

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

JUN 26 2019

S.C. SUPREME COURT

Appellate Case No: 2017-002236

Clarence Winfrey, Employee, .....Petitioner,

v.

Archway Services, Inc., Employer, and American Fire  
& Casualty Insurance Company, Carrier, ..... Respondents.

MOTION FOR WITHDRAWAL PURSUANT TO RULE 260(c),  
SCACR UNDER SUCH TERMS AS ARE SET BY THE  
COURT AND PETITIONER'S REQUEST TO THE COURT  
TO VACATE THE UNPUBLISHED OPINION  
OF THE COURT OF APPEALS AS PART OF  
THE TERMS SET BY THE COURT

TO: THE SOUTH CAROLINA SUPREME COURT, BRETT H. BAYNE, ESQUIRE,  
ATTORNEY FOR THE RESPONDENTS:

Pursuant to the direction of the Court and because although having agreed to a dismissal, the Respondents have not returned the signed agreement for dismissal the Petitioner is hereby filing this Motion for withdrawal of the Petition for Writ of Certiorari filed October 27<sup>th</sup>, 2017 pursuant to Rule 260(c) SCACR under such terms as are set by the Court. As part of the terms set by the Court the Petitioner requests pursuant to the Rules

that the Court vacate the Court of Appeals Unpublished Opinion that gave rise to the Petition for a Writ of Certiorari filed on October 27, 2017. Without being vacated, Petitioner's counsel verifiably believes that the Unpublished Opinion will continue to be referred to before the quasi-judicial Workers' Compensation Commission to affect the rights of injured workers for the reasons set forth below. If the Court after review of the Motion does not vacate the Unpublished Opinion as part of the terms set by the Court, the parties having agreed to a dismissal of the Petition due to the underlying settlement, the Petitioner would request that the Petition be dismissed pursuant to Rule 260(b) SCACR:

1. That this Petition for a Writ of Certiorari arises out of a single-issue hearing and Interim Order concerning reinstatement of temporary benefits and medical care where those were stopped without a hearing. Following that Interim Order issued by a SC Workers' Compensation Commissioner denying reinstatement the underlying workers' compensation claim was then Awarded by a Commissioner and the Full Commission. The Interim Order and the Award gave rise to multiple appeals arising out of that workers' compensation claim; two from the Final Award and one from the Interim Order. The current Petition for a Writ of Certiorari is from the Interim Order and is the only remaining cause of action pending in the State Courts. Prior to the recent Settlement Agreement resolving the underlying workers' compensation claim, the Award of the Commission had been affirmed on appeal by the Court of Appeals

and Certiorari had been denied by this Court; and all other appeals had been dismissed.

2. That the parties to the underlying workers' compensation claim, Petitioner and Respondents to the Petition for a Writ of Certiorari, entered into the final settlement agreement as a result of mediation which was approved by the SC Workers' Compensation Commission on April 24, 2019 as a final release and settlement agreement ending the underlying workers' compensation claim.

3. That as part of and on the basis of the settlement of the underlying workers' compensation claim, it was agreed by the parties that the parties would take such action as was necessary to dismiss all remaining State Court matters pursuant to such terms as would be fixed by the Courts before whom those were pending.

4. That as noted, the parties have agreed to a dismissal and the Petitioner contacted Respondents' counsel as to whether or not there was any objection to a request that the Unpublished Opinion, No. 2017-UP-0388 filed August 2, 2017 be vacated. Due to the birth of a new child, Respondents' Counsel could not respond until May 30<sup>th</sup> and that advised that Respondents could not consent to a withdrawal of the Unpublished Opinion.

Wherefore, pursuant to the provisions of Rule 260(c) and 261(b), SCACR the Petitioner without consent would request that the Court consider vacating the Unpublished Opinion of the SC Court of Appeals as part of the withdrawal and dismissal of this action for the following reasons:

5. This appeal involves an Interim Order based on a hearing on the sole issue of whether or not to reinstate temporary disability and medical benefits, which had been stopped without a hearing, until a Hearing and Final Award could be issued on entitlement to those benefits by the Commission. Such Interim Orders are almost never the subject of a separate appeal as it was not in this case. As set forth in the Petition for a Writ of Certiorari, the Petition involves a request to review Questions arising out of that interim Hearing and Order as to whether or not the Petitioner was denied due process of law including the inability to submit evidence on behalf of the injured worker; the admission of documentary evidence over the objection of the worker and in violation of the Commission Regulations; the denial of the right to take the deposition of an adjuster as the managing agent for the Respondents, and the Interim Order being based upon a, "belief" or, "representations" made to the Commission by Respondents' counsel and not based on evidence.

6. That, as noted, the appeal of the Interim single-issue Order resulted in an Unpublished Opinion which is supposed to be of no precedential authority. However, Unpublished Opinions are published as part of any search done for existing case law on research services such as, for example, Westlaw. A search of this Court's decision in Nicholson v. S.C. Department of Social Services, 411 S.C. 381, 769 S.E.2d (2015), cited in the

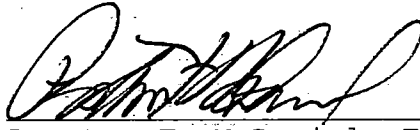
Unpublished Opinion will reveal citation to this Unpublished Opinion under "Citing References," and in reference to headnotes 1, 3 and 4.

7. That while the Appellate Court Rules specifically allow for the request that an Opinion be vacated by agreement, the Rules also provide that the Court may allow a Petitioner to withdraw the Petition for a Writ of Certiorari upon such terms as the Court fixes for its withdrawal. As noted, while the Respondents do not consent, there is no objection to the Court's consideration of Petitioner's request for the vacation of the Unpublished Opinion. Petitioner would therefore request that the Court consider as part of being allowed to withdraw the Petition for a Writ of Certiorari, that the Unpublished Opinion be vacated without the necessity of any further Motion or agreement being submitted to the Court.

WHEREFORE, the Petitioner would respectfully move for an Order of the Court allowing Petitioner to withdraw the Petition under such terms as the Court deems appropriate and after review of this Motion including vacating the Unpublished Opinion of the Court of Appeals or in the alternative, the parties having consented to the dismissal of the Petition for a Writ of Certiorari, dismissing the Petition for Writ of Certiorari from the Interim Order of the S.C. Workers' Compensation Commission by agreement.

\*\*\*\*\*SIGNATURE PAGE TO FOLLOW\*\*\*\*\*

I SO MOVE.



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Preston F. McDaniel, Esquire  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 771-7211  
Attorney for Petitioner

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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM THE APPELLATE PANEL  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

APPELLATE CASE NO. 2017-002236

Clarence B. Winfrey, Jr., Employee, ..... Petitioner,

v.

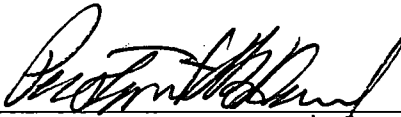
Archway Services, Inc., Employer,  
and American Fire & Casualty Insurance Company,  
Carrier, ..... Respondents.

**PROOF OF SERVICE**

I certify that I have served the **MOTION FOR WITHDRAWAL PURSUANT TO RULE 260(c), SCACR UNDER SUCH TERMS AS ARE SET BY THE COURT AND PETITIONER'S REQUEST TO THE COURT TO VACATE THE UNPUBLISHED OPINION OF THE COURT OF APPEALS AS PART OF THE TERMS SET BY THE COURT** on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to their attorney of Record:

Brett H. Bayne, Esquire  
McAngus, Goudelock & Courie  
Post Office Box 12519  
Columbia, SC 29211

Dated: 6/26/2019

  
Preston F. McDaniel  
MCDANIEL LAW FIRM  
SC Bar No. 3770  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 771-7211  
Attorney for Petitioner

**McDANIEL LAW FIRM**  
**ATTORNEYS AND COUNSELORS AT LAW**  
**1315 ELMWOOD AVENUE**  
**COLUMBIA, SOUTH CAROLINA 29201**

**Proudly representing injured workers  
for over 30 years.**

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

June 26, 2019

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**JUN 26 2019**

**S.C. SUPREME COURT**

**HAND DELIVERED**

The Honorable Daniel E. Shearouse  
Clerk of Court  
SC Supreme Court  
1231 Gervais Street  
Columbia, South Carolina 29211

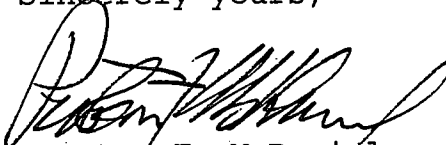
**RE: Clarence Winfrey v. Archway Services, Inc.**  
**Appellate Case No.: 2017-002236**  
**Motion for withdrawal pursuant to Rule 260(c),**  
**SCACR under such terms as are set by the Court and**  
**Petitioner's request to the Court to vacate the**  
**Court of Appeals' Unpublished Opinion as part**  
**of the terms set by the Court**

Dear Mr. Shearouse:

Pursuant to the direction of the Court, please find attached my Motion to withdrawal of the Petition under such terms as are set by the Court or to dismiss the Petition based on the agreement of the parties under Rule 260(c). As set forth in the Motion, I am requesting, as part of the terms of withdrawing the Petition, that the Court vacate the Unpublished Opinion of the South Carolina Court of Appeals. Also, as set forth in the Motion, I have not received the signed Consent Agreement to Dismiss back from Respondents' Counsel. The appropriate filing fee is enclosed along with a Proof of Service on Respondents' Counsel, which I am also forwarding by email.

As always, I appreciate all the courtesies and kindnesses shown to me by the Court in this and all matters and look forward to receiving either an Order withdrawing the Petition on such terms as set by the Court or an Order of Dismissal.

Sincerely yours,

  
Preston F. McDaniel

PFM/rmt/kth  
Enclosures

cc: Brett H. Bayne, Esquire (Via email and US Mail)