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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Allison Renee Lee, Circuit Court Judge

Docket No: 08-CP-40-0009

Larry A. Yates Appellant,

v.

The Estate of Alvin Yates Respondent.

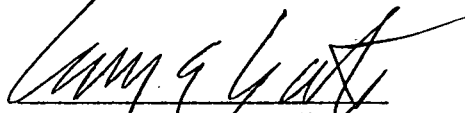
MOTION TO RECALL REMITTITUR

TO THE COURT OF APPEALS:

Appellant moves pursuant to Appellant Court Rule 221(b) for an order recalling remittitur and permitting the re-filing of Appellant's previously rejected Petition for Rehearing for this Courts Unpublished Opinion No. 22014-UP-066.

This motion is based on the attached affidavit, memorandum of points, authorities and arguments.

Respectfully submitted,



Larry A. Yates, Appellant
612 Ashwood Circle
West Columbia, SC 29160
803-917-6224 (Ph)
Laycom6224@gmail.com

Dated: July 3, 2014

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Allison Renee Lee, Circuit Court Judge

Docket No: 08-CP-40-0009

Larry A. Yates Appellant,

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The Estate of Alvin Yates Respondent.

**MEMORANDUM IN SUPPORT OF
MOTION TO RECALL REMITTITUR**

POINTS AND AUTHORITIES

South Carolina Appellant Court Rules 221(a) 221(b), 242(a) and 242(c)

Wise v. S.C. Dept. of Corr., 372 S.C. 173, 642 S.E.2d 551(2007)

S.C. Supreme Court Appellant Case No. 2014-001183 Order of June 19, 2014 (Attached hereto)

Affidavit of Appellant-Petitioner, Larry A. Yates, dated July 2, 2014 (Attached hereto)

APPEAL BACKGROUND

1. As result of a **March 9, 2012**, Circuit Court Hearing, this Appellant's Motion to Set Aside, Circuit Court Judge Childs' October 26, 2009, Order of Judgment, was denied by Circuit Court Judge Lee, and she issued her **Order of Judgment** on **June 7, 2012**.

2, Judge Lee also denied this Appellant's **Motion to Amend**, on **June 27, 2012**.

3. This Appellant filed and served his **Notice of Appeal**, with this Court on, **July 26, 2012**.
4. This Appellant Court issued its **Unpublished Opinion No. 22014-UP-066**, affirming Judge Lee's, June 7, 2012, Order of Judgment, on **February 12, 2014**.
5. Due to Columbia Area's Winter Storm, this Court's, Clerk of Court, could not mail the notice of Opinion, on February 12, 2014, the day of issue, but **did Serve this Appellant** with a copy of the Opinion, via USPS, postmarked on **February 18, 2014**.
6. This Appellant first **received a copy** of Opinion on **February 19, 2014**.
7. This Appellant Court, **sent Remittitur** to lower court on **February 28, 2014**.
8. This Appellant filed **Petition for Rehearing** on **March 6, 2014**.
9. On or about **April 4, 2014**, this Appellant Court **returned Appellant's Petition for Rehearing**, without taking any action, because it was not timely filed in compliance with Appellant Court Rule 221(a).
10. In an effort to comply with the time restraints of Rule 221(a), this Appellant filed a **Motion for Enlargement of Time**, on April 8, 2014, for moving this Appellant Court for an Order granting extra time making **March 6, 2014**, a timely filing date for Petition for Rehearing.
11. On or about May 28, 2012, this Appellant of Court **returned Appellant's Motion for Enlargement of Time**, without taking any action, because appellant Jurisdiction had ended with the sending of the Remittitur.
12. This Appellant filed **Petition for Writ of Certiorari** to Supreme Court on **June 3, 2014**.
13. The Supreme Court issued an Order on **June 19, 2014**, **dismissing** Appellant's Petition for **Writ of Certiorari**, because of Appellant Court Rule 242(a). (see attached order)
14. On July 2, 2014, this Appellant now files his Motion to Recall Remittitur, seeking an Order from this Appellant Court to recall Remittitur and permit the re-filing of Appellant's Petition for Rehearing.

ARGUMENT

On or about February 12, 2014, day this Court issued its Unpublished Opinion No. 22014-UP-066, the midlands of South Carolina, including Richland and Lexington Counties, were blasted with a major winter storm, of ice, sleet, freezing rain and several inches of snow. Many of the area streets and roads were impassable, and those that were passable were very treacherous. Most all area schools and businesses were closed and remained closed for most of the week from February 12th to February 18th. Also, most government offices and courts were closed or operated with limited personnel.

S.C. Appellant Court Rule 221(a) requires that a Petition for Rehearing must be actually received by the Appellant Court, no later than fifteen (15) days after the filing of the opinion. Therefore, it is critically important that, appellants and respondents to the appeal, be timely notified of the issuance of a Court opinion. In this appeal, the Court issued its opinion on February 12th, but Appellant did not know that it had been issued until, seven (7) days later, when he received a copy of the opinion in his late afternoon mail. The envelope, containing the copy of the opinion, had been postmarked on February 18th, and received by Appellant on February 19th.

Instead of mailing the notice on February 12th, the day order was issued, as is customary, the Clerk of Court could not, due to a winter storm, an act of God, mail the notice until February 18th. If the notice could have been mailed on February 12th, this Appellant would have received notice of the issued opinion on February 13th, and would therefore have had fourteen (14) days, or through July 27th, to prepare and file a petition for rehearing.

Because of the befor mentioned act of God, this Appellant had only eight (8) days to prepare and file a petition for rehearing. And, because of receiving the notice just before a weekend, this Appellant was unable to consult with a licensed attorney, until Monday, February

24th, which was only three (3) days before February 27th, the Court imposed deadline for filing a petition for rehearing.

Another hindrance for filing a petition for rehearing is, this Appellant was, surprised, unprepared and dismayed that this Court would affirm the appealed order. Even with the assistance of a licensed attorney, it was not possible for this Appellant to research, prepare and file a petition for rehearing, within the eight (8) days, as this Court has required him to do.

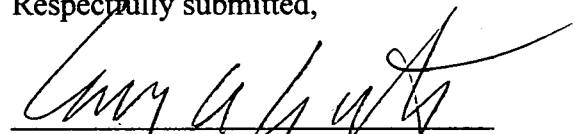
However, this Appellant did research, prepare and file his Petition for Rehearing on March 6, 2014, and within fifteen (15) days after the February 19, 2014, date of receiving notice of the opinion's issuance.

CONCLUSION

It appears that this Appeals Court has mistakenly sent the remittitur in this case to the lower court, due to uncontrollable circumstances that were created by acts of God. Therefore, no logical solution can be reached, for the purpose of correcting an unintentional error or miscarriage of justice created by the untimely issuance of the remittitur, except that this Court of Appeals recall the remittitur and allow this Appellant to refile his previously rejected, petition for rehearing.

Therefore, this Appellant prays this Court will grant his Motion to Recall Remittitur, with permission to refile the previously rejected, Petition for Rehearing.

Respectfully submitted,



Larry A. Yates, Appellant, pro se-
612 Ashwood Circle
West Columbia, SC 29169
Phone: 803-917-6224
Email: laycom6224@gmail.com

July 3, 2014

The Supreme Court of South Carolina

Larry A. Yates, Petitioner,

v.

The Estate of Alvin Yates, Respondents.

Appellate Case No. 2014-001183

Lower Court Case No. 2008-CP-40-00009

ORDER

The South Carolina Court of Appeals filed an opinion in this matter on February 12, 2014. When no petition for rehearing or reinstatement was received within the time specified by Rule 221 of the South Carolina Appellate Court Rules (SCACR), the Court of Appeals sent the remittitur on February 28, 2014.

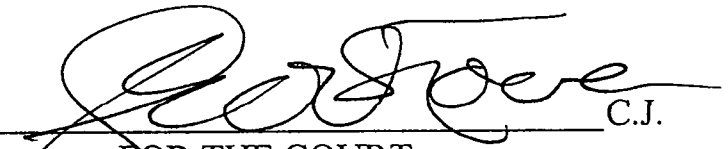
Petitioner then filed a petition for rehearing dated March 5, 2014, and a motion for enlargement of time dated April 8, 2014. The Court of Appeals rejected both of these filings because appellate jurisdiction had ended with the sending of the remittitur.¹

Petitioner has now filed a petition for a writ of certiorari dated June 2, 2014, seeking review of the decision of the South Carolina Court of Appeals in this matter.

Under Rule 242(a) of the South Carolina Appellate Court Rules (SCACR), this Court will only review a final decision of the Court of Appeals, and a decision is not final for the purposes of review until a petition for rehearing or reinstatement has been acted on by the Court of Appeals. Rule 242(c), SCACR. Since no petition for rehearing has been ruled on by the Court of Appeals in this matter, there is no final decision for this Court to review.

¹ Before the Court of Appeals, the Appellate Case Number was 2012-212594.

Further, the Court of Appeals has sent the remittitur in this case. The sending of ended appellate jurisdiction over this case, and the petition for a writ of certiorari cannot be considered by this Court. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007). Accordingly, the petition for a writ of certiorari is dismissed.²



C.J.
FOR THE COURT

Columbia, South Carolina
June 19, 2014

cc: Ronald R. Hall, Esquire
Mr. Larry A. Yates
The Honorable Jenny Kitchings
The Honorable Jeanette W. McBride

² As indicated in *Wise*, the only motion that can be made following the issuance of a remittitur is a motion to recall the remittitur, and such a motion is only appropriate if the remittitur has been sent down due to some error on the part of the appellate court or its staff. No such motion has been made to the South Carolina Court of Appeals.

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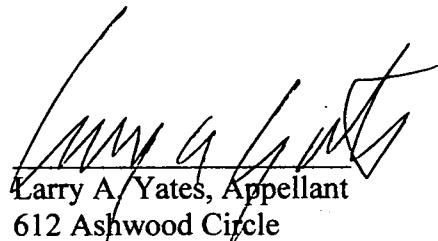
v.

The Estate of Alvin Yates Respondent.

PROOF OF SERVICE

I certify that I have served the "Motion to Recall Remittitor" on the Respondent, by depositing copies in the United States Mail, postage prepaid, on March 5, 2014, to the attorney of record, addressed as follows:

Ronald R. Hall, Esq
Hall & Hall Attorneys at Law
1055 Sunset Blvd
West Columbia, SC 29169



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