

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Oct 06 2025

SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Hon. Maite Murphy, Circuit Court Judge

Case No. 2024-CP-18-00375

Appellate Case No. 2025-000967

1613 Givhans, LLC,

Respondent,

v.

Barney Wimberley,

Appellant.

RETURN IN OPPOSITION TO APPELLANT'S MOTION TO RECALL REMITTITUR

Respondent 1613 Givhans, LLC, by and through undersigned counsel, respectfully submits this Return in Opposition to Appellant's purported Motion to Recall Remittitur and would show unto this Honorable Court the following:

INTRODUCTION

Respondent respectfully requests that this Court deny Appellant's Motion to Recall Remittitur. The motion should be denied for four independent reasons: (1) this Court lacks jurisdiction to entertain the motion because the remittitur has already issued; (2) the motion is untimely, having been filed well after all proper procedural avenues closed; (3) the motion suffers from a service defect; and (4) Appellant has failed to establish any valid grounds for the extraordinary relief he seeks.

PROCEDURAL HISTORY

1. Respondent filed the underlying Action on March 1, 2024.
2. Appellant was personally served on March 2, 2024.
3. Appellant failed to appear or defend the Complaint, and an Entry of Default was entered April 25, 2024.
4. Judgment by Default was entered against Appellant on March 26, 2025. The Judgment required Appellant to vacate the premises within 72 hours. Appellant failed to do so, and the court issued a Writ of Ejectment on May 6, 2025.
5. Appellant filed his appeal on May 19, 2025.
6. This Court dismissed Appellant's appeal as untimely on July 3, 2025.
7. Appellant filed a motion to reinstate the appeal on July 17, 2025.
8. This Court denied the motion to reinstate on August 27, 2025, finding that "Appellant has failed to establish good cause" as required by Rule 260(a), SCACR. The Court's order expressly stated: "Remittitur will be sent as provided in Rule 221 of the South Carolina Appellate Court Rules."
9. The remittitur was sent to the Common Pleas Court in accordance with Rule 221(b), SCACR.
10. On September 16, 2025 - after the remittitur had been sent - Appellant purportedly filed his "motion to recall the Remittitur" with this Court by sending it via regular mail to the Court of Appeals.
11. On September 30, 2025, Appellant sent another letter to the Court of Appeals asking the Court to "please recall remittitur back" so he could "plea my case to the supreme court."
12. Appellant did not serve his motion to recall the remittitur on Respondent's counsel until October 2, 2025, more than two weeks after he claims to have filed it with the Court. Attached

hereto is Exhibit “A”, which contains a copy of the Order denying the Motion to Reinstate the Appeal, as well as Appellant’s subsequent filings, including the envelope in which Appellant purported to serve the request to recall the remittitur showing a postmark of October 2, 2025.

ARGUMENT

I. THIS COURT LACKS JURISDICTION TO ENTERTAIN APPELLANT'S MOTION

The South Carolina Supreme Court has squarely addressed the jurisdictional effect of a remittitur: "When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter." *Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (citing *Mickle v. Blackmon*, 255 S.C. 136, 177 S.E.2d 548 (1970); *Thomas v. Lynch*, 87 S.C. 44, 68 S.E. 817 (1910); *Carpenter v. Lewis*, 65 S.C. 400, 43 S.E. 881 (1903); *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893)). This principle, established over a century ago, reflects the fundamental jurisdictional divide between appellate and trial courts.

The only recognized exception to this rule is "when the remittitur is sent down by mistake, error or inadvertence of the Court." *Wise*, 372 S.C. at 174, 642 S.E.2d at 551 (citing *Keels*, 39 S.C. 553, 17 S.E. 802). This narrow exception addresses only clerical or ministerial errors by the appellate court itself, and not a party's dissatisfaction with the outcome or belated attempts to pursue procedural avenues that were previously available but not timely pursued.

Here, as in *Wise*, the remittitur was properly sent in accordance with the applicable rules. Rule 221(b), SCACR, establishes that the remittitur "shall not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed" since the filing of the opinion finally disposing of the appeal, and that if "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."

Appellant filed his petition for reconsideration within the time permitted. This Court denied that petition. No petition for certiorari was filed. The remittitur was thereafter properly issued and sent to the Common Pleas Court on September 12, 2025, and received by the Common Pleas Court on September 16, 2025. The remittitur was not issued through any "mistake, error or inadvertence" of this Court. It was correctly sent after all procedural requirements were satisfied and all deadlines had passed. At that moment, this Court's jurisdiction ended.

Appellant's current motion, which was filed after the remittitur has issued, is precisely the type of motion that *Wise* and its century of predecessor cases hold cannot be entertained. The Supreme Court could not have been clearer: after the remittitur is properly sent, "no motion can be heard thereafter." *Wise*, 372 S.C. at 174, 642 S.E.2d at 551. This Court is without jurisdiction to act.

II. APPELLANT'S MOTION IS UNTIMELY

Appellant had clear procedural avenues available to challenge this Court's decisions, all governed by specific time limitations. He availed himself of some, by filing a motion to reinstate under Rule 260, SCACR, but failed to pursue others. Most notably, after this Court denied his motion to reinstate on August 27, 2025, Appellant did not file a petition for certiorari to the Supreme Court within the thirty-day period provided by Rule 242(c), SCACR.

The South Carolina Appellate Court Rules establish defined time periods for challenging appellate decisions. These time limits serve critical functions: they provide finality, prevent endless litigation, and allow parties to rely on appellate determinations. Appellant's motion, filed more than two months after this Court's August 27 order and after the remittitur has issued and all proper procedural deadlines have passed, circumvents these carefully crafted time limitations.

In *Wise*, the Supreme Court emphasized the importance of complying with procedural requirements in a timely manner. The Court noted that the remittitur "was correctly sent after fifteen days had elapsed from the date of the order dismissing the appeal without the *proper* filing of a petition for reinstatement." 372 S.C. at 174-75, 642 S.E.2d at 551-52 (emphasis in original). The Court emphasized that procedural requirements must be followed and that failure to comply with those requirements has consequences. Namely, the loss of the right to further appellate review.

Here, Appellant was on clear notice that the remittitur would be sent. The Court's August 27 order explicitly stated this fact. Yet Appellant took no action during the time when he could have sought certiorari. The deadline for filing a petition for certiorari was September 26, 2025. Appellant allowed this deadline to pass without filing. Only after the remittitur was sent did Appellant attempt to revive his appeal through this untimely motion.

Moreover, the timing of Appellant's actual service - more than two weeks after he claims to have filed the motion - demonstrates that this motion is not a prompt response to any perceived error, but rather a further attempt to delay the resolution of this matter and deny Respondent its relief.

Appellant cannot now, after all deadlines have expired and the remittitur has issued, seek to revive his appeal through an untimely motion that effectively requests this Court to undo the jurisdictional consequences of the remittitur he allowed to issue without challenge.

III. THE MOTION SUFFERS FROM A FATAL SERVICE DEFECT

Even if this Court had jurisdiction and the motion were timely, the motion must be dismissed for failure to comply with basic service requirements.

Rule 240(c), SCACR, requires that each motion filed in an appellate court "shall include...

[a] certificate or affidavit of service reflecting the date of service upon all parties." Furthermore, Rule 240(d) provides: "The motion or petition shall be filed with the clerk of the appellate court, and a copy shall be served upon each party."

Here, Appellant purportedly filed his motion with the Court of Appeals on September 16, 2025. However, he did not serve a copy on Respondent's counsel until October 2, 2025, more than two weeks later. This failure to provide contemporaneous service violates the express requirements of Rule 240.

The importance of proper and timely service cannot be overstated. In *Wise*, the Supreme Court noted that the appellant's "petition to reinstate" failed because "he failed to provide proof of service." 372 S.C. at 173, 642 S.E.2d at 551. The Court held that this procedural deficiency justified dismissal and the issuance of the remittitur. *See also* Rule 224, SCACR ("certificate of service shall be filed with all motions and petitions").

Appellant's sixteen-day delay in serving Respondent deprived Respondent of the opportunity to timely respond to the motion and prejudiced Respondent's ability to protect its interests. Where, as here, the movant fails to comply with the fundamental requirement of serving opposing counsel when filing a motion, the motion should be dismissed on that basis alone.

IV. APPELLANT HAS FAILED TO ESTABLISH GROUNDS FOR EXTRAORDINARY RELIEF

Even if this Court had jurisdiction, the motion were timely, and service were proper, Appellant has still failed to establish any valid grounds warranting the extraordinary relief of recalling a remittitur.

As the Supreme Court held in *Wise*, the sole exception permitting an appellate court to act after remittitur has issued is "when the remittitur is sent down by mistake, error or inadvertence of the Court." 372 S.C. at 174, 642 S.E.2d at 551. This exception is narrow and applies only to

nonjudicial errors, such as clerical mistakes, ministerial oversights, or circumstances where the court itself made an error in the remittitur process.

In his September 16 motion and subsequent September 30 letter, Appellant does not allege, nor could he, that:

- The remittitur was issued through inadvertence or mistake of this Court;
- The remittitur was sent before the proper time periods had elapsed;
- The remittitur failed to conform to this Court's actual decision; or
- Any clerical or ministerial error occurred in the remittitur process.

Instead, Appellant's filings reveal his true motivation: he wants this Court to recall the remittitur so that he can "plea my case to the supreme court." In other words, he belatedly seeks to pursue the very remedy that was available to him but which he failed to timely file. This is precisely what *Wise* forbids.

Additionally, Appellant's failure to properly serve his motion on Respondent until more than two weeks after filing it with the Court mirrors the service deficiency that led to dismissal in *Wise*. There, the Supreme Court emphasized that failure to comply with procedural requirements has consequences. The Court will not overlook such deficiencies to grant extraordinary relief. In *Wise*, the Supreme Court noted that "the remittitur in this case was not sent down by mistake, error or inadvertence of the Court of Appeals. Instead, it was correctly sent after fifteen days had elapsed from the date of the order dismissing the appeal without the *proper* filing of a petition for reinstatement." 372 S.C. at 174-75, 642 S.E.2d at 551-52 (emphasis in original).

The same is true here. This Court's remittitur was properly issued in accordance with all applicable rules after Appellant's petition for reconsideration was denied and no petition for certiorari was filed. There was no mistake, error, or inadvertence. Appellant's dissatisfaction with

the outcome does not provide grounds for recalling the remittitur.

IV. APPELLANT'S PATTERN OF DILATORY CONDUCT WARRANTS DENIAL

This case exemplifies dilatory tactics designed solely to prevent lawful enforcement of a final judgment. The procedural history speaks for itself:

- Appellant failed to respond to the complaint, resulting in a default judgment on the underlying ejectment action.

- Appellant failed to vacate the premises within 72 hours as ordered by the default judgment.

- Appellant filed an untimely appeal, which this Court properly dismissed on July 3, 2025.

- Appellant's motion to reinstate was denied on August 27, 2025, with this Court expressly stating that remittitur would be sent as provided by Rule 221.

- Appellant failed to file a petition for certiorari to the Supreme Court within thirty days of the August 27 order (which would have been due by September 26, 2025).

- Only after the remittitur was sent—after this Court's jurisdiction ended—did Appellant belatedly file his motion to recall the remittitur with the Court on September 16, 2025.

- Appellant failed to serve his motion on Respondent's counsel until October 2, 2025, more than two weeks after he filed it with the Court.

- On September 30, 2025, between his filing and his service on Respondent, Appellant filed yet another letter asking the Court to recall the remittitur.

The sixteen-day gap between filing and service is particularly telling. This was not a prompt motion filed and served immediately after the remittitur issued. Rather, Appellant filed something with the Court on September 16, waited two weeks without serving Respondent, sent another letter to the Court on September 30, and only then, on October 2, finally served

Respondent's counsel. This pattern demonstrates procedural carelessness at best, and intentional delay at worst.

Each step demonstrates Appellant's intent to manipulate the judicial process not to vindicate any legitimate legal right, but simply to remain unlawfully in possession of Respondent's property for as long as possible. Appellant's own filings confirm this. In his September 30 letter, he states that the property "has been a part of my whole life" and explains his personal attachment to it. While the Court may sympathize with Appellant's situation, sympathy does not create jurisdiction where none exists, nor does it excuse procedural failures.

South Carolina law prohibits frivolous proceedings. Rule 269, SCACR, provides that "[i]f the appellate court determines an appeal, petition, motion, or return is frivolous . . . it may impose such sanctions as it deems appropriate." Additionally, South Carolina's Frivolous Civil Proceedings Sanctions Act authorizes courts to impose sanctions when a party advances arguments "that a reasonable attorney would believe were not warranted under the existing law." S.C. Code Ann. § 15-36-10(A)(4)(c).

The instant motion seeks relief that South Carolina law clearly does not permit. After the remittitur has properly issued, this Court lacks jurisdiction. The motion is untimely, having been filed after all proper procedural deadlines expired. And Appellant has identified no mistake, error, or inadvertence by the Court that would warrant recalling the remittitur. Under these circumstances, the motion serves only to delay and should be summarily denied.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court:

1. Deny Appellant's Motion to Recall Remittitur;
2. Confirm that the remittitur has properly issued and that this Court lacks jurisdiction to

entertain further motions in this matter; and

3. Award such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

October 6, 2025

s/ Roman V. Hammes
Roman V. Hammes, Esq. (SC Bar #76977)
s/ Christian T. Wall
Christian T. Wall, Esq. (SC Bar #106550)
Charpia & Hammes, Attorneys at Law
215 West 2nd South Street
Summerville, South Carolina 29483
(843) 324-1727
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 2025, a copy of the foregoing *Return in Opposition to Motion to Recall Remittitur* was served upon Appellant *pro se* by First Class Mail, in an envelope with sufficient postage attached, addressed as follows:

Barney Wimberly
1613 Givhans Rd
Ridgeville, SC 29472

/s/ Christian T. Wall
Christian T. Wall, Esq. (SC Bar 106550)
Attorney for Respondent