

RECEIVED

Oct 24 2022

SC Court of Appeals

MOTION TO REINSTATE
APPEAL OF CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Masters-in-Equity

Appellate Case No. 2016-001201

Allen Livingston,

Respondent,

v.

Harold Simmon, Jr.,

Appellant.

Appellant Harold Simmons Jr., Pro Se requests that this Court reinstate the Appeal of this case entered on September 8, 2022. This case was closed without the opportunity to be heard to the Appellant. Therefore, the Appellant makes this motion pursuant to Rule 60(a)(b), SCRPC. **(a) Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court. The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: **(1)** mistake, inadvertence, surprise, or excusable neglect; **(2)** newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); **(3)** fraud, misrepresentation, or other misconduct of an adverse party; **(4)** the judgment is void; **(5)** the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

A. Appellant has suffered serious immediate family crisis issues and natural disaster issues. An immediate family member death occurred on July 2, 2022, Appellant mother was hospitalized on July 29, 2022, Appellant brother was hospitalized on August 8, 2022, Appellant was declared by his doctor to be totally disabled on August 4, 2022, Appellant was in a serious automobile accident on September 8, 2022, returned to Hospital on September 9, 2022, and was diagnosed as having COVID 19 on September 21, 2022. Appellant endured a hurricane natural

disaster on September 28, 2022 , and was declare disabled mentally from injuries on October 4, 2022.

- B. The Appellant was denied a jury trial in the lower courts and this was ignored by the appeals court and the case was never reviewed on the facts but only observed on the technicalities.
- C. The Appellant due process rights were violated numerous times by the lower courts and appeals court based on the ignoring of the facts and evidence that clear revealed fraudulent Judge Orders and defendant filing of fraudulent documents along with not addressing the frivolous actions of the defendant, and ignoring the counterclaim evidence by the lower court Judges, and the ignoring of the supreme court opinion towards the appeals court.
- D. The Appellant was treated bias by the entire court system and its process by the showing of favortism from the lower courts and appeal court systems.
- E. The Appeal Court continued to deny the Appellant the right to argue the case and present the facts and evidence by ordering a dismissal and remitur return and never addressing the evidence and facts. Yet would in return allow the defendant and its counsel to submit evidences and or filings way out of time frame compliance and never address the wrong things done but allowed it and made a false ruling against Appellant based on frivolous information and then when it was pointed out to the Appeal court, it was never corrected. Instead it was used agaistn the Appellant by ignoring and continuing the error as if it was correct.
- F. The Appellant reuests the court reinstate the dismissal of tthis case.

Respectfully Submitted,

September 15, 2000 Harold

Simmons, Jr.,
3042 North
Carolina Ave
North Charleston, South Carolina
294059
843-480-8694
Pro Se, Appellant

Other Counsel of Record:
Allen Livingston
6508 Savannah Hwy
Ravenel, South Carolina 29470
Pro Se, for Respondent

Court of Common Pleas case:2014-cp-100-1635
Honorable Mikel R Scarborough S.C. Master-in-Equity
100 Broad Street, suite 266
Charleston, South Carolina 29401-2258,

South Carolina Court of Appeals
1220 senate street Columbia,
South Carolina 29201
case:2016-001201

Supreme Court of South Carolina
1231 Gervais Street Columbia,
South Carolina 29201
case 2021-001234 memorandum opinion No:2020-mo-008 .

The Supreme Court of South Carolina

Allen Livingston, Respondent,

v.

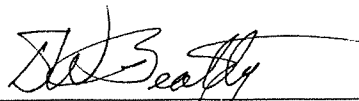
Harold Simmons, Petitioner.

Appellate Case No. 2022-001375

ORDER

The South Carolina Court of Appeals issued an opinion in this matter on August 17, 2022. When no petition for rehearing or reinstatement was received, the Court of Appeals sent the remittitur on September 2, 2022. Petitioner has now filed a petition for writ of certiorari seeking review of the decision of the Court of Appeals' decision.

Because Petitioner failed to file a petition for rehearing and the remittitur has now been sent pursuant to Rule 221 of the South Carolina Appellate Court Rules (SCACR), Petitioner's petition for a writ of certiorari is stricken and dismissed. *See* Rule 242(a), SCACR (providing this Court will only review a final decision of the Court of Appeals); Rule 242(c), SCACR (providing 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); *Stogsdill v. S.C. Dep't of Health & Human Servs.*, 415 S.C. 568, 784 S.E.2d 669 (2016) (stating the sending of the remittitur ends appellate jurisdiction over a case).



C.J.

FOR THE COURT

Columbia, South Carolina
October 11, 2022

cc:

Harold Simmons, Jr.

Allen Livingston

The Honorable Jenny A. Kitchings

Rule 242 (A) ~~Authority~~ By The Supreme Court or Any
(2) Justices.

Motion to Reinstate

I Appellant, Petitioner Ask the Court ~~For~~^{to}
Reinstate ~~meat~~ CASE NO 2016-601201. ~~to~~ Please
take under care For consideration the Merits of
the CASE Verse the technicality. This ^{case} have Been wrongly fully
handie From day one the case was File. I only wish for
Fairness and Justice and Thuth AS ~~Follow~~^{provided} By Rule
60 (A) of the South Carolina Appellate Court Rules.

① I Appellant, Petitioner motion ~~for~~^{to} Reinstate case for

② follow Reason as of July 22, 2022 my Family and I

③ WAS ~~De~~ DEALING WITH ~~Death~~ VERY CLOSE Family members Death,

④ ~~And on the 5/1/2023, 2022 my mother mother was Hosp~~

⑤ and ~~BURIED~~ July 29, 2022 my mother WAS Hosp HOSPA. July 23

⑥ 2022 and Aug 8 2022 my Brother WAS Hosp ~~ise~~ Ropes

⑦ 8, 2022 with Blood and Ken HOSP ~~ate~~ Aug 8, 2022 For Blood and

⑧ Keney Father one more Day he would have Die and is still in the

⑨ HOSPITAL ~~try~~ing to live.

The lower Court Erred Ignor the Supreme Court

Opinion NO. 2020-MO-008 ^{date File June 15, 2022} Against Dismiss. order

Date Aug 64 2021 And Reinforce the same ~~order~~^{Opinion} or order

NO: 2022-UP-343 Date File Aug 17, 2022

9 9/8/2022 involve in car accident

10 9/9/2022 Because of accident Petitioner had to

seek Emergency Treatment At Trident Medical

⑪ 9/21/22 Petitioner ~~was~~ Test Positive For Covid 19

⑫ 10/4/22 Patitioner is found Total ~~ab~~ disabled From car
Accident For Head, Neck, and BACK with Pain Down legs

Patient Status/Disability Form

B.P. Chiropractic
5150 Ashley Phosphate Rd.
N. Charleston, SC 29418

(843) 552-5353 • Fax (843) 553-8105

NAME: Harold Simmons DATE: 10/4/22

This is to certify that the above named patient is under the care of our office. The patient was at our office AM [] PM [] today for treatment.

Physician Report: DIAGNOSES: Post accident trauma : Other _____
And

Therapy Rx [] Physical Therapy Chiropractic [] Orthopedic Evaluation [] Neurologic Evaluation

Frequency [] Daily [] 4 days/week 3 days/week [] 2 days/week

Work/School Recommendations:

Employee may return to work/school without restrictions as of ___/___/___.

Totally disabled. Effective ___/___/___ . Estimated return to work in ___ Weeks; Undetermined time []

The patient has been examined by [] Orthopedic Surgeon [] Neurologist Disability recommendations and report are pending.

The patient is returning to work against medical advice. The patient cites: [] financial necessity [] Employer does not offer light duty work, therefore employee must return to full duty.

Return to work with light duty restrictions listed below: Effective Date ___/___/___

[] Lifting – Occasional 10 / 25 / 50 Max lbs.

[] Lifting – Repetitive 5 / 10 / 25 Max lbs.

[] No repetitive bending, twisting at the waist.

[] No repetitive movements involving arms/shoulders

[] No reaching above shoulder level

[] No repetitive pushing, pulling

[] Hourly breaks (5-10 min) to stretch/rest

[] Mixed sitting, standing, walking hourly

Notes: Mr. Simmons is under our care for a car accident for the next 4-6 weeks.

Physician's Signature



Patient: SIMMONS, HAROLD JR
 Account No: D00073441960
 Unit No: D000269727
 Location: SMC EMERGENCY DEPART...
 Physician: Shelley, Neal H MD
 Date: 10/06/22

Patient Visit Information

You were seen today for:

Cervical strain, acute

Staff

Your caregivers today were:

Physician: Shelley, Neal H MD
 Practitioner: WARE, BRANDON M PA

Patient Instructions Reviewed

Neck Sprain or Strain

received 10/06/22 - 1413

Activity Restrictions or Additional Instructions

Rest, warm compress to areas.

Alternate Tylenol and NSAIDs as needed for pain if you can take these medications.

Please return to the ER for fever, numbness, tingling, weakness, bowel/bladder changes, chest pain, abdominal pain or any other concerns.

Expect to be more sore in the next few days.

Please follow-up with your regular physician

Flexeril as needed for muscle spasms, may cause drowsiness, do not take while driving.

Medication Dose and Instructions

CYCLOBENZAPRINE (FLEXERIL) 10 MG TAB
 10 MG ORAL (by mouth) TWICE DAILY AS NEEDED As Needed for spasm #10 TAB REF 0
 10/06/22 2:12pm Status: PENDING
 Walgreens Drugstore #17043 (843)766-5593
 1115 OLD TOWN RD CHARLESTON, SC 294076062

LIDOCAINE 5% (LIDODERM 5%) 1 EACH ADH.PATCH
 1 PATCH TRANSDERMAL DAILY #14 PATCH REF 0
 Instructions: 12 hours on to affected area, then 12 hours off
 10/06/22 2:12pm Status: PENDING
 Walgreens Drugstore #17043 (843)766-5593
 1115 OLD TOWN RD CHARLESTON, SC 294076062



Fetter Health Care
— NETWORK —

Covid-19 Rapid Covid Test Results (FORM D)

Thank you for entrusting Fetter Health Care Network for your COVID-19 testing needs today. You have received rapid antigen test results.

Please continue to practice social distancing and wearing face coverings to continue to keep yourself and others free of infection.

Your RAPID COVID TEST RESULT IS: POSITIVE/NEGATIVE as of

9/21/22

IF NEGATIVE: Continue to socially distance yourself from others and wear a mask to decrease the spread. If symptoms persist or worsen, consider retesting in 1-3 days.

IF POSITIVE: REMAIN ISOLATED AT HOME, for 5 days (tomorrow is day #1). If symptoms are significantly reduced, stop isolation and wear mask for additional 5 days at all times to decrease spread to others. If still symptomatic, then remain on isolation until symptoms are resolved.

Seek immediate medical attention via 911 or nearest emergency department if symptoms worsen.

Should you develop additional questions related to COVID-19 results after your test, please call 843-722-4112 from 8:30am-5:00pm.



Patient: SIMMONS, HAROLD JR
Account No: D00073190002
Unit No: D000269727
Location: SMC EMERGENCY DEPART...
Physician: ER, Doctor
Date: 09/09/22

School/Work Excuse

Trident Medical Center
Summerville Medical Center
Moncks Corner Medical Center
Centre Pointe Emergency
Brighton Park Emergency

Print Date: 09/09/22 Time: 2338
ED Visit Date: 09/09/22

SIMMONS, HAROLD JR has been treated and released from the Emergency Department.
The physician's instructions are as follows:

Return to Work(days): off 9/9 - 9/11/22

Return to School(days):

Comment:

ED provider: ER, Doctor

Date: 09-08-2022	County: 18	City: 642 / DORCHESTER RD	State: SC	City: NORTH CHARLESTON
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Failure to return this form to the Department of Motor Vehicles within 15 days from the date of the collision could result in the suspension of your driver license and registration privileges pursuant to South Carolina Code of Laws 56-9-351 and 56-10-530.

SA-561853 Driver/Pedestrian's Full name SIMMONS HAROLD N				SA-561854 Driver/Pedestrian's Full name BURGESS TRACY R			
Unit # 1	Sex	Race	Street 1182 KING ST	Unit # 2	Sex	Race	Street 6414 CLEARVIEW DR
# Occ 1	Birth Date	City, State, & Zip CHARLESTON SC 294033426		# Occ 1	Birth Date	City, State, & Zip N CHARLESTON SC 294207804	
State SC	Driver's License # 0002502272	Class D	Insurance Company: AARP	State SC	Driver's License # 0001870670	Class D	Insurance Company: PROGRESSIVE
Year 2004	Body PK	Vehicle Make FORD	VIN 1FTPW12594KB90466	Year 2017	Body UT	Vehicle Make MERZ	VIN WDC0G4KB0HF162988
State SC	Year 2023	License Plate # OZG309	Owner's D.L. # 0026022272	State SC	Year 2023	License Plate # FFR490	Owner's D.L. # 001870670
Home Telephone SIMMONS HAROLD N				Home Telephone BURGESS TRACY R			
Bus. Telephone 1182 KING ST				Bus. Telephone 6414 CLEARVIEW DR			
Contributed To Collision Yes <input type="radio"/> No <input checked="" type="radio"/>				Contributed To Collision Yes <input checked="" type="radio"/> No <input type="radio"/>			

Driver/Pedestrian's Full name				State	Year	License Plate #	Owner's D.L. #
Unit #	Sex	Race	Street	Home Telephone		Owner's Full Name	
# Occ	Birth Date	City, State, & Zip		Bus. Telephone		Street	
State	Driver's License #	Class	Insurance Company:	Contributed To Collision Yes No		City, State & Zip	
Year	Body	Vehicle Make	VIN	Accident Insurance Information for Unit # 2			
All Units Insurance Information (to be completed by Investigating Officer)				Company Name PROGRESSIVE		Area Code/Phone Number	
				Agency Name		Policy Number 938765509	
Accident Insurance Information for Unit # 1				Accident insurance Information for Unit #			
Company Name AARP		Area Code/Phone Number		Company Name		Area Code/Phone Number	
Agency Name		Policy Number 55PHG759983		Agency Name		Policy Number	

Automobile Liability Insurance Information

Notice of Requirement Accepted	Signature	Y N Refused to Affix Signature?	Y N Vehicle Subject to Registration in SC?
To Be Completed Below or Entered at WWW.SC-ALIR.com By Insurance Company representative. This form should not be mailed to DMV if insurance information has been submitted electronically. Reference to Unit #: _____, I hereby affirm that to the best of my knowledge the vehicle described above was insured by the below stated Insurance company on the date of the collision.		The information as contained herein is based solely upon my knowledge and belief as a representative of the above insurance company and no warranty of liability is imputed into the above mentioned insurance as I have listed herein.	
Insurance Company	Policy #	Signature	Title
Beginning Date:	Ending Date:	Policy Holder:	NAIC # (Assigned by S.C. Dept. of Ins.)
		Bus. Telephone ()	

Notice: If liability insurance was not in effect for your vehicle involved in the collision, the Department of Motor Vehicles could suspend your driver license and registration privileges pursuant to South Carolina Code Laws 56-9-351 and 56-10-530.

If any of the below are applicable, Disregard the above portion				Form FR-10 Not Issued: Section 56-10-520			
<input type="checkbox"/> Check here if a Form SR-23, Fleet policy of 25 or more vehicles is on file with the Department of Motor Vehicles covering the vehicle				No FR-10 issued to Operator/Owner of Unit #: _____			
<input type="checkbox"/> Check here if a certificate of self-insurance has been issued by the Department of Motor Vehicles covering the vehicle and indicate the certificate number: SI - _____				Summons Issued To:			
<input type="checkbox"/> Check here if liability insurance was not in effect to comply with South Carolina statutory requirements.				For operating or allowing the operation of an uninsured vehicle		Summons Number:	
Signature		Date		Signature		Signature	
Investigating Officer's Name D. TUTEN	Rank LCPL	SCCJA# 2408-7502	Jurisdiction Code HP06	Review Date	Reviewer's Name	Rank	Internal Agency Code CHTC22CAD107900

APPOINTMENT CARD

Patient Name: Simmons, Harold

Appointment: Wednesday, September 21, 2022 at 9:40 AM

Provider: Dana L Simpson

Resource: Simpson, Dana L

Facility: TJ Bell Family Health Center
130 VARNFIELD DR Suite 100
SUMMERVILLE, SC-29483-7317
Tel:843-722-4112 Fax:866-285-7156

Reason: Car accident

Amendment Rule 22 (1)

~~Oct 2~~ Oct 2 2022 Petitioner ⁽²⁾
Request Extension for
Add. Time

The lower Court erred ~~to~~ ignore the Supreme Court ^{order}
Date ~~July 01, 2022~~ File June 15, 2022 And ~~in~~ ~~to~~ ~~the~~
To the Supreme Court

For ^{write} ① The lower Court erred ignore the 5 Request
For Jury Trial as provide By Rule 38(A)(b)

In the record on Appeal Pg 242, 243, 244, 245, 246, 247, 248, 249

secondly ② The lower Court erred ignore Act of Favoritism
or Mistake of the lower court as provide By Rule
~~to~~ 55 Default (b)(2), ~~(c)~~ (C) And Rule 60(A)

~~In~~ In the record of Appeal Pg 193, 194, 195, 196, 197

thirdly ③ The lower Court erred ~~that~~ ~~to~~ ignore the Request to
move the case before a ~~different~~ Judge was ~~not~~ raised

In the record of Appeal Transcript Pg. ~~255~~ 256 pg line
8 to 12, line 21 to 25, Pg 260 line ^{1 to 10} ~~1 to 10~~, Pg 262 line 21 to 25
Pg 263 line 10 to 17 Pg 264 line 1 to 25 And

ps 341

forthly The lower Court erred this case is in Violation of
the Default, ^{and} Due Process law

Fifthly The lower Court erred the fact ^{that} the case is ^{not} frivolous
for closer ^{case} was file ^{for} non ^{payment} ~~payment~~ the non payment
was find ~~at~~ ^{at the} Trial defendant was giving credit for
it. so the reason the for closer case was file ^{is} ~~is~~
find ~~in~~ In the Record on Appeal Transp Pg 332 line 20, 21

RECEIVED

Oct 24 2022

SC Court of Appeals

FORM 7
PROOF OF SERVICE OF A NOTICE OF
APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Masters-in-Equity

Appellate Case No. 2016-001201

Allen Livingston,

Respondent,

v.

Harold Simmon, Jr., Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Allen Livingston, Honorable Mikel R Scarborough S.C. Master-in-Equity, South Carolina Court of Appeals. And Supreme court of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on October 21, 2022, addressed to all above mentioned at their respectable addresses stated below on October 21, 2022.

October 21, 2022

Harold
Simmons, Jr.,
3042 North
Carolina Ave
North Charleston, South Carolina
294059
843-480-8694
Pro Se, Appellant

Other Counsel of Record:
Allen Livingston
6508 Savannah Hwy
Ravenel, South Carolina 29470
Pro Se, for Respondent

Court of Common Pleas case:2014-cp-100-1635
Honorable Mikel R Scarborough S.C. Master-in-Equity
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