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Jul 07 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of General Sessions
The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Lower Court Cases No. 2018-GS-08-00532, 2018-GS-08-00531, 2018-GS-08-00528,
2018-GS-08-00529 and 2018-GS-08-00530

Appellate Case No. 2019-000511

THE STATE OF SOUTH CAROLINA,

V.

AARON MCKENZIE CAPERS

RESPONDENT,

APPELLANT.

MOTION TO FILE
RECORD ON APPEAL
OUT OF TIME

The deadline for filing the Record on Appeal in the above captioned direct appeal was due for service and filing on June 12, 2023, pursuant to this Honorable Court's Order dated May 11, 2023. That Order granted Appellant's Motion to file a reconstructed copy of Court's Exhibit No. 1, granted Appellant's motion for an extension of the deadline to file the Record on Appeal in this direct appeal and denied Appellant's Motion to submit the report issued following a post-trial psychiatric evaluation conducted by Dr. Donna Maddox, MD, a forensic psychiatrist, under seal. In all candor with the Court, Counsel is not certain why the due date for the ROA was not properly calendared, however she asks the Court to note that at the time Counsel was ill from ongoing serious dental issues. The ROA was submitted to the Court for filing on June 26, 2023 and Counsel failed to file a Motion for Leave to file the ROA out of time with that filing. In addition, a proper Certificate of Service was not submitted to the Court at the time this ROA was filed. On June 26,

2023, an employee for Nova Office Systems, with whom I have worked many times, was supposed to go directly from their print shop to this Honorable Court to file the ROA. It was my plan to send the required copy to opposing counsel through the USPS that afternoon.

Around 3:45 P.M., the date this ROA was submitted to the Court for filing, a representative from Nova Office Solutions called me and asked if I would like him to take opposing counsel's copy to the Office of the Attorney General and serve it by hand delivery. I took him up on his gracious offer. I have confirmed that the ROA was hand-delivered on that date and that Mark Farthing, Esquire, filed his Final Brief of Respondent the following day, June 27, 2023. It was my intent to modify the Certificate of Serve I had previously prepared showing service through the USPS and to change it to reflect hand delivery by an employee of the printing company I used to print and bind this ROA. I planned to file the corrected COS electronically before I left my office. Unfortunately, I did not do so. While I regret this omission, I understand how it happened. I almost without exception mail opposing counsel's copy of the Record on Appeal and send the Court a copy of my COS on the date the ROA was submitted. That day I had just had my second oral surgery on June 21, 2023 and was in pain while recuperating from that procedure. I believe I became concerned that I did not have anything from Nova Office Solutions to confirm they had successfully served the ROA. I realize now that I should have asked for a one day extension of time in which to file the COS so I could have verified successful service the next day. I note that I did send an informal response to the Deficiency letter dated June, 29, 2023, on June 30, 2023. I have that email saved, however, I never received confirmation the Court had received it. I apologize for this omission and respectfully ask that the Court accept the ROA submitted to the Court on June 26, as timely filed. I have included with this motion my COS verifying that the ROA was served on opposing counsel by hand-delivery the same date it was submitted to the South Carolina Court of Appeals for filing.

Counsel requests that her deadline for submitting her Final Brief of Appellant be set from the Court's order addressing this matter.

Respectfully submitted

S/ *Tara D. Shurling*

Tara Dawn Shurling

Attorney at Law

S.C. Bar No. 5099

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ATTORNEY FOR APPELLANT

This 7th, day of July, 2023

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THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

AARON MCKENZIE CAPERS

APPELLANT.

**CERTIFICATE OF SERVICE
OF
RECORD ON APPEAL**

Now comes Appellant in the above captioned direct appeal, acting through his undersigned counsel, who hereby certifies that on June 26, 2023, an agent of Nova Office Solutions, served opposing counsel, Mark Farthing, Assistant Deputy Attorney General, with a copy of the Record on Appeal in the above captioned matter. Opposing counsel was served with a copy of the ROA by hand delivery to street address for the Office of the South Carolina Attorney General as listed below. Counsel has confirmed that service was accomplished on that date.

**Mark Farthing
Assistant Deputy Attorney General
1600 Assembly Street
Columbia, S.C. 29201**

Respectfully submitted,

Tara D. Shurling

Tara Dawn Shurling

S.C. Bar No. 5099

Attorney at Law

ATTORNEY FOR APPELLANT

This 7th, day of July, 2023