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**Apr 14 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
General Sessions Court  
The Honorable Letitia Verdin, Circuit Court Judge

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Appellate Case No. 2020-001122

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State of South Carolina.....Respondent,

vs.

Marquez D. Glenn.....Appellant.

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**REQUEST TO RECALL REMITTITUR/FILE OUT OF TIME**

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Appellant hereby moves the Court to recall the remittitur and for the Court to accept Appellant’s Request for Rehearing that was filed on April 5, 2023 out of time. This Motion is being made in good faith, for good cause, and in the interest of justice. Jordan v. Hartford Fin. Grp., 435 S.C. 501, 505, 868 S.E.2d 400, 402 (“The good cause standard exists to ensure the interests of justice are protected even when a party missteps, so a harmless procedural foot fault does not spring a trap door that mindlessly jettisons innocent parties out of court, regardless of the circumstances.”). Undersigned counsel has been fighting pro bono on Appellant’s behalf since the original trial of this case in August 2015, having taken Appellant’s case to the Supreme Court once already and prevailed in December 2019, thereafter returning to the trial court where rehearing and decision of Appellant’s Immunity Motion was delayed by COVID-19 until August

2020, at which time a timely Notice of Appeal was filed to this Court after which Appellant's Final Brief was filed in June 2021. Unfortunately due to the impact that the pandemic had on the judicial system and community throughout South Carolina, this honorable Court was not able to consider Appellant's case until the February 2023 term after which the Court issued an unpublished opinion affirming the trial court on March 1, 2023. Regrettably, Undersigned Counsel did not receive the email that the Court sent out on March 1, 2023 serving the Court's unpublished opinion, and as such was unaware of the Court's decision until March 20, 2023.<sup>1 2</sup> Accordingly, upon receiving correspondence on March 20, 2023 and seeing in the attachment for the first time the opinion of the Court affirming the decision of the trial court, Undersigned Counsel dove into analysis of the opinion and crafting with particularity the meritorious points that I believe have been overlooked and misapprehended. In my haste to dig into the substance of the Request for Rehearing, Undersigned Counsel did not calendar the deadline for filing of the Request for Rehearing correctly and thus wrongly believed the due date for the Request for Rehearing was April 5, 2023—which is in fact the date Appellant's Request for Rehearing was

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<sup>1</sup> Upon realizing the situation when correspondence was received from the Court on April 13, 2023, Undersigned Counsel immediately called the Clerk of Court's Office for the Court of Appeals and spoke with Ms. Jacklyn Orr about the situation. Ms. Orr confirmed an email was sent to Undersigned Counsel on March 1, 2023 and Undersigned Counsel does not dispute the accuracy of Ms. Orr's records. However, through an overzealous email filter or computer operator, i.e., Undersigned Counsel, error, I did not see or receive and, as such, was not aware of the March 1, 2023 email until my conversation with Ms. Orr on April 13, 2023.

<sup>2</sup> Undersigned counsel also acknowledges that had I not been working from my home office, these oversights likely would have been realized sooner, however, due to my wife and I currently going through IVF again after the recent loss of a pregnancy during the month of February, both my wife and I have been exercising caution and working from home to avoid jeopardizing our current round of implantation through exposure of my wife to COVID-19 or other illness. Though my family's personal matters do not excuse my oversight, Undersigned Counsel wanted to provide the Court the full context in which my error occurred.

filed and served. Undersigned Counsel is deeply respectful of this Court, had no intention not to comply with the requirements of the Appellate Court Rules or to “thwart the judicial system,” and is sincerely apologetic for the delay caused. Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986) (“[W]here there is a good faith mistake of fact, and, no attempt to thwart the judicial system, there is basis for relief.”); see also Morris v. BB&T Corp., Op. No. 28131 (S.C. Sup. Ct. filed Jan. 25, 2023) (Howard Adv. Sh. No. 4 at 13, 15) (holding that “[t]he failure to accurately calendar a filing deadline will not constitute good cause for reinstating an appeal in every instance...however...we find [appellant’s counsel] demonstrated good cause” where counsel quickly brought his mistake to the commission’s attention, admitted his good faith mistake, apologized for the delay and no party was prejudiced thereby); Micronics, Inc. v. S.C. Dep’t of Rev., 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (“We find no evidence in the record that the mistake was anything but a good faith error, as shown by [counsel’s] explanation coupled with his speed in asking the ALJ for rehearing.”). Given the almost decade worth of pro bono work that has been dedicated to pursuing on behalf of Appellant what have been and what I believe still are meritorious arguments of exceptional importance to the right of every South Carolinian to exercise their right to protect themselves, their families, and others from attackers without fear of prosecution, I humbly and with the greatest respect request for this Court to recall the Remittitur issued on March 20, 2023 and to accept Appellant’s Request for Rehearing that was filed on April 5, 2023 out of time. Jordan, 435 S.C. at 506, 868 S.E.2d at 403 (citing Micronics, 345 S.C. at 511, 548 S.E.2d at 226 and Columbia Pools, Inc., 288 S.C. at 61, 339 S.E.2d at 525 and noting that “[t]hese cases recognize, as we do again today, that the practice of law is challenging enough without having to endure the

overbearing enforcement of technicalities when prejudice is absent from the scene;” further noting that although some decisions have refused to find good cause to set aside a default due to a party lawyer’s neglect concerning “time-triggering paperwork,” “those cases dealt with degrees of carelessness and periods of inattention far greater than we have here, and none tossed a party out of court for not timely filing a brief at a later stage of a perfected case.”) (emphasis added).

Counsel for Appellant has spoken with Assistant Deputy Attorney General William Blich who has indicated that the State will file a Response to this Motion consistent with the State’s standard position in connection with such a request.

I SO MOVE:

s/Christopher T. Brumback  
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**PROOF OF SERVICE**

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I certify that I have filed with the Court of Appeals and served Appellant’s Motion for Request to File Out of Time/Extension of Time to File on Respondent’s attorney, William Blich, by email, wblitch@scag.gov, on April 14, 2023.

Respectfully submitted,

BRUMBACK & LANGLEY, LLC

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