

21-304
THE SUPREME COURT OF THE UNITED STATES

On Petition for Writ of Certiorari to
South Carolina Supreme Court
Appellate Case No. 2020-000919



Sharon Brown, Petitioner,

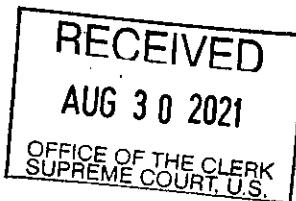
vs.

Cherokee County School District, Respondent.

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW:

1. WHETHER PETITIONER'S DUE PROCESS RIGHTS AND EQUAL PROTECTION RIGHTS VIOLATED UNDER 42 USCA § 1983 WHEN THE CHEROKEE COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES FAILED TO FILE A RECORD CERTIFIED BY THE CHIEF OFFICIAL OF THE SCHOOL BOARD OF TRUSTEES WITHIN 30 DAYS OF APPELLANT FILING AN APPEAL IN THE CIRCUIT COURT? FAILURE TO FILE A COMPLETE RECORD SIGNED BY AN OFFICIAL OF THE AGENCY RESULTS IN THE TEACHER TERMINATION BEING NULL AND VOID.

A. WHETHER CONTINUING CONTRACT TEACHER BROWN'S DUE PROCESS AND EQUAL PROTECTION RIGHTS VIOLATED UNDER 42 USCA § 1983 WHEN S.C. CODE OF LAWS, TITLE 1 CHAPTER 23 SECTION 1-23-320 (G) WAS IGNORED? S.C. CODE OF LAWS, TITLE 1 CHAPTER 23 SECTION 1-23-320 (G) IS UPHELD AND HONORED FOR OTHER OCCUPATIONS IN THE STATE OF SOUTH CAROLINA. WAS BROWN DISCRIMINATED AGAINST BY RESPONDENT DISTRICT AND THE SOUTH CAROLINA COURTS BECAUSE OF OCCUPATION AND RACE?

B. WAS THE INDIANA SUPREME COURT CORRECT WHEN IT HELD IN AN ORDER FILED ON NOVEMBER 13, 2014, THAT A PETITIONER SEEKING JUDICIAL REVIEW OF AN AGENCY ACTION MUST FILE WITH THE TRIAL COURT THE AGENCY RECORD AS DEFINED BY THE ADMINISTRATIVE ORDERS AND PROCEDURES ACT?

C. WAS PETITIONER, BROWN, DUE PROCESS AND EQUAL PROTECTION RIGHTS VIOLATED UNDER 42 USCA § 1983 BY THE STATE COURTS OF SOUTH CAROLINA WHEN SOUTH CAROLINA COURT OF APPEALS ALLOWED RESPONDENT DISTRICT TO FILE A TEACHER DISMISSAL TRANSCRIPT YEARS LATER AT THE COURT OF APPEALS? THE COURT OF APPEALS AND THE SUPREME COURT OF SOUTH CAROLINA WERE AWARE THAT THE CLERKS OFFICE FOR CHEROKEE COUNTY COURT OF COMMON PLEAS CONFIRMED THAT RESPONDENT DISTRICT NEVER FILED AN ADMINISTRATIVE RECORD AT THE LOWER COURT (COURT OF COMMON PLEAS).

D. WHETHER THE SUPREME COURT OF SOUTH CAROLINA, THE SOUTH CAROLINA COURT OF APPEALS, AND THE CIRCUIT COURT (COURT OF COMMON PLEAS) COULD LEGALLY ENGAGE IN

"SUBSTANTIAL INQUIRY" INTO WHETHER THE RESPONDENT DISTRICT HAD SUBSTANTIAL EVIDENCE TO TERMINATE BROWN AS A TEACHER, GIVEN THAT THE RESPONDENT DISTRICT DID NOT SUBMIT TO THE CIRCUIT COURT CLERK OF COURT'S OFFICE A COMPLETE CERTIFIED RECORD FROM THE SCHOOL DISTRICT SIGNED BY AN OFFICIAL AS MANDATED BY RULE 75 SCRPC, S.C. CODE §59-25-480 OF SOUTH CAROLINA TEACHER EMPLOYMENT AND DISMISSAL LAW, AND S.C. CODE OF LAWS TITLE 1 CHAPTER 23 SECTION 1-23-320(G)?

E.. WHETHER THE SUPREME COURT OF SOUTH CAROLINA AND SOUTH CAROLINA COURT OF APPEALS SHOULD HAVE RULED THAT THE FILING OF A CERTIFIED RECORD SIGNED BY AN OFFICIAL OF THE AGENCY (SCHOOL DISTRICT) IS A PREREQUISITE TO THE PURSUIT OF A TEACHERS REQUEST FOR JUDICIAL REVIEW OF HER TERMINATION BY THE CIRCUIT COURT?

F. WHETHER ALL LEVELS OF STATE COURT IN SOUTH CAROLINA LACK THE AUTHORITY TO AUTHORIZE AN EXTENSION TO FILE AN AGENCY RECORD CERTIFIED BY AN AGENCY OFFICIAL WHEN THE AGENCY (RESPONDENT DISTRICT) DID NOT REQUEST AN EXTENSION BEFORE THE 30 DAY PERIOD TO FILE RECORD EXPIRED?

G. DID THE SUPREME COURT OF SOUTH CAROLINA AND THE SOUTH CAROLINA COURT OF APPEALS ERR IN NOT RULING THAT AN AGENCY'S (SHOOL DISTRICT'S) FAILURE TO FILE A COMPLETE AND OFFICIAL CERTIFIED TRANSCRIPT OF RECORD IN A TEACHER TERMINATION APPEAL IS TANTAMOUNT TO NO TRANSCRIPT AT ALL HAVING BEEN FILED BY THE SCHOOL DISTRICT?

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PETITION FOR WRIT OF CERTIORARI

Now comes Pro Se Petitioner, Sharon Brown (Brown), requesting that this court issue a Writ of Certiorari to review the orders of The South Carolina Supreme Court, The South Carolina Court of Appeals, and the Cherokee County Court of Common Pleas.

It is worth noting that Pro se Litigant's pleadings are to be construed liberally and held to less stringent standards than Formal Pleadings drafted by attorneys. If the Court can reasonably read Pleadings to state a valid claim on which litigation could prevail, it should do so despite failure to cite proper legal authority, confusion, legal theories, poor syntax, poor sentence construction, or litigant's unfamiliarity with Pleading requirements. *See Boag v. MacDougall*, 454 U.S. 364, 70 L. Ed. 2d 551, 102 S. Ct. 700 (1982). *See also Haines v. Kemer*, 404 U.S. 519, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972); *See Green v. Branson*, 108 F. 3d 1296 (10th Cir. 1997); *Simmons vs. Abruzzo*, 49 F. 3d 83 (2d Cir. 1995); *Fernandez v. U.S.*, 941 F.2d 1488 (11th Cir. 1991).

OPINIONS BELOW

On January 15, 2020, the South Carolina Court of Appeals issued an order affirming Cherokee County Court of Common Pleas decision that substantial evidence existed for Brown's termination of her continuing contract with Cherokee County School District (the District) and that the district filed a transcript of the School Board teacher termination hearing with the circuit as required by section 59-25-480. (Appendix A). The Appellate Case No. with the South Carolina Court of appeals is the following: 2017-001466. The case caption is Sharon Brown, Appellant v. Cherokee County School District, Respondent.

On January 28, 2020, Petitioner filed a Petition for Rehearing with Suggestion for En Banc with the South Carolina Court of Appeals. (APPENDIX B). On May 22, 2020, South Carolina Court of Appeals denied Petitioner's petition for a rehearing. (APPENDIX C).

On June 23, 2020, Brown's Petition for a Writ of Certiorari was filed in the Supreme Court of South Carolina. (APPENDIX D). On August 3, 2020 the Supreme Court of South Carolina filed Brown's document titled Petitioner's Reply to Respondents Return For a Writ of Certiorari. (APPENDIX E). On May 28, 2021, the South Carolina Supreme Court issued an order denying Brown's Petition for a Writ of Certiorari. (APPENDIX F). The Appellate case no. with the South Carolina Supreme Court is 2020-000919. The case caption is Sharon Brown, Petitioner v. Cherokee County School District, Respondent.

JURISDICTION

The South Carolina Court of Appeals issued an order on May 28, 2021, denying Brown's Petition for a Writ of Certiorari. This Petition for Writ of Certiorari is timely filed and the jurisdiction of the Court is invoked pursuant to 42 USC § 1983, The Fourteenth Amendment of the USA Constitution (Section 1), and Supreme Court Rules 10(c), (b).

CONSTITUTIONAL OR LEGAL AUTHORITY

1. The Fourteenth Amendment provides in pertinent part, "nor shall any state deprive any person of life, liberty or property without **Due Process** of law, nor deny any person within its jurisdiction the **equal protection** of the law."

2. Indiana Supreme Court held in an order filed on November 13, 2014 that a Petitioner seeking judicial review of an agency action must file with the trial court the agency record as defined by the administrative orders and procedure act. *See Teaching Our Posterity Success, Inc. vs. Indiana Department of Education and Indiana State Board of Education* (Case No. 49505-1411-PL-700), filed Nov. 13, 2014. In the case at hand, Respondent District failed to file the administrative record as listed in the administrative procedure act for South Carolina. *See S.C. Code of Laws Title 1 Chapter 23 Section 1-23-320 (G)*, which states that the record in a contested case must include the following:

- (1.) all pleadings, motions, intermediate rulings, and depositions;
- (2.) evidence received or considered;
- (3.) a statement of matters officially noticed;
- (4.) questions and offers of proof, objections, and rulings on the contested case;
- (5.) proposed findings and exceptions
- (6.) any decision , opinion, or report by the officer presiding at the hearing

3. 42 USC § 1983 states in pertinent part, "Every person who under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress."

4. The equal protection jurisprudence has often been concerned with classifications that "affect one group of citizens differently than others. " In the case at hand Brown was treated differently from other similarly situated state employees and citizens, by Respondent District and some of South Carolina's State Courts, when filing an appeal from an agency. Brown was discriminated against, upon belief, based on Brown's occupation (as a teacher) and race (being black). *See McGowan v. Maryland*, 366 U.S. 420, 425, 81 S.Ct. 1101. The Respondent district did not file a complete certified record. According to Cherokee County Court of Common Pleas' Clerk of Court Office, the respondent District did not file a transcript record at all.

STATEMENT OF THE CASE

Sharon Brown, a school teacher, petitioner and appellant petitions this court for a Writ of Certiorari on the above-entitled matter after an order was entered on May 28, 2021, that denied Brown's Petition for a Writ of Certiorari with the South Carolina Supreme Court. An unpublished opinion dated January 15, 2020 was issued by the South Carolina Court of Appeals and an order denying appellant's petition for rehearing was issued by the South Carolina Court of Appeals on May 22, 2020. The South Carolina Court of Appeals affirmed the decision of the circuit court judge who upheld the decision of the Cherokee County School Board Trustees to terminate the continuing teaching employment contract of Brown.

In no way should this Petition be construed as an attack on the South Carolina Supreme Court Justices, the Circuit Court Judge or the Court of Appeals Panel.

On November 22, 2017, the South Carolina Court of Appeals filed Respondent's "certified original Transcript Record" of the teacher dismissal hearing. (Exhibit G). This document was not filed in the lower court (Cherokee County Court of Common Pleas) according to the Cherokee County Clerk of Court's office. The Respondent, to this very day, has never filed a complete certified record with any of the state Courts.

Federal questions were raised at the South Carolina Court of Appeal after Brown inquired about the record in the lower court (Cherokee County Court of

Common Pleas). Brown was at the South Carolina Court of Appeals level when she found out that the school district had not filed a complete record with the lower court. Therefore Brown requested that the Justices of the South Carolina Court of Appeals reinstate her to her teaching position because no record was filed in the Court of Common Pleas. There was no legal record for the South Carolina Court of Appeals to review because there was no record filed. Further, even if the Respondent contends that a record was filed, it would have been uncertified and incomplete. Resulting in due process and equal protection violations committed against Brown. Additionally, Brown raised the due process and equal protection issues at the Supreme Court of South Carolina (Appendix D and Appendix E)

STATMEMENT OF FACTS

Nevertheless, from the record below it is clear that the Respondent District failed to do the following:

1. The District never presented a certified record from the School District signed by an agency official as mandated by Rule 75 SCRCR or S.C. Code 59-25-480, (Appendix F)
2. The transcript of the hearing below was certified by the Court reporter and not by an agency official; (Appendix F)
3. A certified order was not filed with the Clerk of Court's Office within 30 days of the filing of an appeal by Brown with the Circuit Court; As a matter of fact the Cherokee County Clerk of Court said it never received a transcript of Brown's teacher termination.

4. The vote of the Board of Trustees ratifying Brown's termination was not certified within thirty days to the Clerk of Court of Cherokee County as required by SCRCP 75 and S.C. Code 59-25-480.

The record reflects the following:

1. Brown files notice of appeal with circuit court and district.
2. District has 30 days to have an official of the District sign a certified transcript of record below. Here the District alleges to only have filed the court reporter certified Transcript of the Teacher Dismissal Hearing.
3. District transmitted this non-agency official Certified Transcript to the Cherokee County Clerk of Court's Office for filing. Keep in mind that the Cherokee County Court of Common Pleas state that they never received a Certified Transcript. (Appendix G)/
4. District's transmittal must be more than the just the record of the hearing below but must include any relevant Certified orders of the District and the certified vote of the District Board of Trustees.
5. Then Brown filed briefs and other exhibits with the Circuit Court.
6. The Circuit Judge stated that he considered the following: "After reviewing the transcript of the School board's hearing and the exhibits presented as a part of the hearing's record, reviewing the pleadings and brief's in the Clerk of Court's file, considering the arguments presented by counsel, and applying the required standard of review, the School Board's decision is affirmed."
7. The School Board Chair Stated: "We thank everyone for their participation in the hearing and ask that you please excuse us now so we can begin our deliberation. As I indicated at the beginning, the Board will deliberate in executive session at the close of the summation. No votes will be taken in executive session. The Board will vote in open session and announce its decision. Within 10 days a written decision of the Board will be issued consistent with the Board's announced decision, the evidence presented, and applicable law." **Supplemental Record on Appeal page 442 lines 14-25.**

8. Then a decision and judgment is rendered by the Circuit Court Judge.

In McWhirter vs. Cherokee County School District No. 1, 274 S.C. 66, 261 S.E. 2d 157 (1979) South Carolina Supreme Court referred to the actions of a local school board in language that indicates that the board is held to the standards of an "agency" as defined in the APA. *See Brown vs. William B. James, Superintendent for Cherokee County School District*, 389 S.C. 41, 697 S.E.2d 604 (Ct. App. 2010).

S.C. Code of Laws Title 1 Chapter 23 Section 1-23-320 (G), states that the record in a contested case must include the following:

- (1.) all pleadings, motions, intermediate rulings, and depositions;
- (2.) evidence received or considered;
- (3.) a statement of matters officially noticed;
- (4.) questions and offers of proof, objections, and rulings on the contested case;
- (5.) proposed findings and exceptions
- (6.) any decision , opinion, or report by the officer presiding at the hearing

Brown was due process and equal protection of

REASONS FOR GRANTING THE WRIT

1. PETITIONER'S DUE PROCESS RIGHTS AND EQUAL PROTECTION RIGHTS WERE VIOLATED UNDER 42 USC§ 1983 WHEN THE CHEROKEE COUNTY SCHOOL DISTRICT BOARD OF TRUSTESS FAILED TO FILE A RECORD CERTIFIED BY THE CHIEF OFFICIAL OF THE SCHOOL BOARD OF TRUSTEES WITHIN 30 DAYS OF APPELLANT FILING AN APPEAL IN THE CIRCUIT COURT. FAILURE TO FILE A RECORD SIGNED BY AN OFFICIAL OF THE AGENCY RESULTS IN THE TEACHER TERMINATION BEING NULL AND VOID.

Rule 75 SCRC and S.C. Code§59-25-480 statutory language present a procedural "prerequisite to the pursuit for judicial review." It is clear from the language in Rule 75 SCRC and S.C. Code § 59-25-480 that appellant Brown could not lawfully obtain judicial review without the filing of a complete certified record signed by an official of the administrative agency (Cherokee County School District).

Additionally, S.C. Code of Laws, Title 1 Chapter 23 Section 1-23-320 (G) for administrative agencies was completely ignored.

A. PETITIONER WAS A CONTINUING CONTRACT TEACHER. BROWN'S DUE PROCESS AND EQUAL PROTECTION RIGHTS WERE VIOLATED UNDER 42 USCA § 1983 WHEN S.C. CODE OF LAWS, TITLE 1 CHAPTER 23 SECTION 1-23-320 (G) WAS IGNORED. S.C. CODE OF LAWS, TITLE 1 CHAPTER 23 SECTION 1-23-320 (G) IS UPHELD AND HONORED BY THE RESPONDENT DISTRICT AND SOUTH CAROLINA STATE COURTS FOR OTHER OCCUPATIONS AND CITIZENS IN THE STATE OF SOUTH CAROLINA. BROWN , UPON BELIEF, WAS DISCRIMINATED AGAINST BECAUSE OF OCCUPATION AND RACE (BEING AFRICAN AMERICAN).

Brown's constitutional due process and equal protection rights were trampled upon by the Respondent District and South Carolina Courts (specifically the Supreme Court of South Carolina, The South Carolina Court of Appeals, and the Cherokee County Court of Common Pleas).

B. THE INDIANA SUPREME COURT WAS CORRECT WHEN IT HELD IN AN ORDER FILED ON NOVEMEBER 13, 2014, THAT A PETITIONER SEEKING JUDICIAL REVIEW OF AN AGENCY ACTION MUST FILE WITH THE TRIAL COURT THE AGENCY RECORD AS DEFINED BY THE ADMINISTRATIVE ORDERS AND PROCEDURES ACT.

South Carolina Courts should be made to follow the laws that they have on their books for its agencies. The Supreme Court of South Carolina failed to enforce

the laws pertaining to judicial review of an agency's decision. Petitioner agrees with the Indiana Supreme Court on the contention that the administrative record with the trial court, as defined by the administrative orders and procedures act, must be followed. *See Teaching Our Posterity Success, Inc. v. Indiana Department of Education and Indiana State Board of Education*, Opinion No. 49505-1411-PL-700, filed Nov. 13, 2013.

42 USC § 1983 prohibits any citizen of the United States or other person within the jurisdiction thereof from deprivation of any rights, privileges', or immunities secured by the Constitution and laws.

C. PETITONER, BROWN'S DUE PROCESS AND EQUAL PROTECTIONS RIGHTS WERE VIOLATED UNDER 42 USCA § 1983 BY THE STATE COURTS OF SOUTH CAROLINA WHEN SOUTH CAROLINA COURT OF APPEALS ALLOWED RESPONDENT DISTRICT TO FILE A TEACHER DISMISSAL TRANSCRIPT YEARS LATER AT THE COURT OF APPEALS. THE COURT OF APPEALS AND THE SUPREME COURT OF SOUTH CAROLINA WERE AWARE THAT THE CLERKS OFFICE FOR CHEROKEE COUNTY COURT OF COMMON PLEAS CONFIRMED THAT RESPONDENT DISTRICT NEVER FILED AN ADMINISTRATIVE RECORD AT THE LOWER COURT (COURT OF COMMON PLEAS).

The Fourteenth Amendment (Section 1.) states in pertinent part, "nor shall any State deprive a person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

D. SOUTH CAROLINA COURT OF APPEALS AND THE CIRCUIT COURT COULD NOT LEGALLY ENGAGE IN "SUBSTANTIAL INQUIRY" INTO WHETHER THE RESPONDENT DISTRICT HAD SUBSTANTIAL EVIDENCE TO TERMINATE BROWN AS A TEACHER GIVEN THAT THE RESPONDENT DISTRICT DID NOT SUBMIT TO THE CIRCUIT COURT, CLERK OF COURT'S OFFICE, A CERTIFIED RECORD FROM THE SCHOOL DISTRICT SIGNED BY AN OFFICIAL AS MANDATED BY RULE 75 SCRCP, S.C. CODE §59-25-480 OF TEACHER EMPLOYMENT AND DISMISSAL LAW, AND S.C. CODE OF LAWS TITLE 1 CHAPTER 23 SECTION 1-23-320(G).

Rule 75 SCRPC and S.C. Code§59-25-480 statutory language present a procedural "prerequisite to the pursuit for judicial review." It is clear from the language in Rule 75 SCRPC and S.C. Code § 59-25-480 that appellant Brown could not lawfully obtain judicial review without the filing of a complete certified record signed by an official of the administrative agency (Cherokee County School District). Cherokee County School District itself did not authenticate any record.

Here because Cherokee County School District Board of Trustees did not file the agency certified record as anticipated by rule 75 SCRPC, S.C. Code § 59-25-480, and S.C. Code of Laws Title 1 Chapter 23 section 1-23-320(G), Brown's teacher termination should have been ruled null and void.

E.. THE COURT OF APPEALS AND SUPREME COURT OF SOUTH CAROLINA FAILED TO RULE THAT THE FILING OF A CERTIFIED RECORD SIGNED BY AN OFFICIAL OF THE AGENCY (SCHOOL DISTRICT) IS A PREREQUISITE TO THE PURSUIT OF A TEACHERS REQUEST FOR JUDICIAL REVIEW OF HER TERMINATION BY THE CIRCUIT COURT.

Rule 75 SCRPC, S.C. Code §59-25-480, and S.C. Code of Laws Title 1 Chapter 23 section 1-23-320 (G) mandates the filing by the agency of a complete agency certified record.

F. ALL LEVELS OF STATE COURT IN SOUTH CAROLINA LACK THE AUTHORITY TO AUTHORIZE AN EXTENSION TO FILE AN AGENCY RECORD CERTIFIED BY AN AGENCY OFFICIAL WHEN THE AGENCY (RESPONDENT DISTRICT) DID NOT REQUEST AN EXTENSION BEFORE THE 30 DAY PERIOD TO FILE RECORD EXPIRED.

Rule 75 SCRPC and S.C. Code §59-25-480 statute is clear in placing the responsibility on the administrative agency to file the agency record timely, and

that any request for an extension of time must be made within the statutory time period. Given that Cherokee County School District failed to file for an extension to prepare and certify the record on appeal, Brown could not lawfully have her teacher termination judicially reviewed to see if there was substantial evidence to terminate her employment. As a result Brown should have been reinstated to her teaching position with Cherokee County School District.

G. THE COURT OF APPEALS ERRED IN NOT RULING THAT AN AGENCY'S (SCHOOL DISTRICT'S) FAILURE TO FILE A COMPLETE AND OFFICIAL CERTIFIED TRANSCRIPT OF RECORD IN A TEACHER TERMINATION APPEAL IS TANTAMOUNT TO NO TRANSCRIPT AT ALL HAVING BEEN FILED BY THE SCHOOL DISTRICT.

Failure of the Cherokee County School District to submit a certified official record signed by an agency official to authenticate the record and to confirm that the record contains true and correct copies of the complete record should have been considered a fatal error by the Supreme Court of South Carolina and the South Carolina Court of Appeals panel. Brown's due process rights were violated. Brown's termination should have been reversed.

As state above, this Court should grant the Petition because Brown's due process rights and equal protection rights were violated. Brown had a right to have all pleadings, motions, intermediate rulings, depositions, evidence received or considered, a statement of matters officially noticed, questions and offers of proof, objections, rulings on the cons tested case, and proposed findings and exceptions filed with the court of common pleas. As previously stated, In McWhirter vs. Cherokee County School District No. 1, 274 S.C. 66, 261 S.E. 2d 157 (1979), South Carolina Supreme Court referred to the actions of a local school board in language that indicates that the board is held to the standards of an "agency" as defined in the APA. See Brown

vs. William B. James, Superintendent for Cherokee County School District, 389 S.C. 41, 697 S.E.2d 604 (Ct. App. 2010).

Teachers and African Americans should not be excluded from S.C. Code of Laws Title 1 Chapter 23 Section 1-23-320 (G). Additionally, Brown was denied due process because the Clerk's office for Cherokee County Court of Common Pleas states it did not receive a transcript record of any kind pertaining to Brown's teacher dismissal. Brown is entitled to the same rights that are afforded to other state employees by SCRCF 75 (South Carolina Rules of Civil Procedure). Rule 75 (SCRCF75) states in pertinent part, "Upon filing of notice of appeal in an action the original record shall be certified by the clerk of the inferior court or administrative agency or tribunal and transmitted within (30) days to the clerk of the court to which the appeal is taken. Respondent District filed a teacher dismissal transcript for the first time at the South Carolina Court of Appeals. Respondent District, even then, never produced a complete certified record for the South Carolina Court of Appeals. Brown has been denied due process and equal protection when appealing her teacher termination in the judicial system. Respondent District robbed Brown of all her due process and equal protection rights in the judicial system.

Further, Respondent District deprived Brown of a property interest in her continuing teacher contract. Additionally, the Respondent District deprived Brown of liberty interest through damage to her reputation. Further, since Petitioner was deprived of her compensation, created through her continuing teacher contract, she should be allowed to proceed with her due process claim on this basis as well. Additionally, Brown's "protected liberty interests include the freedom to work and earn a living, and therefore such interests can be implicated where a plaintiff "was

either terminated for a reason which was (i)false, (ii), publicized, and (iii) stigmatizing to his standing or reputation in his community orterminated for a reason that was (i)false and (ii) had a stigmatizing effect such that (iii) he was denied other employment opportunities as a result." See Whiting v. Univ. of S. Miss., 451 F. 3d 339 (5th Cir. 2006) (quoting Cabol v. Town of Youngville, 106 F.32d 101, 107 (5th Cir. 1997) (emphasis added).

Brown was denied the opportunity to have meaningful judicial review of her teacher termination because Respondent district failed to file a certified complete Record in the Cherokee County Court of Common Pleas. See Mullane v. Cent. Hanover Bank & Trust Co. 339 U.S. 306, 313, 70 S.Ct. 652 94 L.Ed. 865(1950).

Additionally, Petitioner believes that the Supreme Court of South Carolina and the Court of Appeals panel applied a standard of review not warranted by the facts and law in this case. In this regard Brown believes that it is understandable that the Supreme Court of South Carolina and the South Carolina Court of Appeals Panel misconstrued and misapplied its application of Code §59-25-480 and SCRCP 75 where the Courts did not take the opportunity to discuss the gaps in S.C. Code §59-25-480. Moreover, Petitioner believes that the Circuit Court judge was hamstrung by the misrepresentations of the District about whether the record in the School District was complete and certified by the requisite agency official as contemplated under S.C. Code §59-25-480 and Rule 75 SCRCP. Petitioner also believes the District's legal counsel was confused and as such committed the

logical fallacy of equivocation by equating the Transcript of the Teacher Dismissal Hearing, which transcript was certified by the court reporter, as the complete record on appeal before the Circuit Court as of December 1, 2015.

The Court of Appeals appears to have overlooked the relationship between S.C. Code §59-25-480 and SCRC 75. From precedent it appears that both should be read together. S.C. Code §59-25-480 provides:

- (A)** The decision of the district board of trustees is final, unless within thirty days afterward an appeal is made to the court of common pleas of any county in which the major portion of such district lies.
- (B)** Notice of the appeal and the grounds thereof shall be filed with the district board of trustees. The district board shall, within thirty days thereafter, file a certified copy of the transcript record with the clerk of such court. An appeal from the order of the circuit court shall be taken in the manner provided by the South Carolina Appellate Court Rules. If the decision of the board is reversed on appeal, on a motion of either party the trial court shall order reinstatement and shall determine the amount for which the board shall be liable for actual damages and court costs. In no event shall any liability extend beyond two years from the effective date of dismissal. Amounts earned or amounts earnable with reasonable diligence by the person wrongfully suspended shall be deducted from any back pay.

SCRC 75 provides in part:

Appeals to the circuit court shall be made upon the original record in the lower court or administrative agency or tribunal. Upon filing of notice of appeal in an action the original record shall be certified by the clerk of the inferior court or administrative agency or tribunal.

The general proposition under the APA § 1-23-380 is that a party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. Judge Geathers goes on to state that all the

courts have applied APA standards to certain school board administrative decisions. See *Brown v. James*, 389 S.C. 41, 697 S.E.2d 604 (2010).

In the context of school district terminations of teachers, the school district is looked upon as an agency as defined in the Administrative Procedures Act. See *Brown v. James*, 389 S.C. 41, 697 S.E.2d 604 (2010), also see *McWhirter v. Cherokee County School District 1*, 274 S.C. 66, 261 S.E.2d 157 (1979). "The observance of procedural requirements of the Employment and Dismissal Act is mandatory and not a matter for discretion." *Brown v. James*, 389 S.C. 41, 697 S.E.2d 604 (Court of Appeals 2010).

In *Brown v. James*, the school district prevented Brown from having a due process hearing. *Brown v. James supra*. It is noteworthy to state that this is the same Sharon Brown that is presently before the court.

Here, Brown exhausted her administrative remedies. The district in turn was duty bound to strictly comply with South Carolina Code § 59-25-480 which by its own admission, the district did not do. See *Brown v. James supra*.

The Court of Appeals panel misconstrued and misapplied an erroneous standard of proof in its finding that there was substantial evidence that the trial transcript was filed. The Panel and the South Carolina Supreme Court did not properly apply South Carolina Code § 59-25-480 and Rule 75 SCRCMP.

Respectfully, the District did not submit the entire record below. The way the process should have worked is as follows:

1. Brown files notice of appeal with circuit court and district.
2. District has 30 days to have an official of the District sign a certified Record of all the proceedings and documents below.
3. District then must transmit this Certified Record to the Cherokee County Clerk of Court's Office for filing.
4. District's transmittal must be more than the just the record of the hearing below but must include any relevant Certified orders of the District and the certified vote of the District Board of Trustees.
5. The Appellant then has a due process hearing before the Circuit Court applying the substantial evidence standard of proof.
6. Then a decision and judgment is rendered by the Circuit Court Judge.

What was not done in this case:

7. The District never presented a certified record from the School District signed by an official as mandated by Rule 75 SCRCR or S.C. Code 59-25-480.
8. The transcript of the hearing below was certified by the Court reporter and not by an agency official.
9. A certified order was not filed with the Clerk of Court's Office within 30 days of filing of an appeal by Brown with the Circuit Court;
10. The vote of the Board of Trustees ratifying Brown's termination was not certified within thirty days to the Clerk of Court of Cherokee County as required by SCRCR 75 and S.C. Code 59-25-480.

Since the School District transmitted what Petitioner states is a defective and incomplete non-certified "record" to the Circuit Court, the Circuit Court judge could not properly consider and apply the substantial evidence standard of proof without running afoul of both due process and equal protection clauses of both the South Carolina Constitution, the Federal Constitution and mandatory State Statutes, such as 59-25-480 and Rule 75 of SCRCR (even if Petitioner disregarded the fact that the Clerk of Court

Office for Cherokee County Court of Common Pleas states that they never received a Transcript Record). The Statutory provisions of the Act governing teacher dismissals are mandatory on all parties.

Since S.C. Code §59-25-480 only deals with part of the transmittal process. It is clear that the Rule 75 fills in the gaps and list the administrative agency's clerk, then if no agency clerk, then some other top official as being charged with certifying the transmittal of the record from the School board of trustees to the Circuit Court Clerk. Here legal Counsel for the School Board of Trustees of Cherokee County gives the impression from her December 1, 2015 letter that she filed a certified transcript. This hearing transcript was certified by the Court Reporter. However, Ms. White has not identified any school board official who signed off and certified the record that was ultimately transmitted to the Clerk of Court of Cherokee County. Not having done this, due diligence renders the "Record" before the Circuit Judge defective and a nullity in terms as to what was ordered in the way of termination of Brown since no valid order existed before the Circuit Judge.

Filing a defective uncertified record does not excuse the District from filing a certified record.

Additionally, the District's legal counsel's letter to the Court of Appeals dated November 22, 2017, the School Board's counsel states that she filed the Transcript of record on December 3, 2015 which is a different date than what she represented in her letter dated December 1, 2015. Additionally, the School Board claims that the only record they submitted to the Cherokee County Clerk of Court

was the Transcript of the Hearing below that was typed by the court reporter. This is significant because Judge Hayes only considered the following:

“After reviewing the transcript of the School board’s hearing and the exhibits presented as a part of the hearing’s record, reviewing the pleadings and briefs in the Clerk of Court’s file, considering the arguments presented by counsel, and applying the required standard of review, the School Board’s decision is affirmed.” R. p. 2.

As has been adverted to Rule 75, states in pertinent part, appeals to the Circuit Court shall be made upon the original record in the lower court or administrative agency or tribunal. Upon filing of notice of appeal in an action, the original record shall be certified by the clerk of the inferior court, or administrative agency or tribunal and transmitted within 30 days to the clerk of court to which the appeal is taken. If the lower court, agency or tribunal has no clerk, then the original record shall be certified and transmitted by the judge or chief official of the lower court, agency or tribunal. (Emphasis added).

In this case, we have not been provided with the name of the person who properly certified the record from the School Board of Trustees of Cherokee County to be transmitted to the Cherokee County Clerk of Court within the thirty (30) requirement under both the Statute and the Rule 75. Moreover, the Court reporter does not appear to be listed in either S.C. Code §59-25-480 or Rule 75 of the SCRCP.

Respectfully, the Panel’s finding that the District “...has provided substantial evidence that it did file a transcript of the board hearing” with respect to the mandatory certification is questionable with regard to the confused dates on the District about when the transcript of the hearing was filed and a lack of a

named certifying official of the Record before Judge Hayes. Also, the Panel's reasoning does not comport with the plain language of either the Statute of S.C. Code 59-25-480 or Rule 75 SCRCP.

Additionally, the Supreme Court of South Carolina and the Court of Appeals appears to be confused about the issue as to who certifies the record below and what is to be included in the record. Clearly, the transcript and the exhibits from the Court reporter were insufficient. It follows that the School District had the burden to provide the lower court judge with the decision and order of the School District within the 30 days contemplated by both the Statute of S.C. Code §59-25-480 and Rule 75 of the SCRCP.

It is axiomatic that Brown's due process rights were violated by this oversight by the Supreme Court of South Carolina and the Court of Appeals which is understandable due to the misrepresentations made by the District to the Clerk of Court, Brown's legal Counsel and the Court of Appeals concerning the certification issue and the District's mischaracterization of what it filed or didn't file in the Cherokee County Clerk of Court's Office.

To reiterate, from the record below, it does not appear that the school board and/or its agents, servants and/or employees complied with Rule 75 of the South Carolina Rules of Civil Procedure because it does not appear that the record below was certified to the circuit court by the administrative agency itself. And it does not appear, we believe, that Ms. White on behalf of the school district has submitted a

certified record to the circuit court. If so, then please show us who signed and where it has been submitted.

Clearly then, the Cherokee County School District did not comply with 59-25-480 and/or Rule 75 of the South Carolina Rules of Civil Procedure. It is stated in *Vansant v. Smith* that Rule 74 and 75 make uniform the procedure on appeals to the circuit court where there is no provision by statute or do not replace any provision in Title 18 relating to such appeals in other statutes. Clearly, Rule 75 must be read with 59-25-480 in order to deal with the issue of transmittal of the record below.

In its Brief to the South Carolina Court of Appeals, the District states that "The District has presented evidence to this Court that it filed the transcript. In its return filed with this Court on November 27, 2017, the District responded to Appellant's designation of matters to be included in the record on appeal to ask the Court of Appeals to include a transcript of the teacher dismissal hearing. In that return, the District included as Exhibit A its counsel's letter to the Honorable Brandy McBee, Cherokee County Clerk of Court, dated December 1, 2015, "enclosed for filing the transcript of Brown's teacher's dismissal hearing in accordance with the requirements of South Carolina Code Annotated § 59-25-480." Brown's counsel was copied on the December 1, 2015 letter. In that return the district states, "As further evidence the District filed a transcript, and that it was received by the lower court, Circuit Court Judge J. Mark Hayes cites to the transcript in his order upholding the Board's decision, demonstrating that the transcript was in fact filed. Had the transcript not been filed, Judge Hayes could not have reviewed it." The District also states, assuming *arguendo* that the clerk of court did not receive the transcript, the appropriate relief is not Brown's reinstatement. Once Brown was informed, through her counsel's discussion with the Cherokee County Court of Common Pleas' clerk on October 30, 2017, that the clerk had not received the transcript, Brown was on notice that there was a possible question over the filing of

the transcript. As such, Brown should have remedied the matter by pursuing the appropriate *writ of mandamus*, which she did not do."

Please note in the Transcript of the Teacher Dismissal Hearing there was no order filed with it. Supplemental Record p. 442.

The Supreme Court of South Carolina and the South Carolina Court of appeals cannot relax the rules to suit the District's failure to comply with the clear commands of the Employment and Dismissal Act S.C. Ann. § 59-25-410, 59-25-480, and SCRCP 75 (Rule 75), as well as S.C. Code of Laws, Title 1 Chapter 23 Section 1-23-320 (G).

Since the District chose what record to submit/allegedly submit and that record being defective on its face, reversal of the Circuit Judge and School Board's decision is mandated because it is impossible to apply the substantial evidence standard of proof to the facts in the Transcript of the hearing without a certified decision from the District and a complete record from the Respondent District. As such the lower courts' decisions should be reversed and Brown must be reinstated to her former teaching position.

CONCLUSION

This prejudice the Petitioner in so many ways. As such, Petitioner requests that the Circuit Court, the Court of Appeal's decision, and the Supreme Court of South Carolina decisions be reversed and that Brown be ordered reinstated to her job as a school teacher. A job she is well qualified to serve in.



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