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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge**

Case No.: 21-ALJ-22-0180-AP

Order in Appellate Case No. 2022-000068 (S.C. Ct. App. Feb. 9, 2022)
Appellate Case No. 2022-000565

McKinley Wright, Jr., Appellant,

v.

South Carolina Department of Employment
and Workforce and SEFA Transportation, Inc., Respondents.

Respondents' Return to Petition for a Writ of Certiorari

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STATEMENT OF THE CASE

This case involves Petitioner's quest to obtain unemployment insurance benefits. Respondent South Carolina Department of Employment and Workforce (the Department) issued a final agency decision finding Appellant was ineligible for benefits, and he appealed to the South Carolina Administrative Law Court (ALC). *See Exhibit A, ALC 10/05/21 Order.*¹ Ultimately, the ALC found substantial evidence supported the final agency decision and affirmed in an order dated October 5, 2021. *Exhibit A.* After the ALC denied a motion for rehearing in an order dated December 14, 2021, Petitioner filed a notice of appeal with the South Carolina Court of Appeals on January 12, 2022. This notice of appeal did not contain a proper proof of service, and shortly thereafter, on January 20, 2022, the Court of Appeals issued a deficiency letter informing Appellant that, among other deficiencies, he must file a proof of service. *Exhibit B, Court of Appeals Deficiency Letter.*

Subsequently, Petitioner submitted a notice of appeal and proof of service to the Court of Appeals and certified both that he received written notice of the ALC's underlying decision on December 17, 2021, and that he did not serve Respondents with his notice of appeal until January 28, 2022. *See Exhibit C, Petitioner's Notice of Appeal & Proof of Service.* In response, the Court of Appeals issued an order sua sponte dated February 9, 2022, dismissing the appeal because Petitioner failed to provide proof of timely service of his notice of appeal.² *See Exhibit D, Court of Appeals Order, 2/9/22.* Following the dismissal, Petitioner filed a motion to reinstate the appeal,

¹ Because Petitioner failed to file an Appendix with his Petition for Certiorari pursuant to Rule 242(e), SCACR, the Department has attached exhibits to this Return.

² The Court of Appeals' order contains a scrivener's error in that it references the appeal arising from the Workers' Compensation Commission when, in fact, the appeal originated with the Department. This scrivener's error has no impact on the issue that was before the Court of Appeals, which was whether Petitioner timely served his notice of appeal.

which the Court of Appeals construed as a petition for rehearing. The Court of Appeals denied the petition for rehearing in an order dated March 29, 2022. *See Exhibit E, Court of Appeals Order, 3/29/22*. Petitioner then filed a Petition for Writ of Certiorari with this Court.

ARGUMENT

There are a number of reasons as to why this Court should deny the Petition for Writ of Certiorari. First, the petition fails to raise and argue the only issue ruled upon by the Court of Appeals. The Court of Appeals found, based on Petitioner's own certifications, that Petitioner failed to timely serve Respondents with his notice of appeal as required by Rule 203(b)(6), SCACR. Based on that finding, the Court of Appeals properly dismissed the appeal. *See USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."). However, Petitioner fails to raise and argue timely service in his Petition for Writ of Certiorari. Instead, his petition focuses entirely on the circumstances surrounding his employment separation with Respondent SEFA Transportation, Inc.³ Thus, Petitioner fails to raise to this Court the only issue ruled upon by the Court of Appeals. Because Petitioner fails to raise the timeliness issue in his petition, he fails to properly present the issue for this Court's review. *See* Rule 242(a), SCACR (allowing this Court to "issue a writ of certiorari to review a final decision of the Court of

³ Respondents deny that Petitioner's separation from employment was improper or otherwise unlawful. In any event, the circumstances surrounding Petitioner's employment separation are irrelevant to the issue of whether the Court of Appeals properly dismissing Petitioner's appeal on the basis of Petitioner's failure to timely serve Respondents with notice of his appeal under Rule 203(b)(6), SCACR. Consequently, Petitioner's allegations concerning the circumstances surrounding his employment separation have no bearing on this matter and should be ignored.

Appeals"). Further, this Court should not address the timeliness issue sua sponte. *See Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 533, 564 S.E.2d 322, 323 (2001) ("Appellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.") (brackets removed).

Second, this Petition for Writ of Certiorari raises none of the character of reasons listed in Rule 242(b), SCACR indicating review by this Court is warranted. This appeal contains no novel questions of law, and there was no dissent at the Court of Appeals. The Court of Appeals' decision does not conflict with a prior decision from this Court, and there is no federal question involved accompanied by a conflict with a decision from the Supreme Court of the United States. Also, there is no constitutional issue involved in this appeal. Thus, none of the character of reasons listed in Rule 242(b) are present in this appeal.

Third, the Court of Appeals properly dismissed Petitioner's appeal because he failed to timely serve Respondents with his notice of appeal. Petitioner admitted in his notice of appeal to the Court of Appeals that he received written notice of the ALC's underlying order on December 17, 2021. *Exhibit C*. Based on receiving notice of the underlying order on December 17, 2021, the deadline for filing and serving a notice of appeal was January 18, 2022. *See* Rule 203(b)(6), SCACR (requiring filing and service of a notice of appeal on the agency, the ALC . . . and all parties of record "within thirty (30) days after receipt of the decision"); S.C. Code Ann. § 41-35-750 (Supp. 2021) ("An appeal may be taken from the decision of the [ALC] pursuant to the South Carolina Appellate Court Rules and Section 1-23-610."). However, Petitioner's proof of service certified he failed to serve Respondents until January 28, 2022, which was ten days past the deadline set forth in Rule 203(b)(6), SCACR. *Exhibit C*. Because Petitioner failed to serve Respondents with his notice of appeal within the thirty-day time period, the Court of Appeals

lacked appellate jurisdiction to consider the appeal, and it properly dismissed the appeal. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.").⁴

CONCLUSION

Based on the foregoing, the Court should deny the Petition for Writ of Certiorari. First, Petitioner fails to raise and argue the only issue ruled upon by the Court of Appeals. Second, the petition fails to raise any reasons for granting certiorari that would be consistent with the character of reasons listed in Rule 242(b), SCACR to indicate review by this Court is warranted. Third, the Court of Appeals properly dismissed Petitioner's appeal because, by Petitioner's own admission, he failed to timely serve Respondents with his notice of appeal. Accordingly, the Court should deny the Petition for Writ of Certiorari.

⁴ Notably, like the Court of Appeals, this Court notified Petitioner through a May 3, 2022 deficiency letter that Petitioner failed to provide Respondents' Counsel with proof of service of Petitioner's Petition for Writ of Certiorari and that Petitioner needed to correct this deficiency by May 13, 2022. As of the date of the filing of this Return, Respondents' Counsel has not received proof of service of Petitioner's Petition for Writ of Certiorari. To the extent Petitioner has failed to cure this deficiency, the Petition for Writ of Certiorari should be dismissed. *See* Rule 242(c), SCACR ("A petition for writ of certiorari *shall* be served on opposing counsel *and filed with proof of service* with the Clerk of the Court of Appeals and the Clerk of the Supreme Court *within thirty (30) days* after the petition for rehearing or reinstatement is finally decided by the Court of Appeals.") (emphasis added).

Respectfully Submitted,

s/ Steven Jordan, Jr.

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