



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
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BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA  
29211

1231 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

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August 26, 2013

The Honorable Lynn W. Lancaster  
PO Box 287  
Laurens SC 29360-0287

## REMITTITUR

Re: Benjamin Nabors v. The State  
Lower Court Case No. 2011CP3000308  
Appellate Case No. 2013-001195

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.<sup>1</sup>

Very truly yours,

CLERK

cc: Salley W. Elliott, Esquire  
Mr. Benjamin Nabors, #233844

<sup>1</sup> This remittitur relates to the notice of appeal dated May 23, 2013. The notice of appeal from the order dated July 16, 2013, is currently pending under Appellate Case No. 2013-001797.

# The Supreme Court of South Carolina

Benjamin Ray Nabors, Petitioner,

v.

The State of South Carolina, Respondent.

Appellate Case No. 2013-001195

Lower Court Case No. 2011-CP-30-00308

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## ORDER

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By order dated July 22, 2013, the notice of appeal filed by petitioner in this matter was dismissed due to petitioner's failure to serve the notice of appeal on respondent in a timely manner. Meanwhile, on July 16, 2013, the circuit court denied petitioner's pending motion to alter or amend the order dismissing petitioner's application for post-conviction relief. Since that time, petitioner has sought to have his appeal reinstated on the ground that he had thirty days from July 23, 2013, the date he received written notice of entry of the order denying his motion, to file an appeal. While that is true, petitioner must serve and file a new notice of appeal.<sup>1</sup> The initial notice of appeal cannot be reinstated because it was filed prior to the issuance of the order denying the motion to alter or amend and was therefore premature. *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986); Rule 203(b)(1), SCACR. Accordingly, petitioner's motion to reinstate is denied. The motion for a directed verdict and motion for judgment are denied.



A.C.J.

FOR THE COURT

Toal, C.J., not participating.

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<sup>1</sup> Indeed, petitioner has now served and filed such a notice of appeal. *Nabors v. State*, Appellate Case No. 2013-001797.

Columbia, South Carolina

August 26, 2013

cc: Salley W. Elliott, Esquire  
Mr. Benjamin Nabors, #233844