

# The Supreme Court of South Carolina

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May 29, 2018

The Honorable Richard A. Shirley  
PO Box 8002  
Anderson SC 29622-8002

## REMITTITUR

Re: Daniel E. Sherman v. State  
Lower Court Case No. 2016CP0400298  
Appellate Case No. 2018-000786

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

cc:

Rodney Wade Richey, Esquire  
Lindsey Ann McCallister, Esquire  
Daniel Eugene Sherman, 282045

# The Supreme Court of South Carolina

Daniel E. Sherman, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-000786

Lower Court Case No. 2016CP0400298

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## ORDER

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By order dated February 1, 2018, the circuit court denied the application for post-conviction relief in this case, and petitioner's counsel served a notice of appeal from this order on March 5, 2018. This notice of appeal was dismissed based on petitioner's failure to provide an adequate explanation under Rule 243(c) of the South Carolina Appellate Court Rules (SCACR), and the remittitur was sent on April 26, 2018.<sup>1</sup>

Petitioner has now filed a *pro se* notice of appeal from an order denying a motion under Rule 59 of the South Carolina Rules of Civil Procedure (SCRCP) that petitioner filed *pro se*. According to the public case index for Anderson County, this motion was filed on March 5, 2018, and the order denying this motion is dated March 21, 2018. In addition, petitioner moves for an extension of time to file the explanation required by Rule 243(c), SCACR.

Since petitioner was represented by counsel at that time, the *pro se* Rule 59 motion was essentially a nullity and should not have been accepted for filing by the circuit court. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010);<sup>2</sup> *Jones v. State*, 348

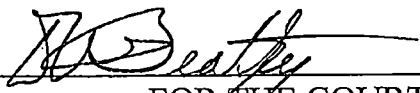
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<sup>1</sup> This notice of appeal was filed in Appellate Court Case Number 2018-000403.

<sup>2</sup> In relevant part, *Miller* states:

S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

Accordingly, the order ruling on the Rule 59 motion is vacated, and the notice of appeal and the request for an extension are dismissed as moot.

  
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FOR THE COURT C.J.

Columbia, South Carolina  
May 03, 2018

cc: Rodney Wade Richey, Esquire  
Lindsey Ann McCallister, Esquire  
Mr. Daniel E. Sherman  
The Honorable R. Lawton McIntosh

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Since there is no right to "hybrid representation" that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel. *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989). Because petitioner was represented by counsel, the *pro se* motion [under Rules 59 and 60, SCRCP] was not proper, should not have been accepted, and should not have been ruled upon. The motion was essentially a nullity.

We therefore vacate the order ruling on the motion and dismiss petitioner's notice of appeal as moot. We also take this opportunity to remind judges and clerks of court of our directive in *Foster* not to accept substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a party who is represented by counsel.