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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

ALC Case No. 21-ALJ-22-0047-AP

James M. Harley, Appellant,

v.

South Carolina Department of Employment and Workforce, and Bradshaw Automotive Group, Inc., Respondents.

Appellate Case No. 2024-001795

MOTION TO FILE AMENDED INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER
AND
RETURN TO RESPONDENTS' MOTION TO DISMISS

Undersigned was retained to represent Appellant, James Harley, on Friday February 27, 2026. Undersigned respectfully requests this Court to allow undersigned to file an amended initial brief and amended designation of matter to be included in the record on appeal on behalf of Appellant so this appeal may proceed in an orderly fashion from here forward. Undersigned requests that, should this Court grant this motion, the deadline for the amended brief and designation be set at thirty days from the date of this Court's decision. Finally, undersigned requests this Court to hold all other pending motions before this Court as moot.

Procedural Background

Mr. Harley was represented in the ALC by Jack Cohoon who filed a notice of appeal on October 21, 2024. Mr. Cohoon was relieved from representing Mr. Harley on appeal on January

13, 2025. Since then, Mr. Harley has proceeded in this appeal pro se due to his inability to retain appellate counsel. Mr. Harley moved for an extension of time on April 14, 2025, to retain counsel which this Court granted. This Court set the deadline for the initial brief and designation of matter for July 7, 2025. On July 1, Mr. Harley requested another extension which this Court granted over the Respondents' opposition. This Court ordered the initial brief and designation to be filed on August 11, 2025.

Mr. Harley filed his pro se initial brief on August 11 along with his designation. The Respondents filed their initial brief on September 10, and Mr. Harley filed his reply brief on September 22, 2025. After two extensions for additional time, Mr. Harley, still proceeding pro se, filed the record on appeal on January 6, 2026.

Pending Motions Before the Court

The Respondents moved to dismiss the appeal—or in the alternative to strike the record—on January 14, 2026, because the record on appeal filed by Mr. Harley did not include everything that had been designated by the parties as required by Rule 210(c) of the South Carolina Appellate Court Rules. Mr. Harley then moved for leave to amend and supplement the briefs and the record on appeal on January 27, 2026. In support of his motion, Mr. Harley informed this Court that he was still diligently seeking to retain appellate counsel and expected to do so by February 15, 2026. Mr. Harley also informed this Court of medical conditions which have hampered his ability to effectively represent himself. The Respondents opposed Mr. Harley's request on the grounds that he had already been given ample time to retain counsel, file his briefs, and file a record in compliance with the South Carolina Appellate Court Rules.

On February 12, 2026, Mr. Harley filed a motion to strike some of the Respondents' arguments that were raised in their motion to dismiss. Respondents then renewed their motion to dismiss the appeal on February 19, 2026. None of these motions have been ruled on by this Court.

Argument

This Court has the authority to extend or shorten the time for performing “any act” in conjunction with an appeal except for the filing of the notice of appeal. *See* Rule 263(b), SCACR. This Court also has the authority to allow a party to supplement the record on appeal under Rule 212(b), SCACR. While there is no specific rule for the filing of an amended brief or designation of matter, former Chief Justice Toal has pointed out that “there is no limit to the type of motion that could be filed in the appellate courts” and that motions to amend are commonplace. *See* Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 379 (3d ed. 2016).

Former Chief Justice Toal has also cautioned that “an over-zealous application of appellate preservation rules denigrates the primary purpose of the judiciary, which is to serve the citizens and the business community of this state by settling disputes and promoting justice.” *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 332, 730 S.E.2d 282, 287 (2012) (Toal, C.J., concurring in result and dissenting in part). This Court should keep in mind that “behind every party name on a caption is a life-blood litigant or criminal defendant that depends on the court system to protect their economic and liberty interests.” *Id. See also Mangal v. State*, 421 S.C. 85, 99, 805 S.E.2d 568, 575 (2017) (“there are situations where the interests of justice require PCR courts to be flexible with procedural requirements before PCR applicants suffer procedural default on substantial claims”). While the issue presented before this Court in these competing motions is not one of issue preservation, the principles apply equally to technical compliance with the South Carolina Appellate Court Rules. To be clear, undersigned is not asking this Court to excuse Mr.

Harley's failure to comply with the rules when he was proceeding pro se. Instead, undersigned is only asking for permission to correct those failures and bring this appeal into full compliance with the rules so that it can be decided on the merits.

Dismissal of this appeal would be a harsh and unwarranted action now that Mr. Harley has retained counsel. South Carolina favors resolution of legal disputes on their merits. *See Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (citing *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986) (noting that public policy favors the disposition of cases "on their merits rather than on technicalities"); *see also Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999) ("When the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly"). Any sanction of a party for violating procedural rules "should . . . not go beyond the necessities of the situation to foreclose a decision on the merits of a case." *Id.* at 198, 511 S.E.2d at 719 (citing *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990)).

Additionally, at the trial level, circuit courts should "freely grant leave to amend when justice requires, and there is no prejudice to any other party," and "the party opposing amendment has the burden of establishing prejudice." *Lee v. Bunch*, 373 S.C. 654, 660, 647 S.E.2d 197, 200 (2007) (citing *Harvey v. Strickland*, 350 S.C. 303, 313, 566 S.E.2d 529, 535 (2002)). The same should be true for the filing of an amended appellate brief. While undersigned acknowledges there have been delays in this appeal prior to becoming involved, any additional delay by allowing the filing of an amended brief and designation will be minimal and will not prejudice the Respondents.

Undersigned was retained late on Friday afternoon, February 27, 2026, while on vacation in California and submits this motion at the earliest time possible. Mr. Harley is no longer a pro se

litigant before this Court but is represented by appellate counsel. Undersigned is an experienced appellate attorney and will ensure that the South Carolina Appellate Court Rules are strictly complied with moving forward.

Conclusion

Undersigned respectfully requests that this Court allow the filing of an amended initial brief and designation of matter to be included in the record on appeal within thirty days of its decision and to find all other pending motions before this Court moot.

s/Adam Ruffin
Adam Sinclair Ruffin
SC Bar No. 101350
1320 Main Street, Suite 300
Columbia, SC 29201
(803) 470-5629
adam@ruffinappeals.com

Attorney for James Harley

March 2, 2026

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PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR, undersigned counsel hereby certifies that a true copy of the motion to file an amended initial brief and designation of matter and return to respondents' motion to dismiss in the above-referenced case has been served upon Sarah Gable, Valerie McMellan, and Benjamin Cook, at their primary e-mail addresses listed in the Attorney Information System (AIS), this 2nd day of March 2026.

 s/Adam Ruffin
Adam Sinclair Ruffin
SC Bar No. 101350
1320 Main Street, Suite 300
Columbia, SC 29201
(803) 470-5629
adam@ruffinappeals.com

Attorney for James Harley