

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850
Appellate Case No. 2015-002417 (Court of Appeals)
Appellate Case No. 2018-001990 (Supreme Court)

RECEIVED
DEC 19 2018
S.C. SUPREME COURT

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown.....Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited
Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Larry Brown, Terry Brown and Daryl Brown Respondents below,

Of whom Deanna Brown-Thomas, Yamma Brown and Venisha Brown,
are the..... Petitioners.

**PETITIONERS' REPLY IN SUPPORT OF MOTION FOR EXTENSION OF
TIME TO FILE COPY OF PETITION FOR WRIT OF CERTIORARI WITH
COURT OF APPEALS**

Counsel for petitioners Deanna Brown-Thomas, Yamma Brown, and Venisha Brown (“Petitioners”) hereby submit this Reply in support of their request that the Court extend the time for filing a copy of the Petition for Writ of Certiorari with the Court of Appeals to December 10, 2018. The Petition for Writ of Certiorari was timely filed in the Supreme Court on November 9, 2018, and a copy was subsequently filed in the Court of Appeals on December 10, 2018.

Responding to the arguments made by Respondent, Petitioners respectfully show as follows:

1. The filing of a petition for writ of certiorari is not jurisdictional in nature. The only filing that is jurisdictional is the Notice of Appeal, the timely filing of which in this matter accorded concurrent jurisdiction to both this Court and the Court of Appeals. S.C. Code Ann. §14-3-330 (2018).

2. Because the Petitioner's procedural oversight here is not jurisdictional, this Court has the absolute discretion to grant Petitioner's Motion and to review the Petition for Writ of Certiorari on its merits. See Rule 242(b), SCACR (2018) (rule neither controls nor fully measures this Court's discretion).

3. Rule 263, SCACR, specifically provides that extensions of time may be granted in every appellate circumstance except the filing of the Notice of Appeal: "The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof." (emphasis added). Respondent's citation to *S.C. Dept. of Highways & Pub. Transp. v. Dickinson*, 288 S.C. 189, 341 S.E.2d 134 (1986), a case involving interpretation of a statute rather than a court rule, is inapposite. All of the South Carolina Appellate Court Rules that are accompanied by time limits use mandatory language such as "shall," yet Rule 263, SCACR, explicitly provides that this Court has the power to grant extensions of those deadlines. See, e.g., Rules 208(a), 209(a), 210(a), 211(a), 240(e)-(f), SCACR.¹

¹ Ironically, despite the fact that Rule 262(b), SCACR states that parties "shall" serve a copy of their filings at counsel's last known address, Respondent mailed both her Return to the Petition for Writ of Certiorari and her Return to this Motion to Parker Poe's Columbia office, addressed in part to an associate who left the firm and was formally relieved as counsel by Order of the Court of Appeals dated August 16, 2017.

4. Nothing in Rule 263 sets a deadline for filing a motion to enlarge time, and counsel for Petitioners are not aware of any authority that suggests this Court's authority to grant an extension does not extend to these circumstances, where the Petition for Writ of Certiorari and Appendix were timely filed in the Supreme Court and timely served on all parties.

5. Petitioners certainly understand and acknowledge that the procedure set forth in Rule 242(c) serves important purposes, including sending notice to the Court of Appeals that a writ of certiorari is being sought, so that a remittitur is not prematurely issued to the circuit court. *Lancaster v. Georgia-Pacific Corp.*, 403 S.C. 136, 742 S.E.2d 867 (2013) (discussing the timing of a remittitur and its applicability to a motion to stay appellate deadlines); Rule 221(b), SCACR. Here, the Court of Appeals already had notice of petitioner Michael Deon Brown's petition for writ of certiorari, so no remittitur was sent to the circuit court.

6. There has been no prejudice to Respondent, who doesn't even claim that there was any prejudice.

7. Counsel's oversight has not resulted in any delay in this matter, as the Petitioners have met all deadlines for filing their Petition for Writ of Certiorari with this Court and for filing their Reply to Respondent's Return to the Petition.

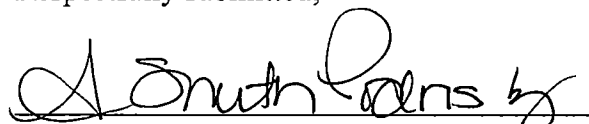
8. The very nature of a writ of certiorari is to address fundamental and important errors of law, such as the misunderstanding and misapplication of law by the lower court and Court of Appeals addressed in the Petition for Writ of Certiorari. See Rule 242(b), SCACR. Although Respondent attempts to distinguish or minimize the importance of *Robinson v. Estate of Harris*, 388 S.C. 616, 698 S.E.2d 214, (2010), the precise point is that this Court clearly has the power and discretion to overlook procedural deficiencies, including the failure to raise an

issue on appeal, in order to reach the merits of an important legal question. *Id.* at 388 S.C. at 627, n.8, 698 S.E.2d at 220 n.8.

9. Since the very purpose of a writ of certiorari is to grant review of important legal questions, the Petitioners respectfully urge the Court to review the Petition on its merits, and not on the procedural oversight raised by Respondent, particularly since no harm, prejudice, or delay has resulted and counsel immediately took steps to correct the mistake once they learned of it.

For the foregoing reasons, counsel for Petitioners respectfully request the time for filing a copy of the Petition for Writ of Certiorari with the Court of Appeals be extended to December 10, 2018.

Respectfully submitted,



Robert C. Byrd, SC Bar #1069

bobbybyrd@parkerpoe.com

A. Smith Podris, SC Bar #78051

smithpodris@parkerpoe.com

Parker Poe Adams & Bernstein LLP

200 Meeting Street, Suite 301 (29401)

Post Office Box 160

Charleston, SC 29402

Telephone: (843) 727-2650

Facsimile: (843) 727-2680

Attorneys for Petitioners

Deanna Brown-Thomas, Dr. Yamma

Brown, and Venisha Brown

W/permission

December 19, 2018

OF COUNSEL

Pro Hac Vice

Marc Toberoff

mtoberoff@toberoffandassociates.com

Toberoff & Associates, P.C.

23823 Pacific Coast Hwy, Suite 50-363

Malibu, CA 90265

Telephone: (310) 246-3333

Facsimile: (310) 246-3101

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

DEC 19 2013

S.C. SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850
Appellate Case No. 2015-002417 (Court of Appeals)
Appellate Case No. 2018-001990 (Supreme Court)

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown.....Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited
Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Larry Brown, Terry Brown and Daryl Brown Respondents below,

Of whom Deanna Brown-Thomas, Yamma Brown and Venisha Brown,
are the..... Petitioners.

PROOF OF SERVICE

The undersigned hereby certifies that on December 19, 2018, s/he has caused a copy of the **PETITIONERS' REPLY IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE COPY OF PETITION FOR WRIT OF CERTIORARI WITH COURT OF APPEALS** to be served upon all parties of record by mailing a copy of the same addressed as follows:

Robert N. Rosen, Esq.
Erin Casey, Esq.
Rosen Law Firm, LLC
18 Broad Street, Suite 201
Charleston, SC 29401

S. Alan Medlin, Esq.
USC School of Law
1713 Phelps Street
Columbia, SC 29205

RECEIVED
DEC 19 2018
S.C. SUPREME COURT

T. Heyward Carter, Jr., Esq.
Andrew Chandler, Esq.
M. Jean Lee, Esq.
Evans, Carter, Kumes & Bennett, PA
115 Church Street (29401)
PO Box 369
Charleston, SC 29402-0369

David L. Michel, Esq.
Michel Law Firm, LLC
751 Johnnie Dodds Blvd., Suite 200
Mt. Pleasant, SC 29464

Sen. Arnold S. Goodstein
Goodstein Law Firm, LLC
PO Box 2350
Summerville, SC 29484-2350

Sen. Arnold S. Goodstein
208 Sumter Avenue
Summerville, SC 29484

Davis C. Sojourner, Jr.,
Limited Special Trustee
Sojourner Caughman & Thomas
PO Box 12127
Columbia, SC 29211

John F. Beach, Esq.
Lyndey Ritz Zwingelberg, Esq.
Adams and Reese LLP
1501 Main Street, 5th Floor (29201)
PO Box 2285
Columbia, SC 29202

Matthew Day Bodman, Esq.
Matt Bodman, P.A.
1500 Calhoun Street
Columbia, SC 29201

Louis Levenson, Esq.
Levenson & Associates
125 Broad Street, SW
Atlanta, GA 30303

Scott Keniley, Esq.
Keniley Kumar LLC
Two Ravinia Drive, Suite 500
Atlanta, GA 30346

John A. Donsbach, Esq.
Donsbach Law Group, LLC
PO Box 212139
Martinez, GA 30917

A. Peter Shahid, Jr., Esq.
Shahid Law Office, LLC
89 Broad Street
Charleston, SC 29401

William Joseph Barr, Esq.
Barr Law LLC
108 N. Academy Street
Kingstree, SC 29556-3422

J. David Black, Esq.
Fred L. Kingsmore, Jr., Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
PO Drawer 2426
Columbia, SC 29202-2426

Russell L. Bauknight, Estate Trustee
and Personal Representative
Bauknight Pietras & Stormer, P.A.
1517 Gervais Street (29201)
PO Box 1330
Columbia, SC 29202

C. Havird Jones, Jr., Esq.
Office of the SC Attorney General
PO Box 11549
Columbia, SC 29211-1549

Vera Gilford, Esq.
PO Box 12553
Miami, FL 33101

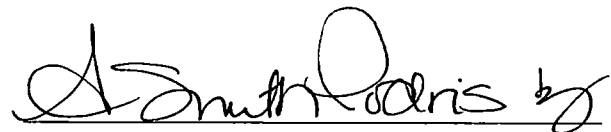
Steven M. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
751 Johnnie Dodds, Suite 100
Mount Pleasant, SC 29464

Terry Brown
3929 Liberty Hill Rd.
Eastanollee, GA 30538

James Mixon Griffin, Esq.
Griffin Davis
1116 Blanding Street (29201)
PO Box 999
Columbia, SC 29202

Itriss J. Jenkins
Itriss J. Jenkins LLC
215 E. Bay Street, Suite 203
Charleston, SC 29401

Daryl Brown
2223 Birnam Place
Augusta, GA 30904


Robert C. Byrd, SC Bar #1069
bobbybyrd@parkerpoe.com *ORC*
w/perm.

A. Smith Podris, SC Bar #78051
smithpodris@parkerpoe.com
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301 (29401)
Post Office Box 160
Charleston, SC 29402
Telephone: (843) 727-2650
Facsimile: (843) 727-2680
Attorneys for Petitioners
Deanna Brown-Thomas, Dr. Yamma
Brown, and Venisha Brown

Charleston, South Carolina