned that the petition for rehearing would not be considered and the remittitur would be sent if the fee was not paid. Apparently no fee was received, and on November 16, 2018, the court of appeals sent the remittitur regarding the dismissal order of August 24, 2018 in *Lynd v. Caldwell*, Appellate Case No. 2016-002024, without taking action on the petition for rehearing.

On December 28, 2018, this Court received several documents from Petitioner. Since the remittitur had been sent as to all portions of the appeal, the Clerk of this Court properly advised Petitioner by letter dated January 3, 2019, that no action would be taken on these documents because appellate jurisdiction had already ended. *See Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (observing the sending of the remittitur ends appellate jurisdiction).

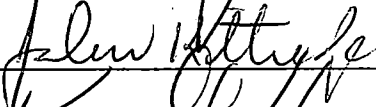
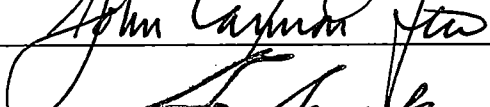
Petitioner has now sent this Court documents entitled, "Certiorari to the South Carolina Supreme Court" and "Appeal Brief," along with a motion for sanctions against the Clerk of this Court. Petitioner also seeks removal of the case to federal court. *See Lynd v. Isle of Palms*, Appellate Case No. 2019-000339.

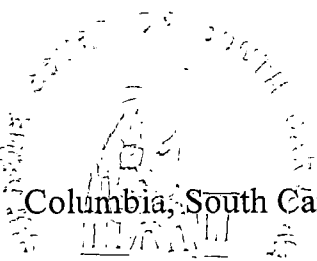
To the extent Petitioner may be seeking review of the court of appeals' order dated March 22, 2018, that request is denied, as the remittitur for that order was properly sent to the circuit court after this Court denied the petition for a writ of certiorari on

November 9, 2018. *See* Rule 221(b), SCACR; *Wise*, 372 S.C. at 174, 642 S.E.2d at 551.

To the extent Petitioner may be seeking review of the August 24, 2018 order of the court of appeals, there is no indication in the appellate case tracking system utilized by the court of appeals and this Court that the filing fee required by Rule 240(d), SCACR, was received for the petition for rehearing. Accordingly, the court of appeals properly declined to rule on that petition and issued the remittitur. *See* Rule 240(g) SCACR (stating the failure to comply with Rule 240 may be deemed an abandonment of the petition). Since no petition for rehearing has been ruled on by the court of appeals, the August 24, 2018 order is not subject to review by this Court, and the request for review of that order is denied. *See* Rule 242(a), (c), SCACR (stating this Court will review only a final decision of the court of appeals, and a decision is not final for the purposes of review by this Court until a petition for rehearing or reinstatement has been acted on by the court of appeals).

Because we find no error on the part of the Clerk of this Court, the motion for sanctions is denied. Lastly, as for Petitioner's request for removal of the case to federal court, no action will be taken on this request by this Court. Instead, if Petitioner desires removal of the case to federal court, he will need to comply with the requirements for removal contained in Title 28 of the United States Code.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.


Columbia, South Carolina
May 13, 2019

cc:

James Jordan Johnson, Esquire
David Leon Morrison, Esquire

Timothy Alan Domin, Esquire
Christopher Thomas Dorsel, Esquire
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David Scot Lynd
The Hon. Jenny Abbott Kitchings