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Mar 24 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Ninth Judicial Circuit Court Judge

App Case No. 2025-000486
COA Case No. 24-1450 and 22-1146
Circuit Court Case No. 21-CP-10-05498

J. K. Holmes,

Respondent,

v.

C. E. Holmes,

Petitioner.

**Expedited Motion Addressed to the Chief Justice for Reconsideration and
Motion for Abeyance of Time Limits Pending Resolution**

C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

The undersigned respectfully submits expedited motion addressed to the Chief Justice for reconsideration with abeyance of the March 17, 2025, opinion regarding error of material fact and timeliness. Malfunction of the dedicated Supreme Court Fax Number 803.734.1499 may have caused or contributed to inadvertent error. Recently, that Fax Number was completely out of service for weeks and after service was restored, service remains intermittent and spotty, including but not limited to, erroneous fax transmission status showing Busy, Error, Failed, and other. Thereafter, thank heaven, your kind staff provided alternate fax numbers. Other folks may be relying on Fax Number 803.734.1499 as listed on the official letterhead and in the Rules. Moreover, it is noted that “initial requests for extensions may be obtained by letter to the clerk, without a formal motion.” Toal *et al.*, *Appellate Practice in South Carolina*, Third Ed. (2016), p. 375.

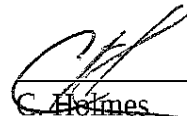
Specifically, the attached copy of our extension request was timely served and filed:

1. In the Supreme Court on February 23, 2025, pursuant to Rule 263, SCACR,
2. The Court of Appeals (COA) received that notice with COA date-stamp of February 24, 2025 (see attached),
3. Timely notice to the COA on February 24, 2025, is corroborated on the COA public index (copy attached),
4. The attached copy of amended request is timely served and filed on March 1, 2025,
5. Pursuant to Rule 263, SCACR, and the SCACR generally, timely service with timely filing of the extension request vests jurisdiction in the superior appellate court and pursuant to Rule 221, SCACR, and the SCACR generally, the record reflects the remittitur was sent in inadvertent error,
6. Remittitur in COA App. Case No. 2024-1450 was sent in inadvertent error on March 5, 2025, and
7. The certiorari petition herein is timely served and filed on March 16, 2025.

The law of the prior appeal, copy attached, provides that the appeal of the June 9, 2022, trial court opinion in COA Case No. 2022-001146 is reinstated after disposition on Rule 59(e), SCRCP, motion and that timely appeal is given COA App. No. 2024-001450. In any case, the extension request also provides the Circuit Court case number and the COA timely entered that request for extension in COA App. No. 2024-001450 on February 24, 2025. The record reflects timely filing, service, and notice of that extension request to the Court of Appeals. The attached copy of supporting affidavit is previously filed herein in Supreme Court App. Case No. 2025-000486. To the extent there is ambiguity and/or COA conflict, the rule of lenity supports our position. Accordingly, under the facts, inadvertent error in sending remittitur does not deprive the superior appellate court of jurisdiction and provides a very strong showing with just cause for recall of remittitur which is respectfully requested. *State v. Barnes*, 413 S.C. 1, 774 S.E.2d 454 (2015); *Wise v. S.C. Dep't. Corrs.*, 372 S.C. 173, 642 S.E.2d 551 (2007); *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893). "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 S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

For substantial justice affecting substantial rights, the undersigned respectfully requests reconsideration with abeyance pending resolution.

Respectfully submitted,



C. Holmes
PO Box 187
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