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**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

S.C. SUPREME COURT

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.

**RESPONDENT’S RETURN TO PETITIONERS’ MOTION
FOR EXTENSION OF TIME TO FILE COPY OF PETITION
FOR WRIT OF CERTIORARI WITH COURT OF APPEALS**

Pursuant to Rule 242(c) SCACR, Counsel for Respondent Tommie Rae Brown submit this Return in Opposition to Petitioners’ Motion for Extension of Time to File Copy of Petition for Writ of Certiorari with Court of Appeals, showing this court as follows:

1. Counsel for Petitioners, in their Petition for Writ of Certiorari to this Court, previously certified that a Petition for Rehearing and Suggestion for Rehearing *En banc* was made to the Court of Appeals and was denied by Order dated October 10, 2018.

2. The Petition for Writ of Certiorari does not comply with the filing requirements of Rule 242, SCACR. Rule 242(c), provides in part:

“[a] petition for writ of certiorari *shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals*”

Rule 242(c), SCACR (emphasis added).

3. The term “shall” in the aforementioned Rule means the action is mandatory. *See S.C. Dep’t of Highways & Pub. Transp. v. Dickinson*, 288 S.C. 189, 341 S.E.2d 134 (1986). Counsel for Petitioners, in their Petition for Writ of Certiorari to this Court, previously certified that a Petition for Rehearing and Suggestion for Rehearing *En banc* was made to the Court of Appeals and was denied by Order dated October 10, 2018. Petitioners’ required action to file the Petition for Writ of Certiorari with the Clerk of the Court of Appeals did not occur until December 10, 2018, when Respondent’s brief to this Court informed them of the procedural defect.

4. Petitioners’ original deadline to file proof of service with the Clerk of the Court of Appeals, as required by Rule 242(c), SCACR, was November 9, 2018. They are now asking this Court to allow them an extension of time to file proof of service with the Court of Appeals more than thirty (30) days after the original deadline. Petitioners’ have failed to file both their Motion for Extension of Time and Petition for Writ of Certiorari outside of the thirty day window

allowed by Rule 242(c), SCACR, and therefore this Court should deny this Motion and the dismiss with prejudice their Petition for Writ of Certiorari as they are procedurally defective.

5. Petitioners' reliance on *Robinson v. Estate of Harris*, 388 S.C. 616, 627 n.8, 698 S.E.2d 214, 220 n.8 (2010), as the basis for allowing them an extension of time to cure the procedural defect is misplaced. In *Robinson*, the Court addressed a party's failure to preserve an issue for appellate review, specifically the party's failure to preserve for review the doctrine of laches. *Id.* In *Robinson*, this Court set aside the party's failure to preserve an issue for review because the issue (the doctrine of laches) provided this Court the opportunity to address the applicability of the doctrine itself. Here, Petitioners' failure to timely file proof of service with the Court of Appeals does not provide this Court with an opportunity to address a doctrine of law. Rather, it is a procedural defect based on the failure to properly file within the timeframe allowed by our rules of appellate court practice.

For the foregoing reasons, counsel for Respondent respectfully ask this court to deny Petitioners' request for extension of time to file a copy of their Petition for Writ of Certiorari with the Court of Appeals.

Respectfully Submitted,



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

PROOF OF SERVICE

The undersigned hereby certifies that a copy of **RESPONDENT'S RETURN TO PETITIONERS' MOTION FOR EXTENSION OF TIME TO FILE COPY OF PETITION FOR WRIT OF CERTIORARI WITH THE COURT OF APPEALS** has been served on all counsel of record by depositing a copy of same in the United States Mail, postage prepaid on December 14, 2018, and addressed as follows:

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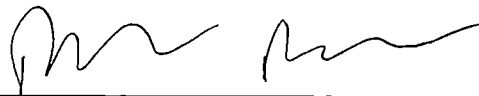
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