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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM Horry County  
Court of Common Pleas  
Benjamin H. Culbertson, Circuit Court Judge  
Case No. 2024-CP-26-00018

WILLIS JOWAN MITCHELL,

Plaintiff–Appellant,

v.

PINE COVE MHP, LLC and

CRAIG WARREN STURGILL,

Defendants–Respondents.

**MOTION**

**APPELLANT'S MOTION TO RECALL AND VACATE REMITTITUR,  
REINSTATE APPEAL, AND FOR PERMISSION TO FILE APPELLANT'S  
INITIAL BRIEF AND DESIGNATION OF MATTER OUT OF TIME**

Date: June 2, 2026

Respectfully submitted.

/s/ Willis Jowan Mitchell

Willis Jowan Mitchell

Appellate-Plaintiff, Pro

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Attorney for the Defendant-Respondent

## **APPELLANT'S MOTION TO RECALL AND VACATE REMITTITUR AND REINSTATE APPEAL**

COMES NOW Appellant, Willis Jowan Mitchell, appearing pro se, and respectfully moves this Honorable Court to recall and vacate the Remittitur issued in the above-captioned matter and to reinstate this appeal. In support of this Motion, Appellant states as follows:

### **I. INTRODUCTION**

This appeal presents a substantial constitutional due process issue arising from the entry of a judgment against Appellant after Appellant failed to appear at a scheduled court hearing because Appellant never received notice of that hearing.

The lack of notice was not the result of neglect, indifference, abandonment of the litigation, or willful disregard of court proceedings by Appellant. Rather, Appellant's failure to receive notice resulted from ongoing mail delivery problems caused by the landlord's failure to maintain mail receptacles in compliance with United States Postal Service delivery requirements.

The underlying appeal challenges the validity of a judgment entered under circumstances where Appellant was deprived of notice and an opportunity to be heard. The same continuing notice problems that form the basis of the appeal also adversely affected Appellant's ability to receive correspondence during the appellate process.

Because the issues presented involve fundamental constitutional concerns and extraordinary circumstances affecting both the proceedings below and the appellate proceedings, Appellant respectfully requests that this Court exercise its inherent authority to recall and vacate the remittitur and reinstate the appeal so that the merits may be considered.

### **II. PROCEDURAL HISTORY**

1. Appellant was a party to proceedings conducted in the Horry County Court of Common Pleas.
2. The proceedings below were presided over by the Honorable Benjamin H. Culbertson.

3. During the course of the proceedings, a hearing was scheduled by the Circuit Court.
4. Notice of the hearing was mailed.
5. Appellant did not appear at the hearing because Appellant never received notice of the hearing.
6. Following Appellant's failure to appear, judgment was entered adverse to Appellant.
7. Believing that the judgment was entered without proper notice, Appellant sought appellate review.
8. A Notice of Appeal was filed and the appeal was docketed before this Court.
9. Thereafter, remittitur was issued.
10. By correspondence dated May 28, 2026, the Clerk of the Court advised Appellant that remittitur had been issued and that the Court no longer possessed jurisdiction over the appeal.
11. Appellant now seeks recall of the remittitur because extraordinary circumstances prevented full review of substantial constitutional issues.

### **III. EXTRAORDINARY CIRCUMSTANCES WARRANT RECALL OF THE REMITTITUR**

12. Recall of a remittitur is extraordinary relief and should be granted only where necessary to prevent manifest injustice.
13. Extraordinary circumstances exist in this matter.
14. The principal issue raised by Appellant concerns lack of notice of the hearing that resulted in entry of judgment.
15. Appellant did not receive notice because mail delivery associated with the property was impaired by the landlord's continuing failure to maintain mail receptacles in compliance with United States Postal Service requirements.

16. United States Postal Service employee Staci Gunnell informed Appellant that the mail receptacles servicing the property failed to comply with postal delivery requirements.
17. Appellant was further advised that notices concerning the deficiencies had previously been issued.
18. Despite receiving notice of the deficiencies, the landlord failed to correct the condition of the mail receptacles.
19. The deficiencies remained uncorrected throughout the period relevant to the proceedings below.
20. Appellant was advised that the United States Postal Service would no longer retain mail for pickup and instead would return mail to sender until compliant mail receptacles were installed and maintained.
21. Consequently, legal notices and correspondence intended for Appellant were subject to being returned without delivery.
22. Appellant had no control over the condition of the mail receptacles and no ability to compel the landlord to comply with postal requirements.
23. As a direct result of these conditions, Appellant did not receive notice of the hearing that ultimately resulted in the judgment challenged on appeal.
24. The continuing mail delivery issues also impaired Appellant's ability to receive notices and correspondence during the appellate process.
25. Thus, the circumstances that resulted in dismissal of the appeal are directly related to the very issues raised by the appeal itself.

#### **IV. THE APPEAL PRESENTS SUBSTANTIAL DUE PROCESS ISSUES**

26. The Fourteenth Amendment to the United States Constitution guarantees notice and an opportunity to be heard before a person may be deprived of rights through judicial action.
27. Notice is among the most fundamental requirements of due process.
28. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), the United States Supreme Court held that notice must be reasonably calculated to

apprise interested parties of the pendency of proceedings and afford them an opportunity to present objections.

29. In *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80 (1988), the Supreme Court held that a judgment entered against a party who was not provided notice violates constitutional due process.
30. Appellant submits that the circumstances presented here implicate these fundamental constitutional principles.
31. Appellant never received actual notice of the hearing.
32. Appellant therefore had no meaningful opportunity to appear, participate, present evidence, or protect his interests.
33. The judgment entered against Appellant arose under circumstances that deprived Appellant of notice through no fault of Appellant.
34. These issues have never been reviewed on their merits.
35. If the remittitur is not recalled, meaningful appellate review of these constitutional issues will be permanently foreclosed.

#### **V. THE INTERESTS OF JUSTICE FAVOR REINSTATEMENT OF THE APPEAL**

36. South Carolina courts have long recognized a preference for resolving disputes on their merits whenever reasonably possible.
37. Appellant did not abandon the litigation.
38. Appellant did not intentionally ignore court proceedings.
39. Appellant did not deliberately fail to prosecute the appeal.
40. Rather, Appellant's difficulties in both the trial court and appellate court stemmed from continuing mail delivery failures beyond Appellant's control.
41. The appeal raises serious questions concerning notice, due process, and the integrity of the judicial process.
42. The interests of justice favor permitting those issues to be heard and decided on their merits.

43. Respondent will suffer no undue prejudice if the appeal is reinstated.
44. By contrast, Appellant will suffer substantial prejudice if appellate review is permanently denied without consideration of the constitutional issues presented.

## **VI. EQUITY AND FAIRNESS REQUIRE REVIEW**

45. Courts exist to resolve disputes fairly and according to law.
46. The entry of judgment against a litigant who never received notice of the proceeding giving rise to that judgment raises substantial concerns regarding fairness and due process.
47. Appellant did not choose to forfeit the opportunity to appear.
48. Appellant was deprived of that opportunity because notice never reached him.
49. Allowing the remittitur to stand under these circumstances would effectively reward the continuing failure to maintain legally compliant mail receptacles and would prevent judicial review of substantial constitutional concerns.
50. Equity, justice, and the integrity of the judicial process favor allowing the appeal to proceed.

## **VII. RELIEF REQUESTED**

**WHEREFORE**, Appellant respectfully requests that this Honorable Court:

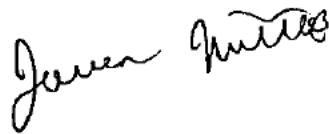
- A. Recall and vacate the Remittitur issued in Appellate Case No. 2025-001891;
- B. Revest jurisdiction in this Court;
- C. Reinstate the appeal;
- D. Permit Appellant to seek appropriate appellate relief following reinstatement of the appeal;
- E. Grant Appellate leave to serve the Initial Brief and Designation of Matter within fifteen (15) days of the Courts Order;
- F. Grant such other and further relief as the Court deems just and proper.

Date: June 2, 2026

Respectfully submitted.

/s/ Willis Jowan Mitchell

Willis Jowan Mitchell  
Appellate-Plaintiff, Pro Se  
4912 Bishop Pine Drive  
Conway, SC 29526  
Phone: (843) 254-7571  
Email: [Annie1maemitchell@gmail.com](mailto:Annie1maemitchell@gmail.com)

A handwritten signature in cursive script that reads "Willis Jowan Mitchell".

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WILLIS JOWAN MITCHELL,

Plaintiff–Appellant,

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PINE COVE MHP, LLC and

Defendants–Respondents.

**PROOF OF SERVICE**

I certify that on this \_\_\_\_ day of June, 2026, I served a true and correct copy of the **APPELLANT’S MOTION TO RECALL AND VACATE REMITTITUR AND REINSTATE APPEAL** upon Counsel for Respondent by depositing the same in the United States Mail, Certified Mail, addressed as follows:

John C. Zelinsky, Esquire  
Attorney for the Respondent Pine Cove MHP, LLC

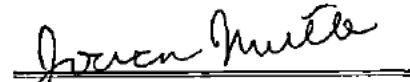
908 Fourth Avenue  
Conway, SC 29526  
Phone: 843-488-5600  
Fax: 843-488-5610  
Email: [john@rivertownlaw.net](mailto:john@rivertownlaw.net)  
Attorney for the Defendant-Respondent

I certify that service was made in accordance with the South Carolina Appellate Court Rules.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 2 day of June, 2026.

Respectfully submitted.



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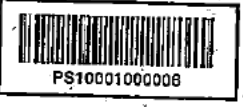
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