

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of General Sessions  
R. Lawton McIntosh, Circuit Court Judge

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**RECEIVED**  
**Oct 29 2020**  
**SC Court of Appeals**

Appellate Case No. 2017-002204

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The State, .....Respondent

v.

Phillip Wesley Walker, .....Appellant.

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**Petition for Rehearing**

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Pursuant to Rule 221, SCACR, Phillip Walker petitions this Court for rehearing. In this Court's opinion dated October 4, 2020, this Court held Mr.

Walker's Rule 16, SCRCrimP objection is not preserved because he did not specifically object to a trial in absentia or argue to the trial court that he did not receive notice of the trial or was unaware the trial would proceed in his absence. A motion for a continuance is not in itself enough to preserve a Rule 16, SCRCrimP objection.

In reaching this conclusion, this Court overlooked the significance of trial counsel arguing, "I move for a continuance based on that my client is not here. The best alternative is for the State to wait and try him when he is here." R. 4. During this appeal, Mr. Walker contended this statement by trial counsel triggered the requirement that trial judge make the findings of fact required by Rule 16, SCRCrimP and our State's caselaw. *E.g.*, Final Brief of Appellant, at 1-2, 5-7, and Final Reply Brief of Appellant, at 3. During oral argument, Mr. Walker argued this statement preserved this issue for appeal.

## CONCLUSION

This Court should grant this petition, rehear this matter, hold the trial judge failed to make the findings of fact necessary to proceed with a trial in Mr. Walker's absence, reverse the convictions and sentences, and remand for a new trial.

IT IS SO MOVED.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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*Attorney for the Appellant*

October 29, 2020  
Greenwood, South Carolina

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**Certificate of Service**

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I certify that I have served this pleading on the State of South Carolina, by email, on the date reflected below, addressed to:

David A. Spencer, Esquire  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211  
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By s/E. Charles Grose, Jr.  
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October 29, 2020  
Greenwood, South Carolina

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October 29, 2020

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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**SC Court of Appeals**

Re: *State of South Carolina v. Phillip Wesley Walker*  
Appellate Case Number 2017-002204

Dear Ms. Kitchings:

Enclosed please find Mr. Walker's petition for rehearing, along with a certificate of service.

Thank you for your attention to this matter. Please let me know if I can answer any questions or provide additional information.

With kindest regards, I am

Yours very truly,

E. Charles Grose, Jr.

cc: David A. Spencer, Esquire