

The Supreme Court of South Carolina

Clifton D. Lyles, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2019-001128

ORDER

The time to serve and file any petition for rehearing is hereby extended until October 14, 2019. Any petition for rehearing must be actually received by this Court on or before October 14, 2019. Further, the petition must fully comply with the requirements of Rules 221 and 240 of the South Carolina Appellate Court Rules.¹

FOR THE COURT

BY



CLERK

Columbia, South Carolina
October 08, 2019

cc: Janell H Gregory, Esquire
Mr. Clifton Lyles, 294075

¹ For the convenience of the petitioner, a copy of those rules is enclosed.

RULE 221
REHEARING AND REMITTITUR

(a) Rehearing. Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court. A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. No return to a petition for rehearing may be filed unless requested by the appellate court. Ordinarily, however, rehearing will not be granted in the absence of such a request. No petition for rehearing shall be allowed from an order denying a petition for a writ of certiorari under Rule 242, SCACR.

(b) Remittitur. The remittitur shall contain a copy of the judgment of the appellate court, shall be sealed with the seal and signed by the clerk of the court, and unless otherwise ordered by the court shall not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment, or decree of the court finally disposing of the appeal. If a petition for rehearing is received before the remittitur is sent, the remittitur shall not be sent pending disposition of the petition by the court. Where a petition for rehearing has been denied, the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 242(c) has expired. If a petition for writ of certiorari is filed, the Court of Appeals shall not send the remittitur until notified that the petition has been denied. If the writ is granted by the Supreme Court, the Court of Appeals shall not send the remittitur.

(c) Rehearing of Motions. The appellate 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.

Last amended by Order dated May 1, 2018.

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.