

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

70452

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

Civil Action No. 13-CP-40-0301

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SC Court of Appeals

Basil W. Akbar, #065498,

Appellant,

v.

South Carolina Department of Corrections,
Bill Byers, Martha Roof, Debrah Long,
Lisia Johnson, Ann and John Doe,

Respondents.

RESPONDENTS' MOTION TO DISMISS APPEAL

Respondents respectfully move this Court for an Order dismissing this appeal on the grounds that the Appellant has failed to comply with the requirements of the South Carolina Rules of Appellate Procedure.¹

Counsel for the Respondents received the Appellant's Notice of Appeal on October 25, 2013, in which the Appellant asserted that he was appealing the Order of Judge G. Thomas

¹ Because this Motion contains a full explanation of its grounds, Respondents forego filing a supporting memorandum, as such memorandum would serve no useful purpose

BJ

Cooper, Jr. granting Respondents' Motion for Summary Judgment. *See Exhibit 1.*² However, it appears as though the Appellant has never filed his Notice of Appeal in the Circuit Court as required under Rule 203(d), SCACR. In the Appellant's Notice of Appeal served on the Respondents, the Appellant never states whether he has filed a copy with the Circuit Court. Furthermore, a copy of the Notice of Appeal was not found during a review of the case file maintained by the Clerk of Court for Richland County. Therefore, it is evident that the Appellant has failed to file a copy of the Notice of Appeal with the clerk for the lower court in this appeal as required under Rule 203(d), SCACR, and Respondents move the Court to dismiss the Appellant's appeal under Rule 203(d), SCACR.

Furthermore, Appellant has failed to comply with the strict requirements of Rule 203(d)(1)(B), SCACR, in that Appellant has failed to pay the filing fee as set by Order of the Supreme Court. *See Exhibit 2.* In correspondence from this Court to Appellant dated October 29, 2013, it was noted that Appellant failed to submit the required filing fee with his Notice of Appeal. *See id.* Also, Appellant's Notice of Appeal was not accompanied by the Order and/or Judgment that is being challenged on appeal. *See id.* Therefore, because Appellant has not submitted the required filing fee or provided the Court with the Order and/or Judgment he challenges, his appeal should be dismissed pursuant to Rules 203(d)(1)(B) and (d)(3), SCACR.

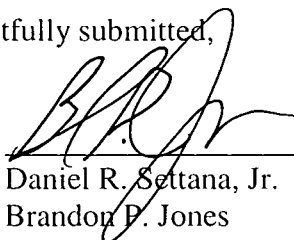
Additionally, on October 15, 2013, Appellant filed a Motion to Alter or Amend (hereinafter "Motion") pursuant to Rule 59(e), SCRCF, in relation to the Order issued by Judge G. Thomas Cooper, Jr. granting Respondents' Motion for Summary Judgment, and the Judgment

² Respondents have attached the copy of the Notice of Appeal it received from the Appellant as it may be different from the Notice of Appeal the Court has on file.

entered by the Richland County Clerk of Court. *See* Exhibit 3.³ This is the same Order that is being challenged by Appellant in his Notice of Appeal. Consequently, the trial judge retains jurisdiction over the action for the purpose of the hearing on Appellant's Motion under Rule 59(f), SCRPC. In the Notice of Appeal, Appellant seems to concede this, stating that the "issues are not ripe for Appeal until the Circuit Court enter its written Order [] resolving the Motion. . . ." *See* Exhibit 1. Therefore, Appellant's Notice of Appeal is improper and should be dismissed as there is a pending Motion to Alter or Amend the Order and/or Judgment that is simultaneously being challenged in this Court by Appellant.

Alternatively, in the event that the Court decides not to dismiss the Appellant's appeal, Respondents request a directive from the Court to the Appellant advising him to provide the Respondents with exact copies of any document(s) he submits to the Court.

Respectfully submitted,



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(803) 256-4645
Attorneys for Respondents

Columbia, South Carolina
November 20, 2013

³ An unfiled copy of Appellant's Motion was received by Respondents' counsel on October 21, 2013. A review of the case file maintained by the Clerk of Court for Richland County revealed that Appellant's Motion was clocked in on October 18, 2013.

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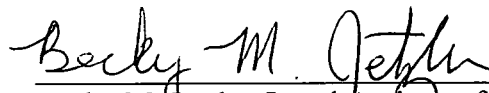
South Carolina Department of Corrections,
Bill Byers, Martha Roof, Debrah Long,
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Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 20, 2013, a copy of the foregoing **RESPONDENTS' MOTION TO DISMISS APPEAL** was served on Pro Se Plaintiff by mailing a copy of same in the United States Mail, via certified mail, return receipt requested, proper postage prepaid, addressed as follows:

Basil W. Akbar, #65498
Lee Correctional Institute
990 Wisacky Hwy, Ker. 2224-N
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