

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Apr 24 2023**

**S.C. SUPREME COURT**

APPEAL FROM CHEROKEE COUNTY  
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

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Opinion No.: 22-UP-429 (S.C. Ct. App. Filed December 7, 2022)  
Appellate Case No.: 2021-000269  
C.A. Case No.: 2020-CP-11-00632

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Bobby E. Leopard, Luther Harris, and Donna Harris .....Appellants,

v.

Perry W. Barbour, .....Respondent.

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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Opinion No.: 2022-UP-397 (S.C. Ct. App. Filed December 7, 2022)  
Appellate Case No.: 2020-001110  
C.A. Case No.: 2019-CP-42-02092

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Luther Harris, Donna Harris, and Bobby E. Leopard .....Appellants,

v.

Perry Wendell Barbour and Southland Transportation Co ..... Respondent.

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**RESPONSE TO REPLY TO MOTION TO PERMIT FILING OF  
CONSOLIDATED PETITION FOR WRITS OF CERTIORARI**

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Petitioners argue that the opportunity to submit a Petition for Writ of Certiorari in the Cherokee action has not lapsed. According to Rule 242, a writ of certiorari must be delivered to opposing counsel and submitted with confirmation of service to the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days following the Court of Appeals' final decision on the petition for rehearing or reinstatement. As the Petition for Rehearing was denied on February 10, 2023, the deadline for filing a petition for Writ of Certiorari was March 12, 2023. However, since March 12, 2023, was a Sunday, the deadline for filing was the following business day. On March 13, 2023, the Petitioners moved for an extension of time to file the Petition, because they had an outstanding Motion to Recall Remittitur in the Spartanburg appeal. The Court of Appeals put the matter in abeyance for forty-five (45) days, starting on March 16, 2023.

Respondent's arguments are contradicted by the fact that the filing and service of a petition for certiorari can be extended, as established in South Carolina Supreme Court's decision in Jim Lancaster v. Georgia-Pacific Corp., 742 S.E.2d 867 (S.C. 2013). Additionally, the Supreme Court itself acknowledges that there may be situations where parties require an extension of time to submit a petition, as stated in Order 2014-07-16-01, RE: Extensions in Cases Seeking a Petition for a Writ of Certiorari to Review a Decision of the South Carolina Court of Appeals. This order outlines the Supreme Court's policy on extensions for cases filed under Rule 242 SCACR and is provided as Exhibit "A".

With respect to the Spartanburg action, Petitioners reiterate their position that the remittitur was sent prematurely, which goes against the provisions of the amended Rule 221(b) of SCACR. This rule states that if a petition for rehearing is received before the remittitur is sent, the remittitur should not be sent until the court has made a decision on the petition. Furthermore, if the petition for rehearing is denied, the court of appeals cannot send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under rule 226(c) has expired. In the Spartanburg action, Petitioners moved to Allow Late Filing of the Petition for Rehearing and subsequently the Petition for Rehearing prior to the remittitur being sent to the lower court.

Due to miscommunication on the payment of filing fee, the Court of Appeals did not act upon the Petition for Rehearing, which is tantamount to its denial on March 17, 2023. Following above-cited Rules, the Court of Appeals cannot send the remittitur until April 17, 2023, 30 days after the denial of the Petition for Rehearing, which is the deadline for filing of a Petition for Certiorari in this action. However, in this case, the Court of Appeals sent the remittitur on the very day it disposed of the petition for rehearing. This being a direct violation of the law, Petitioners are entitled to their prayer to recall the remittitur from the lower court.

### **CONCLUSION**

For the foregoing reasons, in addition to the arguments made in their Motion, Petitioners respectfully request this Honorable Court to grant their motion; and allow Petitioners to submit a Consolidated Petition for Writ of Certiorari.

Respectfully submitted by:

**s/Donald L. Smith**

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April 24, 2023.