

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE CIRCUIT COURT

Judge J. Cordell Maddox, Jr.

Case No. 2018-001042

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NOV 08 2018

S.C. SUPREME COURT

Arthur Field, Respondent,

v.

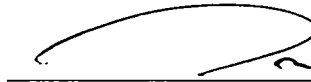
The State, Appellant.

MOTION TO FILE BRIEF OUT OF TIME

1. *Background.* The appellee's brief was due on October 25th, 2018 and that day has passed.
2. *Authority.* Supreme Court Rule 240; Supreme Court Rule 242.
3. *Reasons.* The Respondent wanted to ensure that due diligence and consideration was given to this motion. The State is appealing a sentence imposed on the Respondent through a plea agreement. In this agreement, the State required the Respondent to waive his right to appeal. Allowing the State to render an appeal would deprive the Respondent of the due process and fairness that should be granted to him under the law. Furthermore, sentencing is in the discretion of Circuit Court Judge who gave credit to the Respondent for the time he spent on electric monitoring and house arrest. Monitoring of the Respondent was never removed. The Circuit Court Judge only relaxed house arrest so that the Respondent could work and conduct other activities granted. The State's appeal should be

denied on the grounds that it never raised any objections to the sentencing, house arrest, or monitoring prior to this appeal. Moreover, the Respondent's sentence has recently been revoked on a probation violation rendering this issue mute.

Because of this, respondent asks for permission to file the brief out of time.




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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Motion to File Brief Out of Time was sent by United States Mail, postage prepaid, on November 8, 2018 to:

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RULE 240
MOTIONS AND PETITIONS GENERALLY

(a) Applicability. This Rule governs all motions or petitions filed in the appellate court, including but not limited to: motions for extension of time, motions to reinstate, petitions for rehearing, motions to be relieved as counsel or for substitution of counsel, petitions for supersedeas, motions to remand or dismiss and petitions for hearing *en banc*. Where Rules 241 through 246 provide different or additional requirements or procedures, those requirements or procedures shall apply.

(b) Stay of Time Limits. Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.

(c) Form and Content of Motions and Petitions. All motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. The pages of the motion or petition and all supporting documents shall be consecutively numbered. Each motion or petition shall include the following:

(1) A certificate or affidavit of service reflecting the date of service upon all parties. The original certificate or affidavit of service must be filed with the original motion or petition.

(2) A memorandum with citation of authorities in support of the motion.

(3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.

(d) Filing of Motions and Petitions. An original and six (6) copies of the motion shall be filed with the clerk of the appellate court, and a copy shall be served upon each party. The copies filed with the appellate court shall be accompanied by the filing fee set by order of the Supreme Court.¹ This filing fee shall not be required for motions or petitions in criminal appeals, petitions for writs of certiorari under Rules 242 and 243, certified questions under Rule 244, petitions to invoke the original jurisdiction of the Supreme Court under Rule 245, or motions or petitions filed by the State of South Carolina or its departments or agencies. In extraordinary cases, the appellate court may relieve a party from paying the filing fee.

(e) Return to Motion. Any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file an original and six (6) copies of his return with the clerk and serve on all parties a copy of the return; provided, however, that a return to a petition for rehearing may only be filed if permitted under Rule 221(a). The court may in its discretion enlarge or limit the time for filing the return. The provisions of Rule 240(c) shall apply to a return. Failure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition.

(f) Reply. The moving party shall have five (5) days from the date of service of a return to file an original and six (6) copies of a reply with the clerk and serve on all parties a copy of the reply. The provisions of Rule 240(c) apply to a reply.

(g) Failure to Comply. Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.

(h) Hearing. Unless otherwise ordered by the court, motions or petitions shall be decided without oral argument.

(i) Rehearing. The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.

(j) Authority of an Individual Judge or Justice. Except where these rules require the concurrence of two or more members of an appellate court, an individual judge or justice may grant or deny any motion or petition on behalf of the court. Any review of an order issued by an individual judge or justice shall be by petition for rehearing.

Last amended by Order dated October 9, 2018, effective October 15, 2018, by order of the same date.

¹ By order dated October 9, 2018, the filing fee for motions and petitions was set at fifty (\$50) dollars for a motion filed on or after October 15, 2018.