

**RECEIVED**

**Jan 26 2022**

**SC Court of Appeals**

THE SOUTH CAROLINA COURT OF APPEALS

The State, Respondent,

v.

Jonathan Antonio Nieves, Appellant

Appellate Case No. 2021-001216

The Honorable Carmen T. Mullen

Jasper County

Trial Court Case No.; 2016GS2700007, 2016GS2700008,2016GS2700009

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MOTION TO RECALL THE REMITTITUR

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The undersigned filed a Motion to Reinstate on January 4, 2022 as response to an Order of Dismissal signed and filed on December 14, 2021. The Motion to Reinstate included a letter to the Honorable Clerk of Court, Margaret Bostick, which was a requested deficiency item from October 26, 2021 letter. I argued within the Motion To Reinstate that I had timely returned the Affidavit of Indigency from the Appellant on November 15, 2021 and, therefore, was absolved from ordering the trial transcript. Erroneously, I thought that I had untimely filed the motion. However, I failed to calculate the addition of the five (5) days mailing time period to the electronic notice to Order of Dismissal of December 14, 2021.

The undersigned received letter on January 18, 2022 that the remittitur remains in place from the Order of Dismissal of December 14, 2021. Seemingly, this decision was made without a ruling on the Motion to Reinstate of January 4, 2022. This belief was further confirmed by the

motion not being listed on the SC Appellate Case Management System on January 18, 2022. However, after a subsequent conversation with a staff member from the Court, she pointed that the motion and accompanying attachment was sent to [ctappfillings@sccourts.org](mailto:ctappfillings@sccourts.org) instead of [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org). Further, I inquired into whether the Court had the technological capabilities to return or not accept a filing where the documents were sent to a similar but nevertheless wrong address. The response was “I do not believe so.” Thus, without the existence of such a system, I was under the assumption that the filing was accepted. Therefore, I believe I have made a strong showing that the lack of such a system that would have alerted the non-filing status of my motion amounted to unintentional inadvertence on behalf of the Court.

Respectfully,

s/Joshua Koger, Jr.

Barnwell, SC

January 26, 2022