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Jul 17 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO CHARLESTON COUNTY  
HONORABLE G. THOMAS COOPER JR., CIRCUIT COURT JUDGE

THE CHARLESTON COURT OF COMMON PLEAS

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APPELLATE CASE NO. 2019-000398

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SEQUOIA MCKINNON,

PETITIONER

Vs.

STATE OF SOUTH CAROLINA,

RESPONDENT

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AFFIDAVIT OF FACTS GIVING JUDICIAL NOTICE; MOTION  
TO STAY AND OR HOLD IN ABEYANCE CASE 2019-000398;  
MOTION TO CHALLENGE THE S.C. SUPREME COURT'S  
JURISDICTION AND MOTION TO MOTION THEREFOR

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ALSO IN RE: TO PCR CASE NO. 2020-CP-10-2523 ET. AL.,

TO: THE S.C. SUPREME COURT,  
THE S.C. ATTORNEY GENERAL,  
THE APPELLATE WANDA H. CARTER,  
THE CHARLESTON COUNTY COURT OF COMMON PLEAS ET. AL.,

HERE THE COURT AND PARTIES WILL FIND:

(A) A COPY OF EXHIBIT, "2020-CP-10-2523"

THE PETITIONER GIVES THE S.C. SUPREME COURT AND ALL PARTIES JUDICIAL NOTICE. A SUBSEQUENT PCR HAS NOW BEEN FILED IN THE CHARLESTON COUNTY COURT OF COMMON PLEAS ESTABLISHING CASE 2020-CP-10-2523. DUE TO THIS RECENT FILING I AM RESPECTFULLY PETITIONING AND OR MOTIONING BEFORE THE S.C. SUPREME COURT TO STAY AND OR HOLD IN ABEYANCE CASE 2019-000398. THE PETITIONER SEEKS THIS FOR THE FOLLOWING REASONS:

(1) IN REGARD TO THE FINAL ORDER ISSUED IN CASE 2017-CP-10-2656, THERE IS NOW CONSTITUTIONAL CHALLENGE TO THE ORDER'S VALIDITY WHICH IS JURISDICTIONAL IN NATURE AS WILL BE ELABORATED ON FURTHER IN THE AMENDED PCR FORTHCOMING UNDER CASE 2020-CP-10-2656 SINCE THE FINAL ORDER ISSUED IN CASE 2017-CP-10-2656 BY THE LITIGATION INTENDED TO BE PRESENTED WOULD BE DEEMED UNCONSTITUTIONAL AND VOID AND WILL BE AS IF THERE WERE NO FINAL ORDER ISSUED AT ALL. THIS WOULD AUTOMATICALLY CONSTITUTE A CHALLENGE TO THE S.C. SUPREME COURT'S JURISDICTION UNDER CASE 2019-000398. THE FINAL ORDER ISSUED IN CASE 2017-CP-10-2656 IS A JURISDICTIONAL PREREQUISITE TO THE S.C. SUPREME COURT ENTERTAINING JURISDICTION UNDER CASE 2019-000398. THUS, ANY RULING COMING OUT OF CASE 2020-CP-10-2523 WOULD HAVE A DIRECT IMPACT ON ANY DECISION THAT WOULD POTENTIALLY COME OUT OF CASE 2019-000398 WHERE THE CONSTITUTIONAL ACTION INTENDED TO BE ARGUED WOULD VOID THE S.C. SUPREME COURT'S JURISDICTION AB INITIO, FORTMILL v. FITZGERALD, S.E.2d., 2014 WL 7339453(S.C.App.2014); CALDWELL v. WINQUIST, 402 S.C. 565, 741 S.E.2d.

583(S.C.App.2013); MARTIN-EVANS v. CHESAPEAKE APPALACHIA, LLC, F.Supp.3d., 2015 WL 6681185(N.D.Va.2015); BARTELS BY AND THROUGH BARTELS v. SABER HEALTH CARE GROUP, LLC., 880 F3d. 668(4th.Cir.2018).

(2)THE PETITIONER IS AWARE THAT IN ADDRESSING THE ISSUE OF SUBJECT MATTER JURISDICTION. IT CAN BE BROUGHT UP FOR THE FIRST TIME ON APPEAL. BUT THERE ARE MORE CRUCIAL ELEMENTS AND OR FACTS THAT EXIST IN THIS CASE, THAT SUCH CIRCUMSTANCES AS THEY PRESENT THEMSELVES, ALSO IN FUNDAMENTAL FAIRNESS TO THE STATE, AND TO GIVE THEM A FULL, FAIR AND PROPER OPPORTUNITY TO RESPOND. IT WOULD BE MORE APPROPRIATE TO RAISE THE CLAIM IN THE PCR COURT FIRST. THIS IS ALSO DUE TO THE FACT THAT ONE OF THE CLAIMS BEING ASSERTED IS FRAUD UPON THE COURT. UNDER THE INDEPENDENT ACTION RULE. IT IS MORE APPROPRIATE TO BRING THE ACTION IN THE COURT WHERE THE FRAUD UPON THE COURT IS ALLEGED TO HAVE OCCURRED AND IN THIS CASE, IT IS THE PCR COURT. IN SUCH, IT WOULD BE MORE PROPER TO FILE IN THE PCR COURT AND STAY THE S.C. SUPREME COURT CASE UNTIL THE MATTERS ARE ADDRESSED IN THE LOWER COURT WHERE ANY SUCH RULING WOULD OF COURSE HAVE A DIRECT IMPACT ON ANY RULING THAT MAY POTENTIALLY EMERGE FROM CASE 2019-000398 DUE TO THE VIOLATIONS OF DUE PROCESS THAT HAS OCCURRED BEFORE THAT COURT, ASTERBADI v. LEITESS, 176 Fed. Appx' 426 CA4 (Va.2006); ALADEKA, 2010 WL 4054267 (2010); SOUTH CAROLINA DEPT. OF SOCIAL SERVICES v. TRAN, 418 S.C. 308, 792 S.E.2d. 254(S.C.App.2016); Mr.T v. MRS.T, 378 S.C. 127, 662 S.E.2d. 413(S.C.App.2008); S & E CONTRACTORS, INC. v. U.S., 406 U.S. 1, 92 S.Ct. 1411(U.S.1972); COX v. FLEETWOOD HOMES OF GEORGIA, INC., 334 S.C. 55, 512 S.E.2d. 498(S.C.1999); ROBINSON v. ESTATE OF HARRIS, 388 S.C. 630, 698 S.E.2d. 222(S.C.2010); WELLS FARGO BANK N.A. v. FARAG, 2016 WL 2944561(N.C.2016); ELDERBERRY OF WEBER CITY, LLC. v. LIVING CENTERS-SOUTHEAST, INC., --F3d.--, 2015 WL 4430836 CA4 (Va.2015); WELLS FARGO BANK N.A. v. H.M.H. ROMAN TWO N.C., LLC., 859 F3d. 295(4th.Cir.2017); MOSLEY v. UNITED STATES, 2018 WL 1187778 (W.D.N.C.2018); MILFORD v. MIDDLETON, 2018 WL 348059 (DSC.2018).

INSOMUCH, SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY

TIME, AT ANY STAGE, EVEN AFTER A FINAL ORDER HAS BEEN ISSUED, EVEN FOR THE FIRST TIME ON APPEAL AND THE S.C. SUPREME COURT SHALL NOT FAIL TO TAKE NOTICE WHERE THIS JURISDICTIONAL CHALLENGE, DUE TO THE CONSTITUTIONALITY OF THE ORDER EMERGING FROM CASE 2017-CP-10-2656 BEING CALLED INTO QUESTION, MUST BE ADJUDICATED UNDER THE DUE PROCESS PRONG TO SUBJECT MATTER JURISDICTION. IN SUCH, THE COURT BEING GIVEN JURISDICTION BY STATUTORY PROVISIONS DOES NOT PREVENT REVIEW WHERE THESE MATTERS ARE BEING ARGUED UNDER THE DUE PROCESS PRONG TO SUBJECT MATTER JURISDICTION, HILL v. S.C. DEPT. OF HEALTH AND ENVIRONMENTAL CONTROL, 389 S.C. 1, 698 S.E.2d. 602(S.C.2010); GURNEY v. CONAN, LIEBOWITZ & LATMAN P.C., F.Supp.3d., 2015 WL 4460868 (S.D.N.Y.2015); STEEL CO. v. CITIZENS FOR A BETTER ENVIRONMENT, 523 U.S. 83, 118 S.Ct. 1003 (U.S.1998); TAMM v. CINCINNATI INSURANCE COMPANY, 2020 WL 60932(S.D.N.Y.2020); CHASE v. ANDEAVOR LOGISTICS L.P., 2019 WL 5847879 \* 2 W.D.Tex.; UNITED STATES v. VALLADARES, 2019 WL 4888629 \* 1, W.D.Tex.; ARBAUGH v. Y & H CORP., 546 U.S. 500, 126 S.Ct. 1235(U.S.2006); STEVENS E. HECKER, PLAINTIFF v. THE STATE OF WASHINGTON, DEFENDANT, 2020 WL 134168 (Fed.Cl.2020); HICKS v. HEART OF HOSPICE, LLC., 2019 WL 6255496 (N.D.Miss.2019); KRIKORIAN v. FORD MOTOR COMPANY, 2019 WL 7042939(S.D.Ala.2019); HENDERSON v. SHINSEL, 131 S.Ct. 1197, 1198+ U.S.; BURGESS v. UNITED STATES, 2019 WL 7293400 \* 1 D.Md.; BARNES v. GIVENS, 2019 WL 5579543, \*3, W.D.Tex.; WALLS v. BOEING COMPANY, 2019 WL 4931365, \* 2 DSC.; JEFFERS v. J.P. MORGAN CHASE & CO., 2019 WL 6255311, \* 1, S.D.Tex.; ANTHONY W. HALL, PLAINTIFF v. FRENKEL, LAMBERT,..., 2020 WL 136658, \* 2, E.D.N.Y.; DAVIS v. PALUMBO, 2019 WL 6915949, \* 1 W.D.MO.; SORRINGWIND ENERGY, LLC. v. CATIC U.S.A. INCORPORATED,--F3d.--, 5TH. Cir.(Tex.); 460 S. LAKE AVENUE, LTD. v. APPLETON, 2019 WL 7184737, \* 1 C.D.Cal.; SLAYTON v. JOHNSON AND JOHNSON, 2019 WL 7208414, \* 1 C.D.Cal.

(3) INASMUCH, THE UNITED STATES SUPREME COURT RECENTLY ADDRESSED THE PETITIONER'S CONSTITUTIONAL RIGHTS IN PART WHERE IT DETERMINED THAT A DEFENDANT IS CONSTITUTIONALLY GUARANTEED PERSONALLY THE RIGHT TO MAKE HIS DEFENSE, SPEAKS TO THE

"ASSISTANCE" OF COUNSEL, AND AN ASSISTANT, HOWEVER EXPERT, IS STILL AN ASSISTANT AND THE DEFENDANT'S CONSTITUTIONAL RIGHT OF AUTONOMY CANNOT BE DISTURBED OR IT WOULD CREATE A CONSTITUTIONAL STRUCTURAL ERROR WHICH WOULD VOID THE COURT'S JURISDICTION FOR SUCH UNCONSTITUTIONAL ACTION. SINCE BY THE INDEPENDENT ACTION RULE FOR FRAUD UPON THE COURT IT WOULD BE APPROPRIATE TO FILE THE CASE IN THE COURT WHERE THE FRAUD ALLEGEDLY OCCURRED, COUPLED BY THE PETITIONER'S CONSTITUTIONAL RIGHT OF AUTONOMY WHERE HE CHOOSES BY THAT RIGHT TO EXERCISE THAT INDEPENDENT ACTION IN THE PCR COURT. THAT CONSTITUTIONAL RIGHT OF AUTONOMY CANNOT BE DISTURBED OR DENIED OR IT WOULD VOID THE S.C. SUPREME COURT'S JURISDICTION FOR SUCH UNCONSTITUTIONAL ACTION, BROADNAX v. STATE, 2019 WL 1450399 (Tenn.2019); DAWN v. UNITED STATES, 411 F.Supp.3d. 90, 98 D.Mass.; McCOY v. LOUISIANA, 138 S.Ct. 1500, 200 L.Ed.2d. 821(U.S.2018).

IN CONCLUSION, BY THE AFOREMENTIONED, THE PETITIONER RESPECTFULLY CHALLENGES THE S.C. SUPREME COURT'S JURISDICTION AND RESPECTFULLY SEEK THAT CASE 2019-000389 BE STAYED AND OR IN THE ALTERNATIVE, IT BE HELD IN ABEYANCE UNTIL THE MATTERS IN THE PROCESS OF BEING AMENDED IN CASE 2020-CP-10-2523 COME TO THEIR CONCLUSION AND THAT ORDER, IF NECESSARY, IS THEN APPEALED AND BROUGHT BEFORE THIS COURT. THE PETITIONER PRAYS FOR THIS RELIEF, TO INCLUDE ANY AND ALL OTHER RELIEF THE COURT WOULD DEEM JUST, FAIR AND PROPER, 24 SENATORIAL DIST. REPUBLICAN COMMITTEE v. ALCORN, 820 F3d. 624 (4th.Cir.2016); CALSON v. SOUTH CAROLINA STATE PLASTERING, LLC., 404 S.C. 250, 743 S.E.2d. 868(S.C.App.2013); LIBERTY BUILDERS, INC. v. HORLERT, 336 S.C. 658, 521 S.E.2d. 749(S.C.1999); COX v. WOODMEN OF WORLD INSURANCE CO., 347 S.C. 460, 556 S.E.2d. 397(S.C.App.2001); DOE v. DUNCAN, S.E.2d., 2008 WL 9846820 (S.C.App.2008); THOMPSON v. WATTS, 278 S.C. 230, 294 S.E.2d. 245 (S.C.App.1982); PACE v. DiGUGLIELMA, 544 U.S. 408, 416 (2005); JACKSON v. ROE, 425 F3d. 654 (9th.Cir.2005); BLAKE v. BAKER, 745 F3d. 977 (9th.Cir.2014); MARTINEZ v. RYAN, 132 S.Ct. 1309 (2012); RUNER v. CRAWFORD, 415

415 F.Supp.2d. 1207 (D.Nev.2006); MDC INNOVATIONS, LLC. v. NORTHERN,--Fed. Appx'--, 2018 WL 1129607 (4th.Cir.2018); HAMER v. NEIGHBORHOOD HOUSING SERVICES OF CHICAGO, 138 S.Ct. 13, 199 L.Ed.2d. 249(U.S.2017); MYLES v. DOMINOS PIZZA, LLC., 2017 WL 238436 (D.C.Miss.2017).

SEQUOIA DONTEL MCKINNON  
#368688 F3B RM. 2216  
LEE C.I. 990 WISACKY HWY.  
BISHOPVILLE, S.C. 29010

*Sequoia McKinnon*

JUNE 25, 2020

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO CHARLESTON COUNTY  
HONORABLE G. THOMAS COOPER JR., CIRCUIT COURT JUDGE

THE CHARLESTON COURT OF COMMON PLEAS

---

APPELLATE CASE NO. 2019-000398

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SEQUOIA MCKINNON,

PETITIONER

Vs.

STATE OF SOUTH CAROLINA,

RESPONDENT

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**AFFIDAVIT OF SERVICE**

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I, SEQUOIA D. MCKINNON, DO HEREBY CERTIFY, THAT I HAVE MAILED AND OR SERVED A COPY OF AN AFFIDAVIT OF FACTS GIVING JUDICIAL NOTICE; MOTION TO STAY AND OR HOLD IN ABEYANCE CASE 2019-000398; MOTION TO CHALLENGE THE S.C. SUPREME COURT'S JURISDICTION AND MOTION TO MOTION THEREFOR, ON THE S.C. SUPREME COURT P.O. BOX 11330 COLUMBIA, S.C. 29211, THE S.C. ATTORNEY

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JUN 29 2020  
APPELLATE DEFENSE

GENERAL P.O. BOX 11549 COLUMBIA, S.C. 29211, ATTORNEY WANDA H. CARTER P.O. BOX 11589 COLUMBIA, S.C. 29211-1589 AND THE CHARLESTON COUNTY CLERK OF COURT 100 BROAD STREET SUITE 106 CHARLESTON, S.C. 29401-2258, BY U.S. MAIL POSTAGE PREPAID, BY DEPOSITING IT IN THE INSTITUTION MAILBOX ON JUNE 26, 2020.

SEQUOIA DONTEL MCKINNON  
#368688 F3B RM. 2216  
LEE C.I. 990 WISACKY HWY.  
BISHOPVILLE, S.C. 29010

*Sequoia McKinnon*

JUNE 26, 2020



**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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**Jul 17 2020**

**SC Court of Appeals**

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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

July 17, 2020

The Honorable Daniel E. Shearouse  
Clerk of Court  
The South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

Re: The State v. Sequoia McKinnon  
Appellate Case No. 2019-000398

Dear Ms. Kitchings:

Please find enclosed the pro se petition for writ of certiorari that Mr. McKinnon wishes to file. Petitioner inadvertently mailed this to our office.

If you have further questions, do not hesitate to contact me.

Sincerely,

Wanda H. Carter  
Deputy Chief Appellate Defender

WHC/sl

Enclosure

cc: Benjamin Limbaugh, Esquire