

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE COURT OF COMMON PLEAS

Honorable G.D. Morgan Jr.

Appellate Case No. 2023-001839

RECEIVED

APR 11 2024

SC Court of Appeals

John Alexander,

Appellant,

v.

William Glenn Yarborough III, Esquire;
Lisa Cherry; John Doe, Contract
Attorney; John Doe, Paralegal,

Respondent.

MOTION FOR RECONSIDERATION RULE 59(e), SCRPC

John Alexander, # 194748
Tyger River Correctional Institution
200 Prison Road, U6-15
Enoree, South Carolina 29335

Other Counsel of Record:

William Glenn Yarborough, III, Esquire
308 West Stone Avenue
Greenville, South Carolina 29609

NOW COMES, John Alexander, above appellant pursuant to Rule 59(e), SCRCF with a Motion To Alter Or Amend the Court's Order dated March 28, 2024 and received April 3, 2024, Dismissing appellant's appeal and Denying his motion to proceed in forma pauperis and will show:

I. That the Court erroneously found that "appellant initially filed the Notice of Appeal from the circuit court's October 27, 2023 Order on November 27, 2023." The Respondent as well as appellant agrees that "appellant filed a Notice of Appeal with the Court dated 'November 20, 2023'". See Respondent's Motion To Dismiss page 2 lines 12 and 13 attached. Attachment #1

Pursuant to Rule 203 (1), SCACR the appellant had thirty (30) days from October 27, 2023 to file the Notice of Appeal. Certainly, where the appellant submitted the Notice of Appeal before the Court on November 20, 2023 (and not November 27, 2023), the appeal was timely filed. Also, see Court's Record

II. That on December 6, 2023, the appellant received a letter from the Court dated November 29, 2023 informing him ["A proof of filing with the clerk of the lower court" has not been provided pursuant to Rule 203 (d), SCACR]. And, that appellant had ten (10) days to correct the deficiency. Accordingly, on December 11, 2023, the appellant filed its Amended Notice of Appeal before this Court establishing the Proof of Service deficiency with the lower court had been cured behind the appellant serving the Clerk of Court, Court of Common Pleas with the Amended Notice of Appeal, re-served the Notice of Appeal along with a Motion To Proceed In Forma Pauperis. See Attachment #2

III. That on December 29, 2023, the appellant received a second letter from this Court dated December 18, 2023 stating: "The Court is in receipt of your documents that are in response to the Court's notice of appeal deficiency letter dated November 29, 2023." The second letter did not state the appellant had not timely met the requirements demanded in the November 29, 2023. But rather, the second letter requested the appellant cure other separate and distinct deficiencies with the Notice of Appeal. See Attachment #3

Clearly, with due diligence the appellant has complied with all the demands from this Court in his efforts to timely and completely honor all the requirements under Rule 203, SCACR.

IV. That the Court erroneously denied the appellant pauperis status. The Fourteenth (14th) Amendment of the United States Constitution provides allowance for the appellant to proceed in forma pauperis where he has (1) demonstrated that he is indigent; (2) presented a meritorious appeal; and (3) shown that he is entitled to relief.

Wherefore, it is prayed for the foregoing reasons that the Court Reverse its Order dated March 28, 2024. Grant the Motion To Reconsider. Grant the Motion to Proceed in Forma Pauperis. And grant the appellant to proceed on appeal.

Dated 4/8/2024

Respectfully Submitted,
John Alexander

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County Court of Common Pleas
The Honorable G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2023-001839

John Alexander,.....Appellant

v.

William G. Yarborough, III, Esquire;
Lisa Cherry;
John Doe, Contract Attorney;
John Doe, Paralegal.....Respondents

MOTION TO DISMISS

Comes Now, the Respondents, by through their undersigned attorney of record, William G. Yarborough, III and would hereby respectfully move to dismiss this appeal. In support of this motion, the Respondents would respectfully show:

Following a hearing, Judge G.D. Morgan, Jr. issued a Form 4 Order on July 27, 2023 granting Respondents' Motion to Dismiss and denying Appellant's motions, and directing Respondents to prepare a proposed order to submit to the Court for review. (Ex. A). In response

to the July 27, 2023 Form 4 Order, Appellant submitted a Rule 59(e) Motion to Alter or Amend Judgment as well as a Rule 52(b) Motion for Fact Finding and Conclusion of Law, which were clocked by the Court of Common Pleas on August 28, 2023 and its certificate of service has August 8, 2023 as its date of service. (Ex. B). The final order granting Respondents' motions to dismiss was filed on September 5, 2023. (Ex. C). Appellant served a second Rule 59 Motion upon Respondents, which was received October 4, 2023 and its date of service being October 2, 2023. (Ex. D). The second Rule 59 Motion was not timely served, because as stated in the second Rule 59 Motion, Appellant received written notice of the Court's final order on September 9, 2023. (Ex. D). It also does not appear as though the Appellant's second Rule 59 motion was ever properly filed as the Clerk of Court returned the motion with a notice regarding unpaid motion filing fees. (Ex. E and Ex. F). On October 27, 2023, the Court issued an order denying Appellant's Rule 52 and Rule 59 motions. (Ex. G). Appellant filed a Notice of Appeal with this Court dated November 20, 2023, as amended on December 11, 2023.

The Notice of Appeal with this Court was untimely, as the time for Appellant to appeal was not stayed by a timely post-hearing motion. Appellant, having received written notice of the September 5, 2023 order on September 9, 2023, had ten (10) days to file and serve his Rule 59 motion. *See* Rule 59(e), SCRCF. Because he did not serve his Rule 59 motion until October 2, 2023 (let alone ever properly file it with the Court of Common Pleas), his Rule 59 motion was untimely and thus did not stay the time to appeal. Rule 203(b)(1), SCACR ("When a *timely* motion...to alter or amend the judgment (Rules 52 and 59, SCRCF)...has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.") (italics added)). His notice of appeal to this Court dated November 20, 2023, as amended on December 11, 2023, was thus untimely and this Court

Attachment #2



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
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

November 29, 2023

John Douglas Alexander, 194748
Tyger River Correctional Institution
Upper Yard
200 Prison Road
Enoree SC 29335-9308

Re: John Alexander v. William G. Yarborough, III
Appellate Case No. 2023-001839

Dear Mr. Alexander:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- ✓ • The required filing fee has not been submitted. The correct filing fee is \$250.00.
- ✓ • A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- ✓ • A proof of filing with the clerk of the lower court has not been provided pursuant to Rule 203(d), SCACR.
- ✓ • An amended notice of appeal that is substantially in the format shown by Form 1 in Appendix C to part II of the SCACR is to be served and filed.

Attachment #3



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
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TELEPHONE: (803) 734-1890
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December 18, 2023

John Douglas Alexander, 194748
Tyger River Correctional Institution
Upper Yard
200 Prison Road
Enoree SC 29335-9308

Re: John Alexander v. William G. Yarborough, III
Appellate Case No. 2023-001839

Dear Mr. Alexander:

The Court is in receipt of your documents that are in response to the Court's notice of appeal deficiency letter dated November 29, 2023. The Court requests an amended notice of appeal that lists all of the respondents in the title/caption. Use of "et al" is not acceptable. Failure to provide an amended notice of appeal that lists all of the respondents within 10 days from the date of this letter will result in the dismissal of this appeal.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine S. Harrison, deputy".
CLERK

cc: William G. Yarborough, III, Esquire

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Lisa Cherry; John Doe, Contract
Attorney; John Doe, Paralegal,

Respondents.

PROOF OF SERVICE

I, John Alexander, certify that on this 8 day of April, 2024 I sent the Motion To Reconsider Rule 59(e), SCRPC United States Postal Service, prepaid, to William Glenn Yarborough, III, Esquire, Counsel for All Respondents, 308 West Stone Avenue, Greenville, South Carolina 29609. And to South Carolina Court of Appeals, Clerk of Court, Post Office Box 11629, Columbia, South Carolina 29211.

Respectfully Submitted
John Alexander

Sworn and Subscribed

this 8 day of April, 2024

Paul Permi

Notary Public For South Carolina

My Commission Expires Dec. 16, 2024

John Alexander, #194748
Tyger River Correctional Institution
200 Prison Road, U6-15
Enoree, SC 29335

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8 APR 2024 PM 3 L



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APR 11 2024

SC Court of Appeals

South Carolina Court of Appeals
Clerk's Office
Post Office Box 11629
Columbia, SC 29211

Received

APR 15 2024

Tyger River Mailroom

29211-162929

