

STATE OF SOUTH CAROLINA  
In The Supreme Court

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**RECEIVED**

APPEAL FROM EDGEFIELD COUNTY  
Court of Common Pleas (PCR)

OCT - 3 2018

The Honorable William P. Keesley, Post-Conviction Relief Judge  
The Honorable John C. Few, Trial Judge

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**S.C. SUPREME COURT**

Tommy S. Adams, Petitioner,  
v.  
State of South Carolina, Respondent.

Appellate Case No. 2017-000739

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**RETURN TO MOTION TO RECALL REMITTITUR**

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**\*\*TIME SENSITIVE MATTER\*\***

Pursuant to Rule 240 (e), SCACR, Respondent makes its return to Petitioner's motion to recall the remittitur, dated September 27, 2018, and received October 1, 2018. Respondent opposes the recalling of the remittitur and would respectfully show the Court:

1. This Court issued Memorandum Opinion No. 2018-MO-031 on September 26, 2018, and dismissed as improvidently granted the grant of review in the above captioned matter. On that same day, the Court issued the remittitur. This prompted the provisions of the appeal bond, in particular: "If the final appellate decision affirms Applicant's convictions, Applicant is required to report to the Edgefield County Sheriff's Office for detention and transfer to the South Carolina Department of Corrections **within ten days of the date the appeal is remitted to the circuit court.**" (Order of the Honorable Eugene C. Griffith, Jr., February 9, 2017, C/A No. 2009-CP-19-0064) (emphasis in original). (Copy Attached). **Petitioner presently must report no later than Saturday, October 6, 2018.**

2. “In order to justify this court in exercising the unusual power of recalling the remittitur after it has been sent down, a very strong showing would be required that the remittitur was sent down through some mistake or inadvertence on the part of this court or its officer....” *State v. Keels*, 39 S.C. 553, 17 S.E. 802, 802 (1893). “Generally, the appellate court cannot recall a remittitur after it is sent down so as to correct errors.” J. Toal, et al., *Appellate Practice in South Carolina* 310 (1st ed. 1999) (citing *Carpenter v. Lewis*, 65 S.C. 400, 43 S.E. 881 (1903)).

3. Petitioner asserts the purpose of recalling the remittitur would be to allow the filing of a petition for rehearing. He asserts the “[g]rounds for rehearing will include, but not necessary be limited to, calling this Court’s attention to” Justice Few being included on the Court’s Memorandum Opinion. However, the opinion issued reflects certiorari was improvidently granted. Essentially, the petition for review was denied, albeit after it was previously granted. It would appear that Rule 221(a), SCACR would not allow for a petition for rehearing. (“No petition for rehearing shall be allowed from an order denying a petition for writ of certiorari under rule 242, SCACR). Rule 242 governs certiorari review of the decisions of the Court of Appeals. This case involved review of the South Carolina Court of Appeals opinion, *Adams v. State*, Unpublished Opinion No. 2016-UP-515 (S.C.Ct.App. filed December 14, 2016). Thus, Respondent submits the rule applies.

4. To the extent the proposed petition for rehearing would be limited to a request for clarification, and/or correction of a possible scrivener’s error regarding Justice Few’s involvement, if any, it is true that Justice Few did not participate in the argument, but, as is clear from the opinion, there is no decision on the merits. Consequently, it is not apparent how a possible scrivener’s error on the opinion would make any difference whatsoever, especially in light of the Court’s other records on the Court’s voting and disposition.

5. There is no argument presented as to any error in the sending of the remittitur. Thus, there appears no recognized cause to recall the remittitur.

CONCLUSION

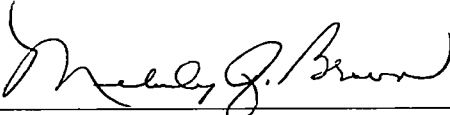
For all the foregoing reasons, Respondent submits the motion should be denied. Due to the fact the remittitur controls the time Petitioner must report to Edgefield County for transfer to the South Carolina Department of Corrections, Respondent respectfully urges the Court to act on the motion in expedited fashion.

Respectfully submitted,

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Attorney General

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Deputy Attorney General

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By:   
MELODY J. BROWN  
SC Bar No. 14244

October 3, 2018.  
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

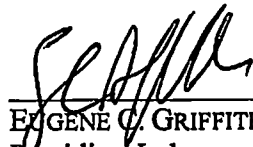


However, this Court adds the following conditions to carry this case to its conclusion:

1. If the final appellate decision affirms Applicant's convictions, Applicant is required to report to the Edgefield County Sheriff's Office for detention and transfer to the South Carolina Department of Corrections **within ten days of the date the appeal is remitted to the circuit court.**

2. If the final appellate decision reverses Applicant's convictions, a bond hearing is to be scheduled to set bond conditions for Applicant while his charges are pending.

AND IT IS SO ORDERED this 9<sup>th</sup> day of February, 2017.

  
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EUGENE C. GRIFFITH, JR.  
Presiding Judge  
Eleventh Judicial Circuit

Lexington, South Carolina

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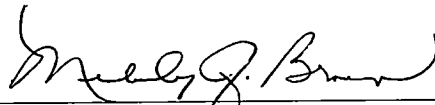
**PROOF OF SERVICE**

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I, Melody J. Brown, counsel for the Respondent, certify that I have served the Return to Motion to Recall Remittitur on the Petitioner by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid, one to each of his attorneys of record, addressed as follows: Teresa L. Norris, Esq., 101 Meeting Street, 5<sup>th</sup> Floor, Charleston, SC 29401; and to E. Charles Grose, Jr., Esq., 404 Main Street, Greenwood, SC 29646.

Further, as a courtesy in this time sensitive matter, Respondent is also today emailing a copy of this return to both counsel of record.

This 3rd day of October, 2018.



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ATTORNEY FOR RESPONDENT