

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County
William H. Seals, Jr., Circuit Court Judge

RECEIVED
FEB 26 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DARRELL BIRCH,

APPELLANT

Appellate Case No. 2012-213215

Motion to Recall Remittitur

Counsel for Darrell Birch respectfully moves this Court to recall the Remittitur issued in this case on February 17, 2015, and received by the Office of Appellate Defense on February 17, 2015.

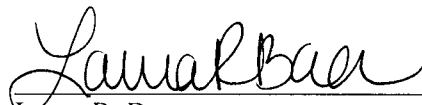
- 1.) On October 29, 2014 this Court, after hearing oral argument on October 14, 2014, affirmed the conviction and sentence in a per curiam unpublished Opinion, No. 2014-UP-366. A timely petition for rehearing was filed on November 13, 2014. The State did not file a Return to the Petition for Rehearing.
- 2.) The petition for Rehearing was denied on December 17, 2014. Counsel, however, did not receive a copy of the Order Denying the Petition for Rehearing. As a result, counsel

did not timely file a petition for writ of certiorari with the South Carolina Supreme Court.

- 3.) As seen below, the Attorney General's office did not receive a copy of the Order Denying the Petition for Rehearing either.
- 4.) On February 17, 2015, the Office of Appellate Defense received a copy of the Remittitur.
- 5.) Counsel received a letter from Petitioner prompting her to look at the status of his case on February 25, 2015 and found that the Office had recently received the Remittitur but realized that she had not received a copy of the Order Denying the Petition for Rehearing. Our office policy when a Remittitur is received is to attach to the Remittitur the most recent order preceding the remittitur and the closing letter sent to the client informing him of the court's decision and next step in the appellate process. This packet is then initialed and signed by the assigned attorney and attorney's assistant. The absence of both the Order Denying the Petition for Rehearing and any closing letter to the client was an immediate indication that something was wrong.
- 6.) Counsel fully intended to file a petition for writ of certiorari.
- 7.) Attached and made a part of this motion is an affidavit from counsel stating that she did not receive a copy of the Order Denying the Petition for Rehearing.
- 8.) Counsel conferred with Assistant Attorney General William M. Blich, Jr. who confirmed that, based on the mail log at the South Carolina Attorney General's Office, his office also did not receive a copy of the Order Denying the Petition for Rehearing. Assistant Attorney General William M. Blich, Jr. does not oppose the motion to recall the Remittitur and leaves the decision in the Court's discretion.

Based on the above factors counsel respectfully asks this Court to recall the Remittitur to allow counsel to move to file a petition for writ of certiorari, out of time, with the South Carolina Supreme Court. Counsel submits that good cause has been shown to recall the Remittitur and the failure to file a timely petition for writ of certiorari was not the fault of petitioner but rather the result of appellate counsel not receiving a copy of the Order Denying the Petition for Rehearing.

Respectfully submitted,

A handwritten signature in cursive script that reads "Laura R. Baer". The signature is written in black ink and is positioned above a horizontal line.

Laura R. Baer
Appellate Defender
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1679

The 26th day of February, 2015.

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AFFIDAVIT IN SUPPORT OF MOTION TO RECALL REMITTITUR

PERSONALLY appeared before me, Laura R. Baer, who being duly sworn, deposes and says that:

- (1) I am an Appellate Defender with the South Carolina Office of Appellate Defense, and I represent Darrell Birch.
- (2) On October 29, 2014, the Court of Appeals affirmed the conviction and sentence. State v. Birch, Op. No. 2014-UP-366 (S.C.Ct.App. Filed October 29, 2014).
- (3) On November 13, 2014, Carmen Ganjehsani, former appellate counsel, filed a timely Petition for Rehearing in Mr. Birch's case. The State did not file a Return to the Petition for Rehearing.

- (4) The Court of Appeals denied the petition for Rehearing on December 17, 2014. My office did not receive a copy of the Order Denying the Petition for Rehearing. As a result, I did not timely file a petition for writ of certiorari with the South Carolina Supreme Court.
- (5) I fully intended to file a petition for writ of certiorari.
- (6) On February 17, 2015, the Office of Appellate Defense received a copy of the Remittitur.
- (7) I received a letter from Mr. Birch prompting me to look at the status of his case on February 25, 2015 and found that the Office had recently received the Remittitur but realized that I had not received a copy of the Order Denying the Petition for Rehearing. Our office policy when a Remittitur is received is to attach to the Remittitur the most recent order preceding the remittitur and the closing letter sent to the client informing him of the court's decision and next step in the appellate process. This packet is then initialed and signed by the assigned attorney and attorney's assistant. The absence of both the Order Denying the Petition for Rehearing and any closing letter to the client was an immediate indication that something was wrong.
- (8) My assistant, Bailey Reed, her supervisor, Kimberly McCall, and I have checked our files thoroughly and found no copy of the Order denying the Petition for Rehearing. When the Office of Appellate Defense receives mail, the mail is stamped received with the date and then routed to the appropriate person. After a diligent review of the procedures in place at Appellate Defense and a thorough review of the file, I can only conclude that my office did not receive a copy of the Order Denying the Petition for Rehearing.
- (9) On February 25, 2015, I conferred with Assistant Attorney General William M. Blich, Jr. who confirmed that, based on the mail log at the South Carolina Attorney General's

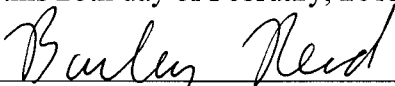
Office, his office also did not receive a copy of the Order Denying the Petition for Rehearing either.

FURTHER AFFIANT SAYETH NOT.



Laura R. Baer
Appellate Defender
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1679

SUBSCRIBED AND SWORN TO before
me this 26th day of February, 2015

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021.