

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Jun 23 2021**

**S.C. SUPREME COURT**

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
APPELLATE PANEL

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Appellate Case No. 2021-000453  
W.C.C. File Nos. 1322451, 1319203, 1420487

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Terry Capone, ..... Petitioner,

v.

City of Columbia, Employer, and  
Companion Third Party Administrator, LLC, Carrier, ..... Respondents.

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**RETURN OF RESPONDENTS TO PETITION FOR WRIT OF *CERTIORARI***

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Pursuant to Rule 242(f), SCACR, Respondents City of Columbia, Employer, and Companion Third Party Administrator, LLC, Carrier, respectfully submit this Return in opposition to the Petition for Writ of *Certiorari*.

### **STATEMENT OF THE CASE**

Appellant *pro se* Terry Capone, Claimant *pro se* below (“Capone”), sought workers’ compensation benefits via three separate claims: (1) WCC File Number 1319203 for re-injury of his hands and wrists; (2) WCC File Number 1322451 for aggravation of a psychological injury; and (3) WCC File Number 1420487 for re-injury of his toe. *See* Forms 50, Employee’s Request for Hearing, attached collectively as Exhibit A to Respondents’ Motion to Dismiss Appeal filed May 8, 2019, in Appellate Case No. 2019-000369. Those claims were heard before Single Commissioner Gene McCaskill on August 21, 2015, and the Commissioner’s Decision and Order denying benefits on these claims was filed December 2, 2015. *See* December 2, 2015 Decision and Order, attached as Exhibit B to Respondents’ Motion to Dismiss Appeal filed May 8, 2019, in Appellate Case No. 2019-000369. Capone did not file a Form 30, Request for Commission Review, challenging Commissioner McCaskill’s Order denying benefits.<sup>1</sup> Instead, more than two years later, on or after February 20, 2018, Capone filed his Notice of Motion and Motion Relief [sic] to Alter, Amend, Set Aside Judgment, Order or Proceeding under Rule 60(A) (B) [sic] and/or S.C. Code 1-23-380. *See* Notice of Motion and Motion, attached as Exhibit E to Respondents’ Motion to Dismiss Appeal filed May 8, 2019, in Appellate Case No. 2019-000369.

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<sup>1</sup> Capone also filed successive Forms 50, Employee’s Request for Hearing, pertaining to the same claims denied by the December 2, 2015 Decision and Order. *See* Successive Forms 50 (WCC File Nos. 130203, 1322451, and 1420487) attached collectively as Exhibit C to Respondents’ Motion to Dismiss Appeal filed May 8, 2019, in Appellate Case No. 2019-000369. These Forms 50 were denied on the basis of *res judicata* via Decision and Order filed March 27, 2018. *See* March 27, 2018 Decision and Order, attached as Exhibit D to Respondents’ Motion to Dismiss Appeal filed May 8, 2019, in Appellate Case No. 2019-000369.

That motion was denied via Administrative Order filed March 27, 2018. *See* March 27, 2018 Motion Order, attached as Exhibit F to Respondents' Motion to Dismiss Appeal filed May 8, 2019, in Appellate Case No. 2019-000369.

Following the denial of his motion to alter or amend judgment, Capone filed a Form 30, Request for Commission Review, dated April 10, 2018, seeking review of the March 26, 2018 Order dismissing his claims as barred by *res judicata*. *See* Form 30, Request for Commission Review, attached as Exhibit G to Respondents' Motion to Dismiss Appeal filed May 8, 2019, in Appellate Case No. 2019-000369. Capone's Form 30 was "Dismissed as Interlocutory" via administrative order dated June 18, 2018. *See* June 18, 2018 Order, attached as Exhibit H to Respondents' Motion to Dismiss Appeal filed May 8, 2019, in Appellate Case No. 2019-000369. Capone filed his Notice of Appeal in the South Carolina Court of Appeals on or about July 23, 2018 *See* Appellate Case No. 2018-001364. The Court of Appeals dismissed Capone's appeal as interlocutory via Order filed September 20, 2018, issued the Remittitur October 9, 2018, and denied Capone's request to recall the Remittitur and reinstate his appeal via Order filed November 2, 2018. The Court also declined to consider Capone's subsequent motion to reconsider via correspondence dated November 15, 2018.

Following issuance of the Remittitur, the Appellate Panel of the South Carolina Workers' Compensation Commission issued its March 1, 2019 Decision and Order. *See* Exhibit I to Respondents' Motion to Dismiss Appeal filed May 8, 2019, in Appellate Case No. 2019-000369. In that Decision and Order, the Appellate Panel fully and unanimously affirmed the single commissioner's prior determination that Capone never appealed the December 2, 2015 Order determining he was not entitled to further benefits for the claims asserted in WCC File Nos. 1319203, 1322451, and 1420487 and that Capone presented no evidence of any mental condition

that would have prevented him from filing a timely Form 30, Request for Commission Review. Further, the Full Commission noted Capone's acknowledgment that "he did not appeal the Decision and Order. . . ." of the single commissioner. *See* Dec. 2, 2015 Order, attached as Ex. B. to Respondents' Motion to Dismiss Appeal filed May 8, 2019, in Appellate Case No. 2019-000369, p. 9, ¶ 4) In addition, the Appellate Panel ordered that further filings by Capone related to these claims shall be administratively dismissed and that Respondents "shall be relieved of any obligation to respond to further filings by [Capone] related to [WCC File Nos. 1319203, 1322451, and 1420487]." (*Id.*, p. 10)

Notwithstanding the Appellate Panel's conclusion that the unappealed single commissioner's order established the law of the case, as well as his admitted failure to seek timely review of that order, Capone filed a second Notice of Appeal in the South Carolina Court of Appeals on or about March 7, 2019. *See* Appellate Case No. 2019-000369. During the pendency of the appeal, Capone received at least six deficiency notices, requested and received multiple extensions of time, filed several motions ultimately denied by the Court, and received several letters instructing him to file and serve the Record on Appeal and notifying him that failure to do so would result in dismissal of his appeal.

In its Order filed March 12, 2021,<sup>2</sup> the Court of Appeals denied Capone's motion to hold the appeal in abeyance. Further, the Court dismissed the appeal, noting Capone's failure to serve the record of appeal and file a proof of service "as required by Rule 210 of the South Carolina Appellate Court Rules and this court's September 3, 2020 letter, February 4, 2021 letter, and

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<sup>2</sup> *See* Appendix compiled by the Clerk's Office, South Carolina Supreme Court. The Appendix also contains Appellant's Petition/Motion to Reinstate Appeal; Return of Respondents in Opposition to Appellant's Petition/Motion to Reinstate Appeal; Appellant's Reply to Return of Respondent(s) in Opposition to Appellant's Petition/Motion to Reinstate Appeal; and April 23, 2021 Order denying reinstatement.

February 17, 2021 letter.” The Court of Appeals denied Capone’s motion to reinstate the appeal via Order filed April 23, 2021, and Capone sought review in this Court via Petition for Writ of *Certiorari* initially filed on or about April 28, 2021, and served upon Respondents on or about May 24, 2021.

### ARGUMENT

**I. THIS COURT SHOULD DENY APPELLANT’S PETITION FOR *CERTIORARI* BECAUSE THE COURT OF APPEALS CORRECTLY DISMISSED THE APPEAL BASED UPON APPELLANT’S FAILURE TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES.**

The Court of Appeals dismissed Capone’s appeal on the basis that he repeatedly failed to comply with applicable provisions of the South Carolina Appellate Court Rules, specifically the Rule pertaining to preparation, service, and filing of the record on appeal, as well as multiple orders extending and clarifying those deadlines. Rather than explain or excuse his repeated delays and disobedience of the Rules and orders of the Court of Appeals, Capone instead filed an 87-page missive rehashing the same vexatious criticisms and unsubstantiated allegations previously leveled against the South Carolina Workers’ Compensation Commission, Respondents, and opposing counsel.<sup>3</sup> Given Capone’s repeated violations of the South Carolina Appellate Court Rules and the Orders below, as well as the inherent authority of the appellate courts to manage their dockets, the Court of Appeals was fully justified in dismissing Capone’s appeal. His Petition for a Writ of *Certiorari* should be denied.

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<sup>3</sup> Capone based his motion to reinstate appeal, in part, on the arguments that he is not a lawyer and that he is proceeding “under disability.” The Court of Appeals denied Capone’s “emergency motions requesting the appointment of counsel” via Order filed July 1, 2020 (citing *Ex parte Dibble*, 279 S.C. 592, 596-597, 310 S.E.2d 440, 442-443 (Ct. App. 1983) (noting factors for consideration when appointing counsel, including whether appointment is necessary to render justice and whether the litigant is able to secure a lawyer on his own.).

The appellate courts of this State have long recognized that the South Carolina Appellate Court Rules “are not mere technicalities but provide the parties and [the courts] with an orderly mechanism through which to guide appeals in this State.” *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992). Thus, appellate courts “would be completely justified in dismissing [an] appeal” based upon repeated violations of those Rules. *Id.* This standard applies with equal force in matters involving *pro se* litigants like Capone. *See, e.g., State v. Burton*, 356 S.C. 259, 265, n.5, 589 S.E.2d 6, 9, n.5 (2003) (“A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.”); *State v. Hollman*, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) (noting that established rules of procedure are not to be discarded on appeal merely because a party appeared *pro se*); *overruled on other grounds by Stevenson v. State*, 335 S.C. 193, 516 S.E.2d 434 (1999).

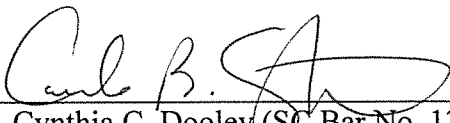
Capone’s consistent disregard for the Rules and orders pertaining to this appeal have resulted in significant delay and the expenditure of resources by court personnel, Respondents, and their counsel. The Court of Appeals gave Capone multiple opportunities to correct noted deficiencies, to no avail. These procedural shortcomings are precisely the sort of disregard for appellate rules and procedure that have been deemed sufficient to warrant dismissal. *Henning*, 307 S.C. 436, 415 S.E.2d 794. Accordingly, the Court of Appeals Orders dismissing this action and denying Capone’s motion to reinstate should be affirmed, and Capone’s Petition for Writ of *Certiorari* should be denied.

### CONCLUSION

Based on the foregoing, Respondents City of Columbia, Employer, and Companion Third Party Administrator, LLC, Carrier, respectfully urge the Court to deny Petitioner’s Petition for

Writ of *Certiorari*.

June 23, 2021

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