

22-6776
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
FEB 10 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

J. Doe,

Petitioner,

v.

Design Review Board (DRB)
of the
Town of Sullivans Island (TOSI),
Alka Construction Co.,
Svetlana Bilic Damjanovic,
Individually and d/b/a Alka
Construction Co., Branko
Damjanovic, Individually and
d/b/a Alka Construction Co.,
Kenneth Craft, III, Individually and
d/b/a Craft Design Co.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

C. Holmes
P.O. Box 187
Sullivans Isd., SC 29482-0187
(843) 883-3010
For Petitioner

QUESTION PRESENTED

I. Whether review should be granted where no other review was available and whether the lower appellate court denied meaningful review and other substantial rights in violation of the First, Fifth, Seventh, and/or Fourteenth Amendments.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

None

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a
writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The unpublished opinion of the state court of last resort appears at Appendix B to the petition. The unpublished opinion of the lower appellate court appears at Appendix A to the petition.

JURISDICTION

An extension of time to file the petition for a writ of certiorari was granted to and including February 11, 2023, Application No. 22A573. Jurisdiction is invoked under 28 U.S.C. § 1257. *Thompson v. City of Louisville*, 362 U.S. 199 (1960) (review granted where no other appellate review was available).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I

Religion and Expression

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment V

From the Bill of Rights

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VII

Civil Trials

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of common law.

Amendment XIV

Rights Guaranteed:
Privileges and Immunity of Citizenship,
Due Process, and Equal Protection.

SECTION I. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof; are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any 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.

STATE PROVISIONS AT ISSUE

S.C. Code § 14-8-220

S.C. Code § 14-8-220. Power of Court and judges to administer oaths and writs; appeal.

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs as are necessary to give effect to its jurisdiction. An appeal shall be allowed from decision of any one judge to a panel of the Court. S.C. Code § 14-8-220.

S.C. Code § 6-29-900.

S.C. Code § 6-29-900. Appeal from board of architectural review to circuit court; pre-litigation mediation; filing requirements.

(A) A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.

(B) A property owner whose land is the subject of a decision of the board of architectural review may appeal either:

(1) as provided in subsection (A); or

(2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-915.

A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

(C) Any filing of an appeal from a particular board of architectural review decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(C)(1).

Rule 210(h), SCACR. Rehearing and Remittitur

(h) Review Limited to Record on Appeal. Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.

Rule 221(a), SCACR. Rehearing and Remittitur

Rule 221(a) Rehearing. Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court. A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. No return to a petition for rehearing may be filed unless requested by the appellate court. Ordinarily, however, rehearing will not be granted in the absence of such a request. No petition for rehearing shall be allowed from an order denying a petition for a writ of certiorari under Rule 242, SCACR, or declining to entertain a matter under Rule 245, SCACR.

Rule 240, SCACR. Motions and Petitions Generally

Rule 240(j) Authority of an Individual Judge or Justice. Except where these rules require the concurrence of two or more members of an appellate court, an individual judge or justice may grant or deny any motion or petition on behalf of the court. Any review of an order issued by an individual judge or justice shall be by petition for rehearing.

Rule 242, SCACR. Certiorari to the Court of Appeals

Rule 242(c) Time for Petitioning and Filing Fee. A decision of the Court of Appeals is not final for the purpose of review by the Supreme Court until the petition for rehearing or reinstatement has been acted on by the Court of Appeals. 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. An original and six (6) copies of the petition shall be filed with the Supreme Court. The copies filed with the Supreme Court shall be accompanied by the filing fee set by order of the Supreme Court. No filing fee shall be required in criminal cases or petitions filed by the State of South Carolina or its agencies or departments.

Rule 242(d)(1) Content of Petition. The petition for writ of certiorari shall contain the following:

(1) Certification by counsel for petitioner that a petition for rehearing or reinstatement was made and finally ruled on by the Court of Appeals.

Rule 242(e) Appendix. At the same time the petition is filed, the petitioner shall also file two (2) copies of the Appendix with the Clerk of the Supreme Court. Fn.2

Footnote 2. By order dated August 25, 2021, the requirement that petitioner file two copies of the Appendix has been suspended, and the necessary documents will be obtained from the electronic records of the case before the Court of Appeals. This order is available at:

<https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2622>

INTRODUCTION

The Great Statesman, Rep. Elijah Cummings, may he rest in peace, observed, "When we're dancing with the angels, the question will be asked, in 2023, what did we do to make sure we kept our democracy intact?" Emphasis supplied. Along with Rep. John Lewis, may God rest his soul, it is fitting to remember these lifetimes of steadfast bravery and unremitting courage. It is fitting, as well, to remember the beginnings of that democracy. The framers of our state and Federal Constitutions risked life, limb, and liberty to escape abuses by the British government.

Both state and Federal Constitutions were deliberately crafted to foreclose those abuses here. The framers did not need computers, tablets, or cell phones to discern the basic tenets of fundamental fairness and due process. An impartial decision-maker was seen as a non-negotiable requirement for preventing such abuses. The letter and spirit of our cherished Constitution categorically prohibit deprivation of life, liberty, or property without due process of law, nor shall any

person be denied equal protection of the laws. The right of trial by jury shall be preserved inviolate. *As a corollary, another requirement, deemed mandatory and prohibitory, is that no single individual, whether British monarch or government official shall have absolute authority over a citizen's life, liberty, or property without being subject to the right of appeal with meaningful judicial review.* Accordingly, wrongful out-of-time dismissal of meritorious appeal herein by a single individual without factual support or Record on Appeal (ROA) is challenged. Moreover, pursuant to Federal and state constitutional law, the SCACR (South Carolina Appellate Court Rules) which are based on the Federal Rules, and statutory authority, timely request for review of an order by a single individual was submitted. That same single individual arbitrarily and capriciously caused conversion of the unearned filing fees and thwarted/obstructed any meaningful judicial review of his own order, i.e., the order of a recently-elected individual and state government employee. Federal and State statutory and constitutional laws mandate meaningful judicial review of orders by a single government employee, not only to protect individuals elected as state court judges and justices, but to protect the integrity of this Murdaugh-besmirched state court.

In the instant case, petitioner timely reserves, preserves, does not waive, and expressly requests fundamental fairness and substantial rights including but not limited to, meaningful opportunity to be heard at a meaningful time, full and fair hearing, and meaningful judicial review. There are examples of pro se filings subjected to a separate second-class system of so-called justice, where the rules of court are gleefully and cavalierly used as a trap for the unwary. Significantly

and materially, there is an abundant body of law decisively declaring separate is never equal. The acknowledged systemic institutional biases against minorities and/or pro se litigants threaten our democracy and feed the appearance of the proverbial “rigged” system. In the pro se setting, this issue is of exceptional importance as it is capable of repetition, capable of evading judicial review, and incapable of adequate remedy on appeal.

The following inscription is found at the Four Corners of Law: “Where the rule of law ends, tyranny begins.” The Judge J. Waties Waring Judicial Center is named for the renowned crafter of divine dissents lying in repose in Charleston, who must be turning over in his grave at the historically persistent lawlessness of the Four Corners of Law where his name is prominently displayed. As set forth more fully below, it is respectfully submitted our democracy depends on the basic tenets of fundamental fairness and due process just as much, if not more so, in this age of cell phones, tablets, computers, and extraordinary and unprecedented public health and affiliated economic emergencies ongoing and still unfolding. To the extent pro se civil litigants are disproportionately affected and would have limited access to attorneys, these important public issues involving substantial rights are statistically less likely to come before this Honorable Court, if at all, which supports review.

FACTS

Pertinent facts include the following. A recently re-elected lower appellate

court judge of the Murdaugh-besmirched South Carolina judicial system, as an individual state government employee and without factual support or ROA (Record on Appeal) for meaningful review, arbitrarily, capriciously, and summarily dismissed petitioner's meritorious Historic District Board of Architectural Review case after developer filed an out-of-time motion to dismiss at the deadline for filing initial brief and without factual support or Record on Appeal (ROA). The petitioner's Rule 240(j), SCACR, Motion for *De Novo* Panel Appeal of an individual judge's order with Motion to Hold All Time Limits in Abeyance was timely filed. Despite timely request, that same conflicted individual wrongfully participated in appeal of his own decision apparently to ensure denial and thwart/obstruct meaningful review of his own unauthorized dismissal. Toal *et al.*, *Appellate Practice in South Carolina* (1999), p. 259 (Rule 240(j) was designated Rule 224(j), SCACR, at that time). Thereafter, timely lower appellate court Rule 221, SCACR, petition for rehearing was filed regarding matters of great public importance including denial of meaningful review of summary dismissal of appeal issued by a single recently re-elected lower appellate court judge without factual support or ROA (Record on Appeal). Other issues include the improper, less burdensome, legal standard applied to deny petitioner's Rule 240(j), SCACR, Motion for *De Novo* Panel Appeal, ambiguity regarding the proper de novo legal standard at Rule 240(j), SCACR, appeal as opposed to a less burdensome standard such as Rule 221, SCACR, petition for rehearing, the propriety of that conflicted individual's participation in appeal of his own decision, lack of uniformity in the state appellate courts including but not limited to, the proper legal standard at Rule 240(j),

SCACR, appeal, the denial of meaningful review, and/or the totality of circumstances.

The same conflicted individual judge refused for filing the timely lower appellate court Rule 221, SCACR, petition for rehearing and converted the unearned filing fees. As a repeat offender, that same conflicted recently re-elected state court judge is currently sitting on the timely filed motion for reconsideration while converting those unearned filing fees as well. The petitioner is prejudiced thereby. Timely petition for a writ of certiorari is filed in the state court of last resort which was denied summarily with no adequate record for meaningful review: Pursuant to Rules 242(d)(1) and 242(e), SCACR, the COA electronic record is the ROA for the state court of last resort with no factual support in this case. The state court of last resort wrongfully refused timely Rule 221, SCACR, petition for rehearing and failed to return unearned filing fees.

Moreover, the case of *Citizens for Quality Rural Living, Inc., v. Greenville Cnty. Planning Comm'n*, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019), and others establish governing precedent which provides that the Legislature intended to and did statutorily vest jurisdiction in the Historic District Board of Architectural Review for the hearing where the issues were presented to the Board by the petitioner. The petitioner is an adversely affected Historic District Property Owner in the immediate vicinity with a substantial interest. Pursuant to statutory authority, appeal is timely filed in the state circuit court. There is no jurisdiction for a merits hearing or dismissal in the state circuit court unless and until **pre-litigation** mediation, timely requested herein, is unsuccessful and mediation

"must be granted." S.C. Code § 6-29-900 et seq. The Legislature enacted mandatory ADR (alternative dispute resolution) for most, if not essentially all, civil matters including the matter herein. It is respectfully submitted the Legislature did not intend to exempt and did not exempt developer from mandatory ADR regarding some of the most desirable full-time residential real property in the state, if not the country. Public policy and Legislative intent mandate pre-litigation mediation "must be granted." S.C. Code § 6-29-900 et seq. Review is requested where no meaningful review of an order by a single recently re-elected lower appellate court judge was available and/or where conversion of unearned filing fees is a routine pattern and practice.

REASONS FOR GRANTING THE PETITION

I. Whether review should be granted where no other review was available and whether the state appellate courts denied meaningful review and other substantial rights in violation of the First, Fifth, Seventh, and/or Fourteenth Amendments.

The petitioner respectfully submits Petition for a Writ of Certiorari. Each assertion set forth in this document that is consistent with the following is incorporated herein by reference as if here set forth verbatim. Without being disagreeable, there is disagreement. It is respectfully submitted the opinion filed September 14, 2022, misapprehends and/or overlooks material fact and law. This matter involves failure to comply with Federal and State Constitutional mandates, as well as conflict with other courts in the interpretation/application of those laws.

Uniformity and consistency in the interpretation and/or application of

constitutional, statutory, and case law compels review. Citizens are the intended beneficiaries of that law. Matters of great public importance are at stake, including but not limited to, dismissal of appeal by a recently re-elected individual state government employee with no record on appeal (ROA) or other factual support for meaningful review which is, by definition, consistent with abuse of discretion. Rule 240(j), SCACR, motion for de novo appeal of order by a single individual was denied by that same conflicted individual thereby denying meaningful review. Thereafter, Rule 221, SCACR, petition for rehearing was timely filed in the South Carolina Court of Appeals (COA) and filing fees paid. That same conflicted state government employee engaged in a pattern and practice of conversion of unearned filing fees and wrongful refusal to file the timely COA Rule 221, SCACR, petition for rehearing thereby denying and/or obstructing full, fair, and meaningful review. The record reflects that the recently re-elected state government employee has gone to extraordinary lengths to thwart/prevent meaningful review of his alleged wrongdoing. Petitioner is prejudiced thereby. But for the alleged misconduct of a single conflicted state government employee, the outcome should and would be in petitioner's favor. It is respectfully submitted the alleged wrongdoing by the conflicted individual state government employee includes but is not limited to, a pattern and practice of conversion of unearned fees, violations of the rules of court, obstruction and/or denial of meaningful judicial review of that same conflicted individual's alleged breach of trust, abuse of discretion, and/or other wrongdoing as well as prejudicial deprivation of due process, equal protection, substantial rights, and Federal and State Constitutional

protections for each citizen's individual and property rights. The state court of last resort summarily denied timely petition for a writ of certiorari thereby failing and refusing to provide meaningful review of that conflicted individual's misinterpretation, misapplication, conversion, and other wrongdoing under the SCACR and governing Federal and state law. No other review is available which supports this petition.

The facts herein are chilling. A recently re-elected judge of the Murdaugh-besmirched "good ole boy" judicial system, as an individual state government employee and without factual support or ROA (Record on Appeal) for meaningful review, arbitrarily, capriciously, and summarily dismissed meritorious appeal. Governing Federal and state constitutional law, the South Carolina Appellate Court Rules (SCACR), the Federal Rules on which the SCACR are based, the South Carolina Legislature's intent, and the letter and spirit of the statutory authority underlying Rule 240(j), SCACR, S. C. Code § 14-8-220, all provide for appeal and meaningful review of that conflicted individual's lower appellate court order. Legislative intent and the purpose of that statute include protection of the integrity of the judicial system, protection of the lower appellate court, protection of individual state court judges, and compliance with Federal and state constitutional mandates and substantial rights:

S.C. Code § 14-8-220

SECTION 14-8-220. Power of Court and judges to administer oaths and writs; appeal.

The Court and each of the judges thereof shall have the same power at chambers or in open court to administer oaths, and to issue such remedial writs

as are necessary to give effect to its jurisdiction. **An appeal shall be allowed from decision of any one judge to a panel of the Court.** S.C. Code § 14-8-220 (emphasis supplied).

The record reflects the single conflicted state government employee who is duty bound by sworn oath to uphold the SCACR violated the SCACR and the above statute by his participation in the appeal, thereby denying meaningful review. The record reflects the self-same conflicted state government employee at every turn used undue influence and/or insider status to evade meaningful review of his own unauthorized arbitrary and capricious order for summary dismissal of meritorious appeal without affidavit, factual support, or ROA (Record on Appeal) in a pattern and practice designed to deny substantial rights. A reasonable person should and would have reasonable questions regarding, included but not limited to, impartiality. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), or denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"). *County of Sacramento v. Lewis*, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998). See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See U.S. Const., Article I, sec. 9 and 10; U.S. Const., Article III; U.S. Const. amend. I, IV, V, VII, and XIV.

The record reflects and the docket confirms the self-same conflicted state

government employee has evaded and/or unlawfully prevented disposition on the merits on petitioner's timely filed lower appellate court Rule 221, SCACR, petition for rehearing. "When a judge or the appellate court dismisses the case, the party should file a petition for rehearing **pursuant to Rule 221, SCACR.**" Toal *et al.*, *Appellate Practice in South Carolina*, Third Edition (2016), p. 374 (emphasis supplied). Pursuant to Rule 242(c), SCACR, "A decision of the Court of Appeals is **not final** ... until the *Rule 221* petition for rehearing has been acted on by the Court of Appeals." Rule 242(c), SCACR (emphasis supplied). In fact, Rules 242(d) (1) and 242(e), SCACR, require petitioner herein to certify the lower appellate court Rule 221, SCACR, petition for rehearing has been finally ruled on and 242(e), SCACR, requires adequate record for meaningful review in the lower appellate court before statutory authority and/or jurisdiction for the petition for a writ of certiorari vests in the state court of last resort. Toal *et al.*, *Appellate Practice in South Carolina*, Third Edition (2016), p. 514. See *Aiken Speir, Inc. v. Henry*, 326 S.C. 268, 486 S.E.2d 492 (1997). In the instant case, there is no ROA or factual support in the lower appellate court. That same conflicted state government employee failed and refused, despite timely notice, to require adequate, or any, record for meaningful review thereby preventing/obstructing meaningful review. Because there is inadequate record with no factual support in the lower appellate court, there can be no meaningful review by the state court of last resort; that court lacks statutory authorization and/or jurisdiction for disposition and the denial of the state court petition for a writ of certiorari herein is, at best, abuse of discretion. Rules 242(d)(1) and 242(e), SCACR. That same recently re-elected

lower appellate court judge thereby hamstrings the state court of last resort and denies substantial rights including meaningful opportunity to be heard at a meaningful time as well as meaningful review. The wrongdoing is capable of repetition and has been repeated, it is capable of evading and has evaded meaningful review, and it is incapable of vindication on appeal. Petitioner's timely filed and paid COA Rule 221, SCACR, petition for rehearing in this matter has not been "finally ruled on." Rule 242 (d)(1), SCACR. The rules of the SCACR provide no jurisdiction or authority for granting or denying petition for a writ of certiorari in the state court of last resort until and unless the timely filed COA Rule 221, SCACR, petition for rehearing has been decided. See Rule 210(h), SCACR (providing an appellate court will not consider any fact that does not appear in the record); *Culbertson v. Culbertson*, 273 S.C. 103, 105-06, 254 S.E.2d 558, 559-60 (1979); *Fountain v. Fred's, Inc.*, 871 S.E.2d 166 (S.C. 2022). The same conflicted recently re-elected state court judge, is currently sitting on the timely filed motion for reconsideration while converting those unearned filing fees as well. His standard operating procedure is a pattern and practice of the alleged wrongdoing including conversion of multiple unearned fees, denial of substantial rights, and/or deprivation of civil rights. Repeated wrongful conversion of multiple unearned fees paid in good faith by a member of the public is a violation of, including but not limited to, the SCACR, it is fundamentally unfair, and it smacks of unequal treatment and/or discrimination against a member of a protected class. Per the SCACR as well as statutory and case law, the Rule 221, SCACR, petition for rehearing filed in the lower appellate court is pending disposition and filing fees

have not been returned. The state court of last resort has jurisdiction to grant and should have granted petitioner's timely request for remand to the state's lower appellate court for disposition on the timely COA Rule 221, SCACR, petition for rehearing en banc. Jurisdiction can be raised at any time. Jurisdiction cannot be waived. To the extent there is ambiguity, the rule of lenity supports petitioner's position. The Federal and state constitutions do not authorize an individual state government employee to essentially make legislative decisions which re-write the statutes and the SCACR rules for his own conflicted convenience in an attempt to thwart and/or obstruct meaningful judicial review. In sum, matters of great public importance invite review and it is respectfully requested the petition be granted.

CONCLUSION

For the reasons stated and for substantial justice affecting substantial rights, the undersigned respectfully requests the petition for a writ of certiorari be granted.

Respectfully submitted,

Dated 2/9/23


C. Holmes
PO Box 187
Sull. Isd., SC 29482-0187
843.883.3010