

**FORM 8**  
**LETTER TO THE COURT OF APPEALS CLERK OF COURT**  
**FILING MOTION TO RECALL REMITTUR**  
**AND REINSTATE THE APPEAL**

July 11, 2018

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

**RE: The State v. Courtney Ray Mitchell**  
**Appellate Case No. 2015-000517**

**RECEIVED**  
JUL 16 2018  
SC Court of Appeals

Dear Ms. Kitchings::

Please find enclosed the following materials for filing in the above-referenced Appellate matter:

- (1) One (1) original and six (6) copies of Appellant's Motion to Recall the Remittur and Reinstate the Appeal; and,
- (2) Proof of Service for same.

Sincerely,



Donald L. Smith, (SC Bar#6699)  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)  
*Attorney for Appellant*

cc: Mr. Alan McCrory Wilson, Attorney General  
Ms. Jennifer Ellis Roberts, Assistant Attorney General  
Mr. William W. Wilkins, Solicitor, Thirteenth Judicial Circuit

**FORM 7  
PROOF OF SERVICE  
APPELLANT'S MOTION TO RECALL THE REMITTUR  
AND REINSTATE THE APPEAL**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
In the Court of General Sessions

Keith Ralph Kelly, Circuit Court Judge

\_\_\_\_\_  
Appellate Case No.: 2015-000517  
\_\_\_\_\_

**RECEIVED**  
JUL 16 2018  
SC Court of Appeals

The State of South Carolina,

Respondent,

v.


Courtney Ray Mitchell,

Appellant.

**PROOF OF SERVICE**

I certify that I have served copies of Appellant's Motion to Recall the Remittur and Reinstatement of the Appeal, and a proof of service of the same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, PO Box 11629, Columbia SC 29211 and, Mr. Alan McCrory Wilson, Attorney General and Ms. Jennifer Ellis Roberts, Assistant Attorney General, at the Office of the Attorney General, located in PO Box 11549 Columbia SC 29211, and Mr. William Walter Wilkins, III, Solicitor, Thirteenth Judicial Circuit, at 305 East North Street, Suite 325, Greenville, SC 29601, by depositing a copy in the United States Mail, postage prepaid, on April 26, 2018 to the addresses listed above.

July 11, 2018

  
\_\_\_\_\_  
Donald L. Smith, (SC Bar#6699)  
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*Attorney for Appellant*

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
In the Court of General Sessions

R. Keith Kelly, Circuit Court Judge

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Appellate Case No.: 2015-000517

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**RECEIVED**  
JUL 16 2018  
SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Appellant.

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**APPELLANT'S MOTION TO RECALL THE REMITTITUR  
AND REINSTATE THE APPEAL**

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Appellant Courtney Ray Mitchell respectfully moves this court for an order recalling the remittitur and permitting him to reinstate his appeal in this case. In support of this motion, Appellant shows the following:

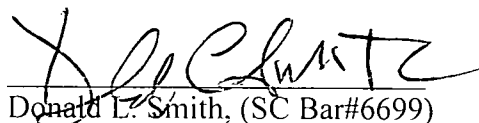
- 1) This Honorable Court rendered its opinion and judgment in the *State of South Carolina v. Courtney Ray Mitchell*, Appellate Case No. 2015-000517 on April 11, 2018.
- 2) Appellant thereafter petitioned for rehearing of the abovementioned case on April 30, 2018.
- 3) Appellant anticipated a Return from the Respondent.

- 4) On July 3, 2018, after the prescribed period for the filing of a Return has elapsed, Appellant verified the status of the case from the South Carolina Appellate Case Management System.
- 5) Upon checking, Petitioner found that his Petition for Rehearing was denied on May 25, 2018.
- 6) Appellant and his counsel did not receive a written copy of the said denial.
- 7) Under Rule 242 ( c) of South Carolina Appellate Rules Procedure, Petitioner may file a certiorari to the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals.
- 8) The thirty-day period to file for petition for certiorari has lapsed.
- 9) On the same day, July 3, 2018, Appellant communicated his non-receipt of a written copy of the Order dated May 25, 2018 to this Honorable Court as well as the Supreme Court.
- 10) Upon recommendation, Appellant filed a motion to relax the time for filing a Petition for Certiorari with the Supreme Court on July 3, 2018. (Exhibit A).
- 11) Due perhaps to the holiday season, (it being the Fourth of July week), the Supreme Court acknowledged that it received Appellant's motion on July 9, 2018.
- 12) On July 10, 2018, Appellant received a copy of the Remittur, dated July 6, 2018.
- 13) On July 11, 2018, Appellant received a letter from the Supreme Court, stating that it cannot take action on Appellant's motion due to the Remittur having been sent to the lower court. (Exhibit B).

- Appellant has not received a written copy of the May 25, 2018 Order of Denial, and as such, was unable to file his Petition for Certiorari within the prescribed period. Appellant, upon

consultation with the Honorable Court, immediately undertook steps to address the issue and exerted all efforts to comply with the law. In the interest of justice, Appellant respectfully invokes this Honorable Court's sense of fairness to exercise its unusual power to recall the remittur and allow him to reinstate his appeal. Appellant expressed his intent to file for Certiorari, and sincerely believes in the merits of his case. He submits that Motion is not filed manifestly for delay, and that no party will be prejudiced by the granting of this action.

Respectfully submitted by



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*Attorney for Appellant*

July 11, 2018

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
In the Court of General Sessions

R. Keith Kelly, Circuit Court Judge

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Appellate Case No.: 2015-000517  
2018-UP-147

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**RECEIVED**  
JUL 16 2018  
SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Petitioner.

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**MOTION TO RELAX TIME FOR FILING  
PETITION FOR CERTIORARI**

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Petitioner respectfully moves this Honorable Court to allow Petitioner to file his Petition for Certiorari. In support of this motion, Petitioner shows the following:

- 1) The Court of Appeals rendered its opinion and judgment in the State of South Carolina v. Courtney Ray Mitchell, Appellate Case No. 2015-000517 on April 11, 2018.
- 2) Petitioner thereafter petitioned for rehearing of the abovementioned case on April 30, 2018.
- 3) Petitioner anticipated a Return from the Respondent.
- 4) On July 3, 2018, after the 30-day prescribed period for the filing of a Return has elapsed, Petitioner verified the status of the case online in the South Carolina Appellate Case Management System.

- 5) Upon checking, Petitioner found that his Petition for rehearing was denied on May 25, 2018.
- 6) Petitioner and his counsel did not receive a written copy of the said denial.
- 7) Under Rule 242 ( c) of South Carolina Appellate Rules Procedure, Petitioner may file a certiorari to the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals.
- 8) The thirty-day period to file for petition for certiorari has elapsed.

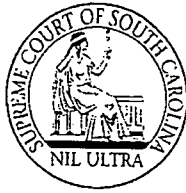
Therefore, Petitioner prays that this Honorable Court grant this motion to relax the time for filing a Petition for Certiorari and allow Petitioner to file his Certiorari considering that he did not receive a written copy of the denial of the petition for rehearing. Counsel for Petitioner has conferred with the Office of Attorney General, who did not object to this request. This motion is not filed for the purpose of delay, and no party will be prejudiced by the granting of this action.

Respectfully submitted by



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*Attorney for Petitioner*

July 3, 2018



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

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July 09, 2018

Donald Loren Smith, Esquire  
Attorney Office Of Donald Smith  
122 N. Main St.  
Anderson SC 29621

Re: The State v. Courtney Ray Mitchell  
Appellate Case No. 2018-001256

Dear Counsel:

This Court has received your motion to relax dated July 3, 2018, today. Please be advised that the South Carolina Court of Appeals sent the remittitur in this case<sup>1</sup> on July 6, 2018. Since the sending of the remittitur ended appellate jurisdiction over this case,<sup>2</sup> no action will be taken on your motion by this Court.

Very truly yours,

CLERK

cc: Jennifer Ellis Roberts, Esquire  
Alan McCrory Wilson, Esquire  
William Walter Wilkins, III, Esquire

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<sup>1</sup> Before the Court of Appeals, the Appellate Court Case Number was 2015-000517.

<sup>2</sup> *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).