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Nov 18 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Master in Equity

Common Pleas No. 2023-CP-23-05263

NASSCO, Inc., Respondent,

v.

Byungwhan Chay a/k/a Bjorn Chay and Michelle Mihyang Chay,

Of whom Byungwhan Chay is the Appellant.

Appellate Case No. 2024-001489

MOTION TO RECALL REMITTITUR
AND REINSTATE APPEAL

Byungwhan Chay, through undersigned counsel, respectfully moves this Court to recall the remittitur issued on November 7, 2024 in the above-referenced appeal because the remittitur was issued on the mistaken belief that Mr. Chay was represented by Jason Ward at the time he filed his pro se motion to reinstate his appeal. *See Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551 (2007) (appellate court has appellate jurisdiction to consider post-remittitur motions “when the remittitur is sent down by mistake, error or inadvertence of the Court”).

Procedural Posture

Mr. Chay was represented at trial by Jason Ward. The trial court ruled against Mr. Chay on August 9, 2024. Mr. Chay informed Mr. Ward that he wished to appeal the decision to the Court

of Appeals. Mr. Ward served and filed the notice of appeal on Mr. Chay's behalf on September 9, 2024. See Exhibit A.

This Court sent its initial appeal letter to Mr. Ward on September 10. On September 24, this Court sent Mr. Ward a letter indicating that the time for ordering the transcript had expired and that if the transcript was not ordered within ten days, the appeal would be dismissed. Mr. Ward did not respond to this Court's letter. On October 11, this Court dismissed the appeal because the transcript had not been ordered.

Mr. Chay received an email from Mr. Ward on October 11 that the appeal had been dismissed and that Mr. Chay would need to contact an appellate lawyer about how to next proceed. See Exhibit A. Mr. Chay, unable to retain appellate counsel at that time, filed a pro se motion to reinstate his appeal on October 23. Mr. Chay also ordered the lower court transcript on October 23 and notified this Court of that in writing.

On November 7, this Court responded to Mr. Chay's motion with a letter indicating that because he was represented by Jason Ward, it would not rule on his motion to reinstate his appeal. *See Miller v. State*, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010) ("there is no right to 'hybrid representation' that is partially pro se and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed pro se by a person represented by counsel are not to be accepted unless submitted by counsel"). This Court issued the remittitur at the same time of the letter.

Argument

This Court should recall the remittitur, reinstate this appeal, and allow undersigned counsel to order the transcript in this case and perfect Mr. Chay's appeal. At the time Mr. Chay filed his motion to reinstate his appeal and ordered the transcript, he was not represented by Mr. Ward.

While Mr. Ward served and filed the notice of appeal, he took no further action in perfecting the appeal on Mr. Chay's behalf. Mr. Ward only represented Mr. Chay in the serving and filing of the notice of appeal. Although Mr. Ward never filed a motion to withdraw as counsel with this Court after serving and filing the notice of appeal, the fact remains that Mr. Ward was not representing Mr. Chay in this appeal. Mr. Ward certainly was not representing Mr. Chay after this Court issued its order dismissing the appeal. See Exhibit A.

Mr. Chay filed his pro se motion after Mr. Ward ceased to represent him and before this Court issued the remittitur. See Exhibit A. Respectfully, this Court refused to rule on Mr. Chay's motion to reinstate his appeal and issued the remittitur on its mistaken belief that Mr. Chay was represented by Mr. Ward. *See Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).

Requested Relief

Undersigned counsel respectfully requests this Court to recall the remittitur, reinstate this appeal, and allow undersigned counsel to order the transcript and perfect the appeal.

Respectfully submitted,



Adam Sinclair Ruffin
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Columbia, SC 29201
(803) 470-5629
adam@ruffinappeals.com

Attorney for Byungwhan Chay

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Charles B. Simmons, Master in Equity

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v.

Byungwan Chay a/k/a Bjorn Chay and Michelle Mihyang Chay,

Of whom Byungwan Chay is the Appellant.

Appellate Case No. 2024-001489

AFFIDAVIT OF BYUNGWHAN CHAY

Personally appeared before me, Byungwan Chay, after first being duly sworn, do hereby swear, make oath, and affirm as follows:

1. I was represented by Jason Ward in the trial court in the above-referenced case.
2. I received the unfavorable ruling by Judge Simmons from Mr. Ward on August 9, 2024.
3. I informed Mr. Ward that I wanted to appeal the decision to the Court of Appeals.
4. Mr. Ward served and filed the notice of appeal on September 9, 2024 but took no further action in representing me on appeal.
5. On October 11, 2024, Mr. Ward emailed me informing me that my appeal had been dismissed because the transcript was not ordered in time. Mr. Ward included a copy of the



Court of Appeals' Order dismissing my appeal. Mr. Ward indicated that he was unfamiliar with the appeals process and that I would need to speak to an appellate lawyer.

6. I immediately began seeking appellate counsel but was unable to retain anyone at that time.
7. On October 23, 2024, I filed a motion to reinstate my appeal. I also ordered the transcript from the court reporter.
8. The Court of Appeals responded to my motion to reinstate my appeal by letter dated November 7, 2024 that I was represented by Jason Ward and because of that I was not allowed to file any pro se motions in the case. However, Jason Ward was not representing me at that time.
9. I continued seeking appellate counsel and was able to obtain Adam Ruffin on November 18, 2024 in an effort to reinstate my appeal.

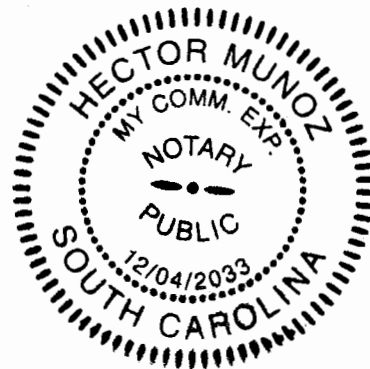
Byungwhan Chay
Byungwhan Chay

11-18-2024
Date

Sworn to before me this 18 day of NOV., 2024

Hector Munoz
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 12-04-2033



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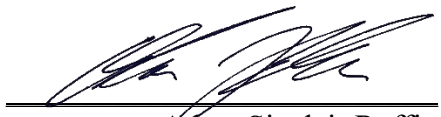
Byunghwan Chay a/k/a Bjorn Chay and Michelle Mihyang Chay,

Of whom Byunghwan Chay is the Appellant.

Appellate Case No. 2024-001489

PROOF OF SERVICE

Pursuant to Rules 262(a)(3) and 262(c)(3), SCACR, undersigned counsel hereby certifies that a true copy of the motion to recall the remittitur and reinstate the appeal in the above-referenced case has been served upon Aaron Angell and Jonathan Waller at the primary e-mail address listed in the Attorney Information System (AIS) on November 18, 2024.



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Attorney for Byunghwan Chay