

IN THE SUPREME COURT OF SOUTH CAROLINA

BRENDA NESBITT  
Appellant

Re: Nesbitt v. State  
2011-CP-23-00547

Against

THE STATE OF SOUTH CAROLINA  
Respondent

RECEIVED  
RESERVED FOR FILING  
DEC 9 2013  
S.C. Supreme Court

DEC -9 2013

S.C. Supreme Court

REQUEST FOR RECONSIDERATION REGARDING:  
MOTION FOR PERMISSION TO ALLOW LATE FILING OF NOTICE OF APPEAL

BRENDA NESBITT, is in receipt of this court's Order dated: November 15, 2013 dismissing her appeal in this matter. The Court cites: *Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464, 2006. She believes the Court's reliance on *Lewis* is irrational. *Lewis* specifically states that if a (decision/order) of the court so completely fixes the rights of the parties that the court has nothing further to do in the action then it is final. For unfathomable reasons this Court "In our opinion" indicates that deleting the term "Conditional" somehow changes the rights of the parties in a way that justifiably denies the right of a defendant to challenge a miscarriage of justice. *Lewis* is in fact irrational on its face, and fundamentally unfair, and unconstitutional.

Had the Court done further research, it would have learned that it is out of step with higher authority. "A technical defect of prematurity should not be allowed to extinguish an otherwise proper appeal." (*Firs Tier Mortg. Co. v. Investor's Mortgage Co.* 498 U.S. 269, 111 S.Ct. 648, 650-651, 1991) One should note that a "there are situations when ... a premature appeal will ripen at a later date." (*In re Bryson*, 406 F.3d 285, 287, [1] 2005).

Note also:

[Notice of intention to appeal preserves all rights (for final hearing) *Clark v. Dunbar*, 106 S.C. 423, 91 S.E. 323, 1917.

*Hand v. Kelly*, 102 S.C. 151, 86 S.E. 382, 1915, Appeal from order overturning defendant's demurrer and pleas held not to be premature.

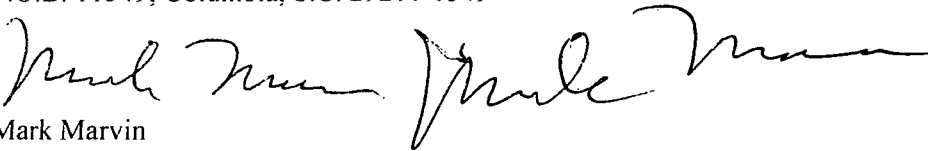
The Supreme Court held that appeal was premature where circuit court did not rule on poor person status. *Martin v. State*, 321 S.C. 533, 471 S.E.2d 134, 1995,]

It appears that this Court holds that South Carolina lacks a remedy for miscarriage of justice that is consistent with the demands of justice.

Respectfully submitted

Brenda Nesbitt, 139726  
Leath Correctional Institution, Q2-102X  
2809 Airport Road  
Greenwood, S.C. 29649

I certify under penalty of perjury that I mailed a copy of this motion to the Attorney General,  
P.O.B. 11549, Columbia, S.C. 29211-1549



Mark Marvin  
135 Mills Road  
Walden, 12586

Dated: December 3, 2013

28 USC 2254

The Supreme Court, a justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States,

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that--

(A)

(i) *there is an absence of available State corrective process; or*

(ii) *circumstances exist that render such process ineffective to protect the rights of the applicant*

Xxx

(d) an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1) *resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States, (Williams v. Taylor, 529 U.S. 362, 413, 2000) or*

(2) *resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding (Carey v. Musladin, 549 U.S. 70, 2007).*

11-25-13

Mark,

I am sending you a copy of this letter from the courts, I just received this letter today. The guilt plea is in 1997 and it should be 1987. Mark I believe that they are giving me time to file a notice of appeal, from the final order of dismissal.

Help me to understand everything was sent in 2011 and just received by the Supreme Court 11-1-13. I really do believe that these people are giving me the run around. What do you think? I need for you to help me with the remittitur and appeal.

Thanking You  
Brenda Nettitt

# The Supreme Court of South Carolina

Brenda Nesbitt, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-002372

Lower Court Case No. 2011-CP-23-00547

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## ORDER

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This is the third application for post-conviction relief that petitioner has filed regarding guilty pleas entered in 1997. After issuing a conditional order of dismissal dated March 23, 2011, the circuit court issued a final order of dismissal dated May 25, 2011.

Petitioner has now filed two notices of appeal with this Court.<sup>1</sup> The first, which is entitled "Reply Motion to Dismiss and Notice of Appeal," is dated March 29, 2011, and the second, which is entitled "Order Dismissing PCRA Should Not Be Made Final Notice of Appeal," is dated April 18, 2011.

At the time these notices of appeal were served and filed, there was no appealable decision in this matter. *See Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006) (since "only a final decision or judgment in a post-conviction relief action is subject to review" in a post-conviction relief case, a conditional order of dismissal is not an appealable order). Accordingly, these notices of appeal are dismissed without prejudice to whatever right petitioner may now have to timely serve and file a notice of appeal from the final order of dismissal. The remittitur will be sent

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<sup>1</sup> These documents were apparently filed with the clerk of the circuit court but were not filed with this Court. A copy of these notices of appeal was not received by this Court until November 1, 2013.

as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

  
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C.J.  
FOR THE COURT

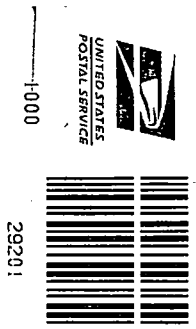
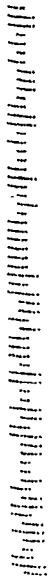
Columbia, South Carolina  
November 15, 2013

cc Karen Christine Ratigan, Esquire  
Ms. Brenda Nesbitt, # 139726

*Handwritten:* *Heck*  
MARVIN  
135 MILLS ROAD  
WALDEN, N.Y. 12586

2921 181 939

SC Supreme Court  
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29201



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