

# The Supreme Court of South Carolina

Jamaal Gittens, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-000102

Lower Court Case No. 2018CP4200864

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## ORDER

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By order dated July 11, 2019, the South Carolina Court of Appeals dismissed the appeal in this matter based on petitioner's failure to provide a proof of service showing that a copy of the notice of appeal had been served on the respondent. On July 19, 2019, the Court of Appeals received a motion entitled "motion to remand," and this motion was construed to be a motion for reinstatement.

By letter dated December 10, 2019, the Court of Appeals advised petitioner this motion was deficient because he had failed to provide a proof of service for the motion.<sup>1</sup> Petitioner was given ten days to correct this deficiency.

When petitioner failed to correct this deficiency, the Court of Appeals sent a letter to petitioner on January 8, 2020, advising him that no action would be taken on the motion to reinstate.<sup>2</sup> On January 9, 2020, the Court of Appeals sent the remittitur to the circuit court.<sup>3</sup>

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<sup>1</sup> See Rule 240(c)(1) of the South Carolina Appellate Court Rules (SCACR) ("Each motion or petition shall include the following: (1) A certificate or affidavit of service reflecting the date of service upon all parties."), and Rule 262, SCACR (If a party is represented by counsel, "service shall be made upon the attorney unless service upon the party himself is ordered by the appellate court."). This letter appears to mistakenly refer to this motion as being a motion to remand.

<sup>2</sup> See Rule 240(g), SCACR ("Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.").

<sup>3</sup> Before the Court of Appeals, the Appellate Case Number was 2019-000808.

Petitioner has now filed a document which has been construed as a petition for a writ of certiorari to review the decision of the Court of Appeals under Rule 242, SCACR. This petition is dismissed for several reasons.

First, petitioner has failed to provide a proof of service showing that a copy of the petition for a writ of certiorari has been served on the opposing counsel as required by Rule 242(c), SCACR.

Second, the petition does not have the content specified by Rule 242(d), SCACR.

Third, petitioner has failed to serve and file an appendix as required by Rule 242(e), SCACR.

Fourth, under Rule 242(a), SCACR, this Court will only review a final decision of the Court of Appeals, and a decision is not final for the purposes of review until a petition for rehearing or reinstatement has been acted on by the Court of Appeals. Rule 242(c), SCACR. In this case, the Court of Appeals did not rule on the motion for reinstatement because petitioner did not provide a proof of service showing that a copy of the motion had been served on the opposing counsel. Therefore, there is no final decision for this Court to review.

Finally, when no *proper* petition for rehearing or reinstatement was received by the Court of Appeals, the Court of Appeals properly sent the remittitur, and the sending of the remittitur ended appellate jurisdiction over this case. *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007) (remittitur properly sent by Court Appeals when petition for reinstatement did not have the required proof of service).

Accordingly, the petition for a writ of certiorari is dismissed.

  
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FOR THE COURT C.J.

Columbia, South Carolina  
January 29, 2020

cc: Mr. Jamaal A. Gittens  
Daniel H. H. Cude, Esquire  
Office of the Attorney General  
The Honorable Jenny Abbott Kitchings