

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2022-000671

RECEIVED

MAY 02 2023

SC Court of Appeals

The State of South Carolina.....Respondent

v.

Gwendolyn B. Frasier.....Appellants
LaQuesha Felder

**EXPARTE MOTION FOR NOTICE OF COUNSEL, RIGHT TO APPEAL
AND FRAUD UPON THE COURT**

Appellants move before The Honorable Judge Lockemy with an Exparte Motion For Notice of Counsel And Right to Appeal and Fraud Upon the Court pursuant to SCACR, Rule 240.

Appellants Gwendolyn B. Frasier and LaQuesha Felder respectfully request that The Honorable Judge Lockemy protects their First and Fourteenth Rights to access the Court, due process and their statutory right to appeal, by issuing an order to the Clerk of the SC Court of Appeals ordering the Clerk to; (1) file Appellants' March 28, 2023, Emergency Motion to Relieve Counsel and Proceed Pro Se, Initial Brief of Appellants, Habeas Corpus in Aid of Appellant Jurisdiction, Motion for Leave to File and Enlarged Brief and Designation of Matter, filed along Appellant, Terron Dizzley, and allow the judge to determine whether their First and Fourteenth Amendment Right to Familial Association with Appellant Terron Dizzley without government interference, is being violated pursuant to Appellant Terron Dizzley's false imprisonment for nine years and counting without any legal nor jurisdictional

authority; (2) Cease from rejecting any future filings from Appellants Gwendolyn B. Frasier and LaQuesha Felder and to docket all filings from Appellants Gwendolyn B. Frasier and LaQuesha Felder in compliance with Barnes v. State, 433 S. C. 399 (2021).

STATEMENT OF CASE

Appellants Gwendolyn B. Frasier and LaQuesha Felder contend that the clerk of court of the S.C. Court of Appeals has violated their state statutory right to appeal their case pursuant to the letter sent to Appellant Gwendolyn B. Frasier via e-mail from Attorney Yarborough stating that the clerk of court will reject any filings from them pursuant to their March 28, 2023 filings which consisted of a Emergency Motion to Relieve Counsel And Proceed Pro Se, Initial Brief of Appellants, Habeas Corpus in Aid of Appellate Jurisdiction, Motion For Leave to File an Enlarged Brief, and Designation of Matter, alleging that, (1) Appellants are not parties to the appeal; and (2) Appellants are not licensed to practice law.

Appellants contends that they were aggrieved by clerk of court rejecting their filings, whereas, it is established pursuant to South Carolina law that; (1) clerks of court duties are ministerial, and they have no authority to reject docketing filings irrespective of any procedural flaws they may feel exist, nor may exercise any judicial functions or perform any action contingent on deciding a question of law; (2) the clerk of court's actions in the rejection of docketing their filings violated their statutory right to appeal.

NOTICE OF COUNSEL, GWENDOLYN B. FRASIER, LAQUESHA FELDER

On October 28, 2021, Appellants, Gwendolyn B. Frasier and Laquesha Felder, filed a motion pursuant to their First and Fourteenth Amendment Right to Familial Association with Terron Dizzley without government interference, as parties to their

“Emergency Exparte Motion and Proposed Motion for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court Jurisdiction to Impose Sentence, pursuant to Terron Dizzley’s false imprisonment. Since this motion was filed, every order by The Honorable Judge Culbertson, was “**only**” addressed to Appellants Gwendolyn B. Frasier and LaQuesha Felder. None of these orders were served on Appellant, Terron Dizzley. Therefore, “**only**” Appellants Gwendolyn B. Frasier and LaQuesha Felder were recognized by the Court as the Appellants of this case. When the Honorable Judge Culbertson issued an order denying Appellants motions that did not comply with law, pursuant to findings of facts and conclusions of law, and refused to respond to Appellants “Emergency Motion for Alteration, Amend, Modification, Reconsideration and Rescission of Order, Appellants filed an appeal.

Appellants contend that the record shows that the S. C. Court of Appeals mistakenly dismissed their appeal, on the grounds that the appeal was untimely. Appellants then filed a Motion to Reinstate on the grounds that; (1) Appellant Terron Dizzley had never received any notices pursuant to any rulings in their case, and all appeals filed on his behalf were pursuant to notification from Appellants Gwendolyn B. Frasier and LaQuesha Felder who had received orders from the courts. Therefore, according to S.C. law, an appeal under such circumstances is not untimely; (2) Appellants had filed an Emergency Motion for Alteration...in the circuit court, of which the court refused to respond, which tolled the time for filing an appeal; and (3) subject matter jurisdiction maybe raise at anytime even for first time on appeal, and may not be waived even with consent of all parties and should be taken notice of by the Appellate Court. Appellants contend that it was based on these grounds that the S.C. Court of Appeals remanded their case back to the Circuit for a ruling on their Motion For Alteration... Therefore, Appellants, Gwendolyn B. Frasier and LaQuesha

Felder's have appealed two of the Honorable Judge Culbertson's orders specifically addressed them and the Circuit Court nor the S.C. Court of Appeals issued any orders that they were not parties to this case.

Appellant contends that according to the record of this appeal, they were always recognized by the Courts as parties to this case; if this was not so, the Honorable Judge Culbertson would not have addressed them at the November 17, 2022, hearing and would have never issued such order pursuant to their case.

PROSECUTORIAL MISCONDUCT

Appellants contend that the transcript of the November 17, 2022, hearing proves that it was not until the Attorney General initiated false accusations against Appellants Gwendolyn B. Frasier and LaQuesha Felder by stating that they were "individuals practicing law without a license," and not to consider them as parties to this case. The record also shows that Judge Culbertson deprived Appellants Gwendolyn B. Frasier and LaQuesha Felder of opportunity to and fully and fairly present their case, therefore, violating their rights to due process and issued an order pursuant to these false allegations that Appellants were "individuals practicing law without a license," without any findings of facts or conclusions of law on the merits of Appellants Exparte Motion that supported such ruling. The record also proves that when Gwendolyn B. Frasier tried to explain to the court that this was not the case, that she was not attempting to practice law without a license on behalf of Appellant Terron Dizzley but was a pro se litigant exercising her First and Fourteenth Amendment right to familial association with Terron Dizzley; Judge Culbertson refused to allow her to speak, as well as LaQuesha Felder. See: November 17, 2022, hearing transcript P. 14, L 12- P. 15, L 1-20.

The Attorney General's accusations were false and resulted in prosecutorial misconduct and intimidating Appellants to prevent them from testifying and to prevent them from exercising their First and Fourteenth Amendment rights to familial association with Terron Dizzley, of which they have a right to without government interference pursuant to Terron's false imprisonment for on nine years and counting. Appellants contend that the same exact thing happened in State v. Inman, 395 S.C. 539 (2011), "manner in which State conducted *void dire* of defense expert concerning her licensure status and whether she was subject to civil and criminal penalties for practicing social work without a license unequivocally constituted witness intimidation. A prosecutor may not "lob baseless threats or charges at a potential defense witness in effort to prevent the witness from testifying." State v. Williams, 326 S.C. 130 (1997), "State's improper intimidation of potential defense witness resulting in witness refusal to be interviewed by defense counsel was not harmless error. Governmental intimidation of witness can be deemed harmless error where witness nonetheless testifies, but fact that witness does not testify does not automatically result in reversal, and, in order to obtain relief, defendant instead must demonstrate both substantial interference and prejudice."

Appellants contend that the record of the November 17, 2022, hearing proves substantial interference with their right to "free and unhampered" choice to prosecute their case. Appellants contends that, clearly, they were prejudice by such deprivation of their rights to due process. State v. Williams, 326 S.C. 130 (1997), "Improper intimidation of a witness may violate a defendant's due process right to present his defense witness freely if the intimidation amounts to 'substantial government interference with the defense witness free and unhampered choice to testify." See: Berger v. United States, 295 U.S. 78, 88 (1935), " A prosecutor may prosecute with

earnestness and vigor-indeed, he should so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

Appellants also contends that the Honorable Judge Culbertson's actions of issuing such an order also amounted to intimidating and threatening Appellants Gwendolyn B. Frasier and LaQuesha Felder to prevent them from prosecuting their case and pursuing an appeal. Therefore, the Honorable Judge Culbertson's conduct amounted to an abuse of discretion and a "usurpation of judicial power." See also: **SC ST s 40-5-80 Citizens may prosecute or defend own cause**; which states in pertinent part: "This chapter may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."

Appellants contend that, now the clerk of court of S.C. Court of Appeals is also using the same tactics that Attorney General and Judge Culbertson used to prevent them from fully and fairly presenting their case at the November 17, 2022, hearing, that has already been established is the S.C. Supreme Court as "intimidating and threatening" an individual to prevent them from appealing their case, as of right.

FRAUD UPON THE COURT

Appellants also contend that, according to the S.C Supreme Court, the Attorney General, the Honorable Judge Culbertson, and the clerk of court of the S.C. Court of Appeals actions also amounts to "fraud upon the court." See: Sanders v. Smith, 431 S.C. 605 (2020), "Fraud Upon the court, as a ground for relief from judgement, is a narrow and invidious species of fraud that subverts to the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner it's impartial task of adjudging cases

that are presented for adjudication." See also: Chewing v. Ford Motor Co., 354 S.C 72 (2003).

Appellant Gwendolyn B. Frasier contends that she paid Attorney Yarborough \$15,000 dollars to represent them on remand pursuant to their Emergency Motion For Alteration..., and Attorney Yarborough assured Appellant Terron Dizzley and Appellant Frasier on several occasions that he would address "all" of their issues raised in their Emergency Motion for Alteration..., which was the sole purpose that the S.C. Court of Appeals remanded the case back to the Circuit Court. However, although the Attorney General's allegations at the November 17, 2022, hearing were baseless and has been determined by the S.C. Supreme Court as "prosecutorial misconduct," see Inman, supra, 395 S.C. 539 (2011). Attorney Yarborough failed to defend them, as his clients against these allegations, sold them out and became their adversary, falsely alleging that he was not representing them.

Attorney Yarborough misrepresented the truth to Appellants Terron Dizzley and Gwendolyn B. Frasier, indicating that he would raise "all" their issues in the Appellate Brief. However, Attorney Yarborough began to threaten Appellants Terron and Gwendolyn B. Frasier that if she pursued her appeal, he would ask to be relieved and would also abandon Appellant Terron Dizzley's case.. (Note: Attorney Yarborough also intentionally misrepresented the truth in his April 18, 2023, filing of the Initial Briefs on behalf of Appellants, of which Appellants disapproved, that Appellants Gwendolyn B. Frasier and LaQuesha Felder signed their names as parties to the motions because they did not understand the meaning of "Power of Attorney" without speaking to Appellant Gwendolyn B. Frasier nor LaQueha Felder as to the reasons for their signature.)

U.S. Supreme Court has also established that when an attorney employed corruptly sells out his client's interest, such fraudulent acts are sufficient to set aside a judgment or decree. See: United States v. Throckmorton, 98 U.S. 61 (1878) " Where unsuccessful party has been prevented from fully exhibiting his case, by fraud or deception, as by keeping him away from court, false promise of compromise, or keeping him ignorant of the suit; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where attorney regularly employed corruptly sells out his clients interest; and in similar cases where there has never been a real contest, new suit may be maintained to set aside and annual judgment or decree."

RIGHT TO APPEAL

Appellants contend that according to clearly established state statutory laws, and rules of court of South Carolina, Appellants have a right to appeal the Honorable Judge Culbertson's order pursuant to their case. See: State v. Rearick, citing " State v. Wilson, 387 S.C. 597, 599 (2010) ("The right to appeal arises from and is controlled by statutory law."). To appeal, a defendant must be "aggrieved" by a decision that is statutorily classified as one that is appealable, which generally involves a final judgment. S.C. Code Ann. sec. 18-1-30. ("Any party aggrieved may appeal in the cases prescribed in this title."); Rule 201(b), SCACR, ("Only a party aggrieved by an order, judgment, sentence or decision may appeal."): See Rule 201(a), SCACR ("Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.").

Appellants contend that the Honorable Judge Culbertson's November 17, 2022, order denying their case on the grounds alleging that they were "individuals practicing

law without a license," is a final order within the meaning of the aboved statutes and rules of South Carolina which gives them the right to appeal Judge Culbertson's order.

**DUTIES OF CLERK OF COURT FIRST AND FOURTEENTH
AMENDMENT RIGHT TO ACCESS THE COURT AND PROCEDURAL DUE
PROCESS**

Appellants contend that the clerk of court of the S.C. Court of Appeals has no authority to refuse to file their appeal in this matter pursuant to; (1) her opinion that they are not parties to this case; (2) baseless allegations that because they don't have a license to practice law, that they cannot file motions on behalf of their constitutional rights to familial association with Terron Dizzley and ; (3) because of her perceived opinion that because Appellants filed their issues along with Terron Dizzley that it was not the proper form; nor (4) because of her opinion as to the merits of their issues or the effect and interpretation of them. For these are all questions of law that a judge must determine. See: Barnes v. State, 433 S. C. 399 (2021). "We take this opportunity to remind the clerks of court of their ministerial duty to docket filings irrespective of potential procedural flaws that may exist. Miller v. State , 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008) ("[I]t is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely."). This duty is not discretionary. See 21 C.J.S. Courts § 335 (2021). Unless specifically authorized by statute or a court rule, a clerk of court may not exercise any judicial power reserved for a judge. Id. ("The clerk cannot, without express constitutional or statutory authority, exercise any judicial functions."). This includes the prohibition of performing any action contingent on deciding a question of law. Id. ("It follows that a clerk of court cannot ordinarily determine questions of law."). Accordingly, a clerk of court does not have the authority to reject a filing

based on ostensible or perceived failures, including whether the document is contained on the proper form. Because the clerk's role is ministerial in this respect, the clerk shall not be "concerned with the merit of the papers or with their effect and interpretation" Id. § 337. Stated differently, "[a] clerk of court may not reject a pleading for lack of conformity with requirements of form; only a judge may do that." Instead, the clerk shall accept the filing, thereby permitting the court to decide any issues the parties may have with it."

For the foregoing reasons Appellants Gwendolyn B. Frasier and LaQuesha Felder respectfully request that The Honorable Judge Lockemy grants this Exparte Motion.

Date: 4-24-23

Respectfully submitted,

S, Gwendolyn B. Frasier
Gwendolyn B. Frasier
7996 Pennyroyal Road
Georgetown, SC 29440

S, LaQuesha Felder
LaQuesha Felder
1440 Baxter Street
Orangeburg, South Carolina 29115



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 05, 2023

Terron G. Dizzley, 00359480
Allendale Correctional Institution
P. O. Box 1151, Hwy 47
Fairfax SC 29827

Re: The State v. Terron G. Dizzley
Appellate Case No. 2022-000671

Dear Mr. Dizzley:

The Court is in receipt of your motions and other filings filed March 30, 2023. All of your motions and accompanying material must be served upon the counsel of record that currently represents you. Until such time as your attorney is relieved as counsel, no action will be taken on your motions. Further, it does not appear that Gwendolyn B. Frazier or LaQuesha Felder are parties to this appeal nor are they licensed attorneys. No action will be taken on any documents submitted by Ms. Frazier or Ms. Felder for the reasons stated above.

Very truly yours,

A handwritten signature in cursive script that reads "V. Claire Allen".

CLERK



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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Very truly yours,

A handwritten signature in black ink that reads "V. Claire Allen". The signature is written in a cursive style.

CLERK

cc: Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
William G. Yarborough, III, Esquire
Lauren C Hobbis, Esquire

LAW OFFICE OF WILLIAM G. YARBOROUGH, III

P: 864.331.1612
F: 864.271.0711
E: Bill@wgylaw.com

308 W. Stone Avenue
Greenville, SC 29609

March 30, 2023

Terron Dizzley, 00359480
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

Re: State v. Terron Dizzley; 2009-GS-22-0078
Initial Brief

Dear Mr. Dizzley,

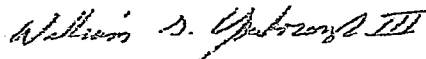
As requested, on March 3, 2023, we sent you a copy of the initial brief we intended to file on your behalf. On March 13, 2023 we received an email from Gwendolyn Frazier on your behalf, indicating that you did not want us to submit the Brief that we mailed to you. The email also stated that you would write with details. We did not hear back from you until March 30, 2023, wherein you stated that you are firing me, do not wish for me to file your Brief, and that you will file it *pro se*.

The initial brief was due on March 20, 2023. We filed an extension request on your behalf, and an Order (enclosed) was issued, granting the extension to April 19, 2023. As stated in the Order, "any further extension request must show the existence of extraordinary circumstances" and "state what actions are being taken to insure that no further extension will be required..."

Although you would like to relieve me as counsel, procedurally, that has not been done. If you have not filed your Brief, by the due date, April 19, 2023, I will move forward with filing the Initial Brief. Failure to file by the deadline could result in a dismissal of your Appeal.

Please feel free to contact the office with any questions or concerns.

Thank you,



William G. Yarborough, III

WY/lde

Enclosures

cc: Gwendolyn Frasier (via email only at fblessed1@aol.com)

William G. Yarborough, III
308 West Stone Avenue
Greenville, SC 29609
March 30, 2023

Dear Attorney Yarborough:

The brief that you sent me for approval does not raise all of the issues as agreed upon. The brief is not supported by any case law at all. You, intentionally, misrepresented the truth as to the procedural history of my case stating that I knowingly and intelligently waived my direct appeal to pursue a speedier process and filed a PCR, although I told you that I did not knowingly and intelligently waive my direct appeal and that I have a motion pending in S.C. Court of Appeals to reinstate my direct appeal and even asked you to assist me with this also.

You also falsely stated that my PCR appeal was dismissed for failure to file the appeal, when I showed you the proof that my PCR was the result of fraudulent, illegal representation from Attorney Eleanor Duffy Cleary, which prevented me from raising any issues and deprived me of my appeal. I personally showed you a copy of the Rule 59(e) Motion for Reconsideration filed by Attorney Eleanor Cleary, where she admitted that her representation was conflicting, against my wishes, and that I had filed a civil action against her, and that because of this, she had filed several motions to be relieved from her fraudulent representation, in which she stated that the Court was in error for forcing her to continue to represent me under such circumstances, and that because of this, the "strong and meritorious" issues, that I have that were not raised.

I also asked you to assist me in also reinstating my PCR. If you knew this, then why would you litigate a false procedural history of my case that would only prejudice me, when you are supposed to advocating for me.

You lied about my mother and wife's intentions in filing for my immediate release, which is an exercise of their First and Fourteenth Amendment rights to familial association with me without government interference pursuant to my false imprisonment, by stating that they have a misunderstanding of what power of attorney means, although you agreed to raise this issue.

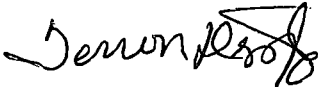
The contract that I signed with you states that you would return the \$7,500 if we did not allow you to appeal the case. However, when you came to see me after the hearing, you specifically told me that you would raise all of the issues if I briefed them, and you and your lawyer would redo the brief, and you would send it to me, and if I did not agree with it, you would refund the \$7,500. We do not agree with the brief that you sent to me. We, therefore, have decided to file the brief ourselves because you have breached the contract are asking you to return the \$7,500 which you were paid in good faith.

Because you have breached the entire contract and did not raise all the issues at hearing, and was not even unprepared to raise the Double Jeopardy issues. We are also asking you to return the entire \$15,000 which we paid to you.

It clear that your strategy was to get paid and hope that the judge would allow me to argue my own case, which I had a right to, that you failed to protect. You also lied to me that if I briefed all the issues, you would raise them on appeal. You have not done anything that was agreed to in the contract. According to the statement you made in our March 3, 2023, phone conference, that as far as you are concerned that you fulfilled your obligation when walked out of the Court room on November 17, 2022, is clear that your sole intentions were swindle my family and me out of \$15,000, and walk in the courtroom say a few words and get a free \$15,000.

If our fee is not returned, we will pursue legal actions against you. Fifteen thousand dollars is not a little bit of money.

Yours truly,

A handwritten signature in black ink, appearing to read "Terron Dizzley". The signature is written in a cursive, somewhat stylized font with a large loop at the end.

Terron Dizzley

William G. Yarborough, III
308 West Stone Avenue
Greenville, SC 29609
April 3, 2023

Dear Attorney Yarborough:

We sent you a letter, on March 30, 2023, explaining that we wish you to refund the \$7,500.00 which we paid you as part of our agreement which was refundable if we did allow you to do the appeal. We filed the appeal ourselves, on March 28, 2023, which included a motion to relieve you as counsel.

We are also, again, requesting that you return the additional \$7,500.00 for a total of \$15,000.00 which we paid you to represent us pursuant to our "Emergency Motion for Alteration..." As explained to you in the letter, you breached your contract by not raising all of our issues at the November 17, 2022, Hearing and by not raising all of the issues in the appellate brief that you sent us. You also included false/inaccurate information in the brief which you sent us for review.

After the November 17, 2022, Hearing, when you came to visit me, I explained to you that my family and I were extremely dissatisfied with your representation at the hearing and that we wanted to fire you. However, you insisted that if we allowed you to do the brief, and that if I briefed all of the issues and send them to you, that you and your legal team would redo them, send it to me, before filing, and that if I did not agree with the brief that you prepared to file, you would return our money.

You did not address the return of our money in your March 31, 2023, response to our letter, which is detailed as to why we are requesting the return of our funds.

Again, we are requesting the return of the \$15,000.00 which you were paid for legal services which you failed to provide.

Yours truly,



Terron Gerhard Dizzley

SUMMONS

The Defendant, Chief Judge, James Edward Lockemy , YOU ARE HEREBY SUMMONED and request to answer Petition for Habeas Corpus in Aid of Appellant Jurisdiction, a copy is hereby served upon you, and to serve a copy of your answer to the said complaint on the subscriber at their office in P.O. Box 750, Dillon, South Carolina 29536 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

MAY 02 2023

SC Court of Appeals

Appeal from Georgetown County

Honorable Judge Benjamin Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

v

Gwendolyn B. Frasier
LaQuesha Felder

Appellants

APPELLATE CASE NO. 22-000671

CERTIFICATE OF SERVICE

We, Gwendolyn B. Frasier and LaQuesha Felder, hereby certify on this 24th day of April, 2023, filed An Exparte Motion for Notice of Counsel, Right to Appeal and Fraud Upon the Court in the above matter by placing in U. S. mail, postage prepaid, sent to the address below:

Chief Judge James E. Lockemy
P. O. Box 750
Dillion, SC 29536

s, Gwendolyn B. Frasier
Gwendolyn B. Frasier Pro Se
7996 Pennyroyal Road
Georgetown, SC 29440

s, LaQuesha Felder
LaQuesha Felder, Pro Se
1440 Baxter Street
Orangeburg, South Carolina 29115

1057 Revolutionary Trail
Fairfax, SC 29827
April 20, 29827

RECEIVED

MAY 02 2023

SC Court of Appeals

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

RE: Appellate Case No. 2022-000671, Appellants Terron Dizzley, Gwendolyn B. Frasier, LaQuesha Felder v State

Dear Honorable Clerk Jenny A. Kitchings:

Appellant contends that he filed an emergency Motion to Relieve Counsel and Proceed Pro Se On March 28, 2023 along with the "Initial Brief of Appellant. However, Appellant, Terron Dizzley, was notified by his Mother, Gwendolyn B. Frasier, on April 18, 2023 that Attorney Yarborough e-mailed her a letter from the Clerk of Court of the South Carolina Court of Appeals that they were not filing Appellant's Emergency Motion to Relieve Counsel and proceed pro se because he had to serve a copy of the document to his attorney of record, Attorney Yarborough. She also stated that "it does not appear that Gwendolyn B. Frazier or LaQuesha Felder are parties to this appeal nor are they licensed attorneys. No action will be taken on any documents submitted by Ms. Frazier or Ms. Felder for the reasons stated above". However, this is contrary to clearly established South Carolina law and was an error in refusing to file Appellant's motions on such grounds. Foster v. State, 298 S.C. 306 (1989), "Nothing in this order shall be construed to limit any party's right to file a pro se motion seeking to relieve his counsel."

Therefore, the clerk of court had no authority to reject filing Appellant's Motion. See: Barnes v. State, 433 S. C. 399 (2021). "We take this opportunity to remind the clerks of court of their ministerial duty to docket filings irrespective of potential procedural flaws that may exist. Miller v. State, 377 S.C. 99, 102, 659 S.E.2d 492, 493 (2008) ("[I]t is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely."). This duty is not discretionary. See 21 C.J.S. Courts § 335 (2021). Unless specifically authorized by statute or a court rule, a clerk of court may not exercise any judicial power reserved for a judge. Id. ("The clerk cannot, without express constitutional or statutory authority, exercise any judicial functions."). This includes the prohibition of performing any action contingent on deciding a question of law. Id. ("It follows that a clerk of court cannot ordinarily determine questions of law."). Accordingly, a clerk of court does not have the authority to reject a filing based on ostensible or perceived failures, including whether the document is contained on the proper form. Because the clerk's role is ministerial in this respect, the clerk shall not be "concerned with the merit of the papers or with their effect and interpretation" Id. § 337. Stated differently, "[a] clerk of court may not reject a pleading for lack of conformity with

requirements of form; only a judge may do that." Instead, the clerk shall accept the filing, thereby permitting the court to decide any issues the parties may have with it."

Therefore, these are not the words Appellant but of clearly established South Carolina Supreme Court law which establishes that you have no authority to: (1) to reject any filings from Appellants based on your opinion of who should be served; (2) based on your opinion of whose names you think should or shouldn't be on the document; (3) based on your opinion of whom you believe are appellants or whether they have a license to practice law or (4) based on your opinion of any alleged incorrect form on which the motions were filed or any potential procedural flaws you may think that exist in filing these motions. According to clearly established South Carolina Supreme Court law, these are questions of law that only a judge may decide and your duties, as a clerk of court, is strictly ministerial, therefore, you have no authority to reject filing our motions.

Furthermore, the reasons that you stated that you were not filing Appellants, Gwendolyn B. "Frazier" and LaQuesha Felder's motions because you alleged that we are not licensed to practice law, it has already been established in State v. Inman, 395 S.C. 539 (2011), that depriving a person from the opportunity of being heard and fully and fairly exhibit their case because of baseless allegations that they do not have a license to practice law is intimidating and threatening that individual to prevent them from presenting their case. Appellants, Gwendolyn B. Frasier and LaQuesha Felder, are not attempting to practice law on behalf of Appellant, Terron Dizzley, however, Appellants, Gwendolyn B. Frasier and LaQuesha filed their motion as Pro Se litigants on their own behalf, of which they have a right to do pursuant to their First and Fourteenth Amendment rights to Familial Association with Terron Dizzley. According to Barnes, these are questions of law that only a judge may decide.

Furthermore, your allegations that Appellants "Frazier and Felder, are not parties to this case is not supported by the record. Appellant contends that according to the record of this appeal, they were always recognized by the Courts as parties to this case; if this were not so, the Honorable Judge Culbertson would not have addressed them at the November 17, 2022, hearing and would have never issued such order pursuant to their case. Appellants contend that according to clearly established state statutory laws, and rules of court of South Carolina, Appellants have a right to appeal the Honorable Judge Culbertson's order pursuant to their case. See: State v. Rearick, citing "State v. Wilson, 387 S.C. 597, 599 (2010) ("The right to appeal arises from and is controlled by statutory law."). To appeal, a defendant must be "aggrieved" by a decision that is statutorily classified as one that is appealable, which generally involves a final judgment. S.C. Code Ann. sec. 18-1-30. ("Any party aggrieved may appeal in the cases prescribed in this title."); Rule 201(b), SCACR, ("Only a party aggrieved by an order, judgment, sentence or decision may appeal."): See Rule 201(a), SCACR ("Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.").

Appellants contend that the Honorable Judge Culbertson's November 17, 2022 order denying their case on the grounds alleging that they were "individuals practicing law without a license," is a final order within the meaning of the above statutes and rules of South Carolina which gives them the right to appeal Judge Culbertson's order. Appellants contend that they have appealed two of the Honorable Judge Culbertson's

orders, specifically addressed to them, which resulted in the S.C. Court of Appeals remanding their case back to the Circuit Court and not once did the Court of Appeals issued an order stating that they were not parties to this case nor that they were "individuals practicing law without a license."

Therefore, for the foregoing reasons Appellants Gwendolyn B. Frasier and LaQuesha Felder's appeal pursuant to their First and Fourteenth Amendment rights to familial association with Terron Dizzley, without government interference, pursuant nine years and counting of the State of South Carolina holding him falsely imprisonment must be filed. For the right to familial association is ingrained in the U.S. Constitution, clearly established U.S. Supreme Court law and South Carolina Supreme Court law.

For the foregoing reasons, Appellants respectfully request that you follow the procedures in Barnes v. State Supra and file their March 28, 2023 Emergency Motion to Relieve and Proceed Pro Se and other filings regardless of any procedural flaws that you may think exist and allow the judge to decide any question of law pursuant to Appellants filings. Appellants were extremely prejudiced and aggrieved by your misapplication of the law which led you to believe that you had the authority to reject the filing of our motions for such reasons, which resulted in Attorney Yarborough filing a brief on Appellants' behalf, although he and this Court were notified that he was being "Relieved as Counsel". This is a conflict of interest. We are asking you to correct this by filing our March 31, 2023 Motion to Relive Counsel along with the other documents , which your currently have, and inform the Court that Appellants are requesting that Attorney Yarborough's Initial Brief filed on April 18, 2023, on their behalf be substituted, after Attorney Yarborough is Relieved as Counsel, with the Initial Briefs which were filed by Appellants on March 28, 2023 along with their Emergency Motion to Relieve and Counsel and proceed Pro Se.

Yours truly,



Gwendolyn B. Frasier
7996 Pennyroyal Road
Georgetown, SC 29827



LaQuesha Felder
1440 Baxter Street
Orangeburg, SC 29115

PLACE STICKER AT TOP OR BOTTOM TO THE RIGHT
OF THE RETURN ADDRESS, FACING POST OFFICE
CERTIFIED MAIL
7022 0410 0003 3178 2602

 
RDC 89 29536
U.S. POSTAGE PAID
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29115
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Gwendolyn B. Frasier
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4-27

Chief Judge James E. Lockemy
P. O. Box 750
Dillon, SC 29536

