FORM 18
PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
MASTER-IN-EQUITY LAW

Judge Mikell R. Scarborough

Case No. 2016-001201 (S.C. Ct. App. filed Sept. 28, 2021)

Allen Livingston,

Respondent,

v.

Harold Simmons, Jr., Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

The petitioner, Harold Simmons, respectfully petitions this court for a writ of certiorari to review the judgment and opinion of the South Carolina Court of Appeals, filed on September 28, 2021. The petitioner certifies that the Petition for Rehearing/ Reverse Order was made and finally ruled (denied)on by the Court of Appeals on September 28, 2021.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in not considering the Pro Se non-professional in a professional system and the limited literary ability of the petitioner and the violation of due process of law?

2. Did the Court of Appeals err in their order filed date August 4, 2021 in not considering the factual documented evidence verses a misprint that causes the order to be in err of its contents of Pursuant to Rule 203(b)(1), SCASR.?

3. Did the Court of Appeals err in not considering the entire origin of the appeals case and order a ruling in favor of the petitioner and the many violations of the respondent?

STATEMENT OF THE CASE

Appellant Harold Simmons is a disabled business man of Charleston County. Respondent, Allen Livingston, is a business man of Charleston County. On March 11, 2014 the Respondent filed a Lis Pendens concerning a property that was in contract between the respondent and the Appellant. On April 4, 2014 the Appellant was served the Lis Pendens. On April 23, 2014 the Appellant filed an answer and requested a jury trial at that time.

The respondent filed on April 28, 2014 an affidavit of default, on May 22, 2014 a motion to refer to master in equity. On June 10, 2014 the Appellant was served a notice of hearing before Judge Nicholson on July 16, 2014. The Appellant was served a letter on or about July 2, 2014 from Respondent Attorney giving notice of a no hearing date needed on July 16, 2014. The Appellant

was served a letter on or about July 3, 2014 from Respondent Attorney giving notice of hearing for Judge Mikell Scarborough August 4, 2014. On August 4, 2014 the hearing was scheduled and set forth to take place on November 3, 2014 at 10am.

From the first hearing date on or around November 2014 through December 7, 2014 Judge Mikell Scarborough has denied the Appellant any and all due process along with ignoring and not accepting prior orders by Judge Nicholson and the fact that the respondent legal counsel false testified about a hearing and presented documents based on the false hearing and further refuse to take in consideration the Respondent perjury and falsification of documents in prior court proceedings under Judge Nicholson. Judge Mikell Scarborough has constantly denied the Appellant a jury trial, change of venue, and counter claim during the entire process and refuse to Dismiss the Respondent claim and Grant Appellant the counterclaim.

The court below erred in ruling that the denial of defendant's motion to alter and amend order, the master's sale on the foreclosure of the installment sales contract should take place, and in and all pursuant terms and conditions of the May 18, 2016 order as well. Grant of Order on May 18, 2016 was in error. This court should conduct its on review of the procedures and prior Judge Nicholson orders and all documents requested by Appellant.

Reverse all of the rulings of the court below and remand and grant the case for reconsideration of appellants' motion for counterclaim and dismiss of respondent Lis Pendens case filing in light of the violation of due process and denial of jury trial amongst all the other arguments presented in this appeal. In relief the Appellant asks for the granting of the counterclaim in the minimum summation of $600,000.00 for pain and suffering, an additional minimum summation of $600,000.00 for harassment in the courts system, and reimbursement of all overpayments in the

minimum summation of $60,213.00 which is fair computation per the factual recordings of the payment records in and out the court system. This Appeal followed.

If the Due Process Law Clause applies to Pro Se litigants that have been denied the right to equal time in the court of law to present argument and the right to be given the proper rules and documents along with being limited and or lack the literary abilities and if such application is unconstitutional, rehearing should be granted to determine the proper remedy. If the Due Process Law Clause does apply than the petitioner should be granted the opportunity to properly submit Rule 59 (e) and be allowed to resubmit the appellant brief. See US Constitution Amendment Article Fourteen.

During this period of time, petitioner was taking a medication, Oxycodone, prescribed by his physician, Dr. Richardson, of the Southeastern Spine Institute. Petitioner suffers from severe back pain due to back surgery. Petitioner was taking an additional medication, cymbolta, prescribed by his physician, Dr. Richardson of the Southeastern Spine Institute. Petitioner suffers from major depression disorder due to medical condition.

Petitioner immediately telephoned the South Carolina Court of Appeals to ask for assistance in reinstating his appeal.

Petitioner, a layperson of the law, should not be penalized for being ignorant of appellate procedures. (People v. Davis (1965) 62 Cal.2d 806.) Moreover, the court must consider petitioner's state of health and the bewilderment he must have felt in attempting to provide the court with the proper filings. Petitioner sincerely believed that he had proceeded properly and that he had done his best as legal representation on appeal. (People v. Hickok (1949) 92 Cal.App.2d 539.)] Petitioner due process of law was violated and based on the defendant Judge Mikell Scarborough and Judge R. Markley

Dennis, Jr. clearly acted outside of the scope of the law and therefore immunity does not apply in this matter.

Petitioner respectfully requests this court to consider his filings in light of the standards announced in People v. Ribero (1971) 4 Cal.3d 55, 65, that the power of appellate courts to grant relief from default ". . . is to be liberally construed to protect the right to appeal."

The Court of Appeals affirmed the judgment of the circuit court. Petitioner seeks a writ of certiorari to review that decision.

ARGUMENT

1. THE COURT OF APPEALS SHOULD HAVE CONSIDERED THE PRO SE NON-PROFESSIONAL IN A PORFESSIONAL SYSTEM AND THE LIMITED LITERARY ABILITY OF APPELLANT AND THE VIOLATION OF DUE PROCESS OF LAW.

Petitioner received correspondence from the South Carolina Court of Appeals advising him that his case was found no error. The ORDER is in error concerning its contents of Pursuant to Rule 203(b)(l), SCA CR.

On or around June 2nd, 2016, petitioner certified mailed in his Notice of Appeal. Petitioner contends that he immediately submitted the Notice of Appeal based on his best ability according to the issues that were raised in the lower court. Petitioner received a letter dated May 3rd, 2016, that advised him of the South Carolina Court of Appeals affirmed no error.

The panel's conclusion did not state what the per a losing party failed to comply with and file Rule to preserve the issue for appellate review and that the petitioner failed to give sevice notice of was an accurate opinion without consideration of the fact that the Petitioner was Pro Se and therefore falls in the category of a non-professional in a professional system

and could have not been made aware of the Rule and or given the nextproper process step or documents, coupled with the denial to finish arguments and have limited or lack of literary ability otherwise known as being feeble intellect is a huge oversight.

Powell v. Alabama, 287 U.S. 45 (1932), involved the conception of the due process of law clause. "While the question has never been categorically determined by this court, a consideration of the nature of the right and a review of the expressions of this and other courts, makes it clear that the right to the aid of counsel is of this fundamental character. It never has been doubted by this court, or any other, so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they, together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirement of due process of law. The words of Webster, so often quoted, that, by "the law of the land" is intended "a law which hears before it condemns" have been repeated in varying forms of expression in a multitude of decisions." The rule that no one shall be personally bound until he has had his day in court was as old as the law, and it meant that he must be cited to appear and afforded an opportunity to be heard. Bute v. Illinois, 333 U.S. 640 (1948), involved the due process of law clause "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He

lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect."

The Panel did not consider the Pro Se Context, federal courts overlooked the non-professional in a professional system and the limited literary ability of appellant along with the denial of a jury trial puts the decision in direct conflict with the decision of other circuits. On November 21, 2013 the petitioner submitted a petition for panel rehearing or rehearing en banc as pro se, to the best of his ability considering petitioner is limited and lack literary ability with a feeble intellect. Petitioner submitted the petition in a timely manner by certified mail.

The practical implications of the panel's decision further support granting review. By opening the door to suits against officials challenging official government actions, the panel's decision potentially creates jurisdiction in this Circuit over every human rights case in the world—an outcome that, is very needed in the legal system. Indeed, if a Pro Se litigant with limited literary abilities could be heard and obtain judicial review of virtually any official government action simply "by (the) artful pleading" of suing the responsible officer (person in their official capacity), the statute would become "optional." And the flood of potential suits allowed by the panel decision may well include challenges to the actions of important allies of the Official persons. See Belhas v. Ya'alon, 515 F.3d 1279 (D.C. Cir.

2008).

If the Due Process Law Clause applies to Pro Se litigants that have been denied the right to equal time in the court of law to present argument and the right to be given the proper rules and documents along with being limited and or lack the literary abilities and if such application is unconstitutional, rehearing should be granted to determine the proper remedy. If the Due Process Law Clause does apply than the petitioner should be granted the opportunity to properly submit Rule 59 (e) and be allowed to resubmit the petitioner brief. See US Constitution Amendment Article Fourteen

2. PETITIONER DID NOT PROPERLY RECEIVE DUE PROCESS OF THE LAW PURSUANT TO RULE 203(b)(1), SCASR.

On or around May 2016 the petitioner submitted a notice of appeal as pro se, petitioner is limited and lack literary ability with a feeble intellect along with the trial court failure to give the proper rules according to South Carolina Code of Laws Section 14-17-260 (b) which clearly states that the clerk shall issue all processes and sign all judgments. The clerk shall (b) issue all rules and notices ordered in the common pleas, The Panel should be willing to consider and determine if the clerk failed to comply with the South Carolina Code of Laws. This contributed to the petitioner to be unaware of the Rule 59(e) after inquiry with the court clerk concerning the rules and next step in the process, no preorder or rules was sent to or given to the petitioner. The petitioner proceeded to file a notice of appeal on or around July, 2021 believing that the clerk direct him accurately in the process and had given him all of the rules at that time, not realizing that the clerk did not give him the rule of 59(e). The panel didnot consider that the Pro Se Petitioner did not have the proper information given to

him andor that he comprehended the information.

3. PETITIONER DID NOT PROPERLY GET THE JUSTICE THAT IS DUE PER THE LAW AND RULING IN THEIR FAVOR BASED ON THE MANY VIOLATIONS OF THE RESPONDENT ACTS

The Court sent a ORDER filed dates August 4, 2021 via delivery by email to me. The ORDER is in error concerning its contents of Pursuant to Rule 203(b)(l), SCA CR. I did serve in my legal 30 days written notice to the Respondent. In fact I have provided legitimate proof of such matters to concur my statement of validity.

1: The Judgement was entered on April 27th , 2016

2: The USPS stamped date it May 2nd, 2016

3: Delivered it on May 3rd, 2016

4: The Appellant 30 days starts to run from May 4th, 2016 through June 2nd , 2016.

Documents collaborate this as well and this is from 2016 even though there has been a minimum of two other orders that has came after this alleged service violation that brought about this ORDER on August 4th, 2021 . This is a direct insult to justice and yet another violation of my civil procedure rights and due process in the American Judicial system. I find it very unfair that I am called on this frivolous alleged violation in a ORDER, when for years the Respondent has committed varies violation including perjury, falsifying documents, and even judges rendering false ORDERS and yet no one has been called to the forefront on their proven blatant criminal acts and this case being ruled upon in my favor. I am asking for the Appeals court to do their just duty and let justice prevail and give me exactly what any American citizen deserves and that Dueprocess and justice for a wrong that has been doing to them. Neither did the Court of Appeals consider the original final

brief and its contents that speak on the above mnentioned violations and improper due process of law.

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CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

October 26, 2021

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In Reference to the Notice of Appeal File 5 years (2016) Ago that is Being question today 5 years later (2021) it have Already obvious Been review 6 years Ago and everthing was Find O.K. By the Court of Appeal Clerk, or case Examiner. Every time A motion was File Appellant Call the Court As a follow up to be sure every thing is Done correct and the court of Appeal state to Appellant Everything is correct and look good. Appellant Do his followup to make sure nother come up like these today 6 years later. And if the Court is about truth and Justice and solid Evidence and Facts. Then For (1) one the Notice of Appeal have a Hand written misprint on the Date of Receiveing the Charleston County Court Notice of Entry at the time (Exhibit 1 pg (19) For (2) two the Fact that on 27th of April 2016 the Notice of entry was Being enter into the court system, it was still in the Hands of the court Cleck Exhibit (2) pg (17) and For (3) Three the Notice of Entry state that the Notice of Entry will be mail out First Class to Appellate and his Attrony on 28 of April 2016 Exhibit (2) pg (17) which show the Notice of Entry is still in the hands of the Court Clerk (Fact Exhibit (2) pg (17) And

continue next page

For 3 the Envelop the Notice of Entry was mailout Postmark stamp May 02, 2016 which show the Notice of Entry is in the Hands of the post office U. S. Postal Facts Exhibit 3 pg (18) And

For 4 Appellate and His Attroney Did not Reciere the mailout Notice of Entry until May 3, 2016 Facts one day Delivery and

For 5 that would make the last Day for served June 02 2016

The Exhibit Documents Collaborate this well (Truth, Facts, solid Evidence of a written misprint of the Date, In 2016.

Harold Simmons Jr.