

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Maite Murphy, Circuit Court Judge
Case No. 2021-CP-18-01486

Appellate Case No. 2023-000757

John Trenton Pendarvis, Respondent,

v.

L.C. Knight, in his official capacity as Dorchester County Sheriff; Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division; Hugh E. Weathers, in his official capacity as the South Carolina Commissioner of Agriculture; and John Doe(s), Defendants,

Of whom Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division, is Appellant.

RETURN IN OPPOSITION TO MOTION TO FILE OUT OF TIME OR EXTENSION OF TIME

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Appellant Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division (“SLED”), hereby submits this short Return in Opposition to Respondent John Trenton Pendarvis’s Motion to File Out of Time (“Motion”). For the following reasons, Respondent’s Motion should be denied, and this Court should find that Respondent is not entitled to an award of costs against

SLED for the reasons previously set forth in SLED’s Return in Opposition to Respondent’s Motion for Costs.

Here, Respondent submits an Affidavit in support of his Motion that contends he did not *receive* notice of the issuance of the remittitur until January 2, 2024, and that he filed his Motion for Costs within “six days of learning of the issuance of the remittitur on January 2, 2024.” (Motion at 2). Respondent asserts he should be given extra time to submit his Motion for Costs. Simply put, Respondent’s Motion invites this Court to overlook and rewrite the plain language of Rule 222(d), SCACR. The Court should decline Respondent’s invitation.

“A party desiring costs to be taxed **shall**, within fifteen (15) days of the **issuance** of the remittitur, serve and file a motion requesting that costs be assessed under this Rule.” *Id.* (emphases added). Respondent would suggest that “issuance” be replaced with “receipt.” The Court, respectfully, should not blue-pencil the Rule. The drafters of Rule 222(d) are presumed to have known the difference between the terms “issuance” and “receipt,” and the Court should give meaning to the term chosen by the General Assembly.

The term “issuance” is defined as the “instance of putting, sending, or giving something out to the public, to subscribers, etc.” ISSUANCE, Black’s Law Dictionary (11th ed. 2019). This Court issued the remittitur to the circuit court on December 14, 2023. On the same day the remittitur was issued to the circuit court, the remittitur was publicly posted to the South Carolina Judicial Branch’s Appellate Case Management System (“C-Track”).¹ Furthermore, Respondent acknowledges the circuit court filed the remittitur on the lower court’s public index on December 27, 2023, and that the remittitur was dated December 14, 2023. Therefore, the December 14, 2023

¹ At the time the document was published on the lower court’s public index, Respondent still had two days to submit a Motion for Costs in compliance with Rule 222(d).

issuance date is the 15-day triggering date, not the date Respondent contends he received the remittitur.

The timing of the issuance of a remittitur is no surprise to appellate litigants because this timing is set forth in the Appellate Court Rules. *See* Rule 221, SCACR. Rule 221(b) provides:

(b) Remittitur. The remittitur shall contain a copy of the judgment of the appellate court, shall be sealed with the seal and signed by the clerk of the court, and unless otherwise ordered by the court shall not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment, or decree of the court finally disposing of the appeal. If a petition for rehearing is received before the remittitur is sent, the remittitur shall not be sent pending disposition of the petition by the court. Where a petition for rehearing has been denied, the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 242(c) has expired. If a petition for writ of certiorari is filed, the Court of Appeals shall not send the remittitur until notified that the petition has been denied. If the writ is granted by the Supreme Court, the Court of Appeals shall not send the remittitur.

Rule 221(b), SCACR (emphasis added). Furthermore, Rule 221(a) makes certain that petitions for rehearing are prohibited from being filed following the denial of certiorari. The Supreme Court sent correspondence to this Court on December 13, 2024, notifying the Court that certiorari was denied, and the Court issued its remittitur the following day—all in accord with the Appellate Court Rules.

Respondent's citation to *Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 709 S.E.2d 122 (2011), is of no help. There, the *Prince* Court correctly declined to address a party's request for costs that was presented to the Court during the merits of the appeal. *Id.* No one disputes that this was improper because remittitur was not issued. Rather, the *Prince* Court directed the parties to Rule 222(d) for the proper timing for a request for appellate costs and confirmed that the Rule

requires “a party seeking costs to file his motion for costs within fifteen days of the *issuance* of the remittitur.” *Id.* at 611, 709 S.E.2d at 128 (emphasis added).

Based on the foregoing, SLED respectfully requests the Court deny Respondent’s Motion to File Out of Time or Extension of Time and similarly deny Respondent’s Motion for Costs.

Respectfully submitted,

SMITH | ROBINSON

s/ Daniel C. Plyler

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Counsel for Appellant Keel in his Official Capacity

Columbia, South Carolina

January 25, 2024

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Jan 25 2024

SC Court of Appeals

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APPEAL FROM DORCHESTER COUNTY
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L.C. Knight, in his official capacity as Dorchester County Sheriff; Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division; Hugh E. Weathers, in his official capacity as the South Carolina Commissioner of Agriculture; and John Doe(s), Defendants,

Of whom Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division, is Appellant.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court’s Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of Smith Robinson Holler DuBose and Morgan, LLC, counsel for the Appellant, does

hereby certify that service of the **Return in Opposition to Motion to File Out of Time or Extension of Time** in the above-captioned matter was made upon Respondent's counsel by email only this the 25th day of January, 2024, as follows:

Patrick J. McLaughlin, Esquire
Wukela Law Office
Email: patrick@wukelalaw.com

C. Bradley Hutto, Esquire
Williams & Williams
Email: cbhutto@williamsattys.com

s/ Daniel C. Plyler

From: [Melissa S. Segear](#)
To: [Brad Hutto](#); [patrick@wukelalaw.com](#); [rwalker@wukelalaw.com](#); [vmware@williamsattys.com](#); [mwatson@wukelalaw.com](#); [Marlene Day](#)
Cc: [Daniel C. Plyler](#); [Fred Hanna](#); [Austin Reed](#)
Subject: Pendarvis v. Keel (Appellate Case No. 2023-000757)
Date: Thursday, January 25, 2024 12:19:00 PM
Attachments: [image001.png](#)
[Return to Motion to File Out of Time \(Final\), 3.pdf](#)
[COS-Return to Motion to File Out of Time, 2.pdf](#)

Attached herewith and served upon you please find the Appellant's Return in Opposition to Motion to File Out of Time or Extension of Time in regard to the above matter.

Thank you!

Daniel C. Plyler

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