

SOUTH CAROLINA COURT OF APPEALS

Ray E. Chestnut,
Appellant,
- VS -
state of South Carolina,
county of Horry,
Respondent.

Appellate case no. 2013-001768

REPLY TO RESPONDENT'S RETURN
TO MOTION TO REINSTATE

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SC Court of Appeals

COMES NOW, Ray E. Chestnut, pro se, appellant in the above-named case respectively submits a 'Reply To Respondent's Return To Motion To Reinstate,' hereby asking this court to deny the respondent's return to motion to reinstate, and grant the appellant's motion to reinstate. In support thereof appellant would respectfully show unto this court:

On December 11, 2013 this court ordered the respondent to file a return to motion to reinstate no later than ten (10) days from the date of the court order. The respondent had until December 21, 2013 to file a return to motion to reinstate. However, the respondent filed its return to motion to reinstate after December 21, 2013. Specifically, on December 23, 2013 (see Return To Motion To Reinstate). Thus, the respondent's return to motion to reinstate is untimely and should be denied. Further, the respondent failed to seek or

- request a extension by this court to file a return after December 21, 2013, or were there any extension granted by this court. Moreover, the respondent was fully aware to file a return to motion to reinstate on or by December 21, 2013, as this court provided respondent with the order to file a return to motion to reinstate. Therefore, the respondent's return to motion to reinstate is untimely and should be denied.

Respondent also claims to not have been served with a motion to reinstate or the notices of appeal or any other correspondence or documentation concerning this case, besides the order dismissing the appeal. That is nothing more than a fanciful tale. However, appellant did so serve the respondent with a copy of the motion/request to reinstate on the same exact date the original motion to reinstate were mailed to this court, which appellant declare upon oath, and under penalty of perjury. Additionally, appellant provided the respondent with copies of all other correspondence or documentations concerning this case that were also provided to this court. Therefore, it is hard to believe that the respondent is not in the position to be able to respond ~~adequately~~ to the motion to reinstate, when respondent provided a return to motion to reinstate. It further appears that the respondent is only denying being served the motion to reinstate because the allegations raised by the appellant in

the motion to reinstate can not on its face be disputed or challenged, due to the fact those allegations being true and correct, and respondent can not present any information or evidence to this court to indicate otherwise, besides alleging that the appeal is not timely. That may be correct, but the notices of appeal are subject to equitable tolling, as appellant was not advised by trial counsel or the court of the right to file a appeal from the sentence or convictions within ten (10) days after imposition of the sentences. Thus, it would be a fundamental miscarriage of justice to not set aside or consider the notices of appeal as timely when in fact appellant was prejudice of the right to appeal within ten (10) days of being sentenced for the convictions in 2002, 2003, 2004, and 2005, when appellant wasn't advised of his rights during sentencing. moreover, appellant filed the notices of appeal in this court within ten (10) days after being informed in a letter dated August 9, 2013 that a notice of appeal is to be filed in ten (10) days. Therefore, had appellant been fully aware that a notice of appeal had to be filed within ten (10) days of being sentenced, appellant would have acted immediately to preserve the appeal, but unfortunately its no fault of appellant for the filing of a belate appeal in this case. Nevertheless, the appellants trial counsel and the court is at fault for not advising or informing appellant of the right

- to file a appeal within ten (10) days of being sentenced. As a initial matter, appellant would like it to be noted, the court did not only failed to advise during sentencing of appellant's right to appeal, but also failed to advise or inform appellant of the right to a jury trial or the nature of the charges before accepting the guilty pleas. As such, appellant's due process rights of the Fourteenth (14TH) amendment of the U.S. constitution and Fed. R. crim. P. 11 were violated. Furthermore, this court of appeals should not have dismissed the appeal, but instead should grant the appeal, and the remittitur should not be issued.

WHEREFORE, appellant move this Honorable court and prays humbly that the motion to reinstate is granted, and any other relief appellant is entitled that is deem just, proper, and equitable. Last but not least, this court should deny the respondent's return to motion to reinstate in its entirety, and for untimely filing of return to motion to reinstate.

December 29, 2013

Respectfully Submitted,



Ray E. Chestnut, 13465-171

United States Penitentiary

PO Box 1000

Lewisburg, PA 17837

SOUTH CAROLINA COURT OF APPEALS

Ray E. Chestnut,
Appellant,

-VS-

State of South Carolina,
Respondent.

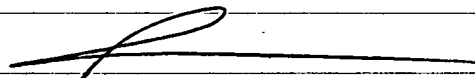
Appellate case no.

2013-001768

CERTIFICATE OF SERVICE

On 12-29-13, I, Ray E. Chestnut, hereby certify that I have caused service of the attached 'REPLY TO RESPONDENT'S RETURN TO MOTION TO REINSTATE,' on the respondent by placing said copy in a prepaid envelope addressed to the person hereinafter named, at the place and address listed below, by depositing said envelope and contents in the prison mail system to be forwarded to the U.S. mail for delivery to: Salley W. Elliott, Senior Asst. Deputy Attorney General at Post office Box 11549; Columbia, SC 29211-1549.

December 29, 2013


Ray E. Chestnut

Ray Edward Chestnut
U.S. Penitentiary
PO Box 1000
Lewisburg, PA 17837

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December 29, 2013

SC Court of Appeals

Jenny A. Kitchings
clerk, S.C. court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Reply To Respondent's Return To Motion To Reinstate
Certificate of Service
Appellate case no. 2013-001768

Dear Ms. Kitchings,

Happy New Year's to you and your staff! Enclosed please find the original copy of my Reply To Respondent's Return To Motion To Reinstate, and certificate of service. If you would please file these documentations and return a time-stamped copy asap I would most certainly appreciate it. Additionally, I would like to know what's the status of my request for appointment of counsel. Please appoint counsel as soon as possible, and let me know who were appointed. Thank you for your time into these matters. I trust you understand. I look

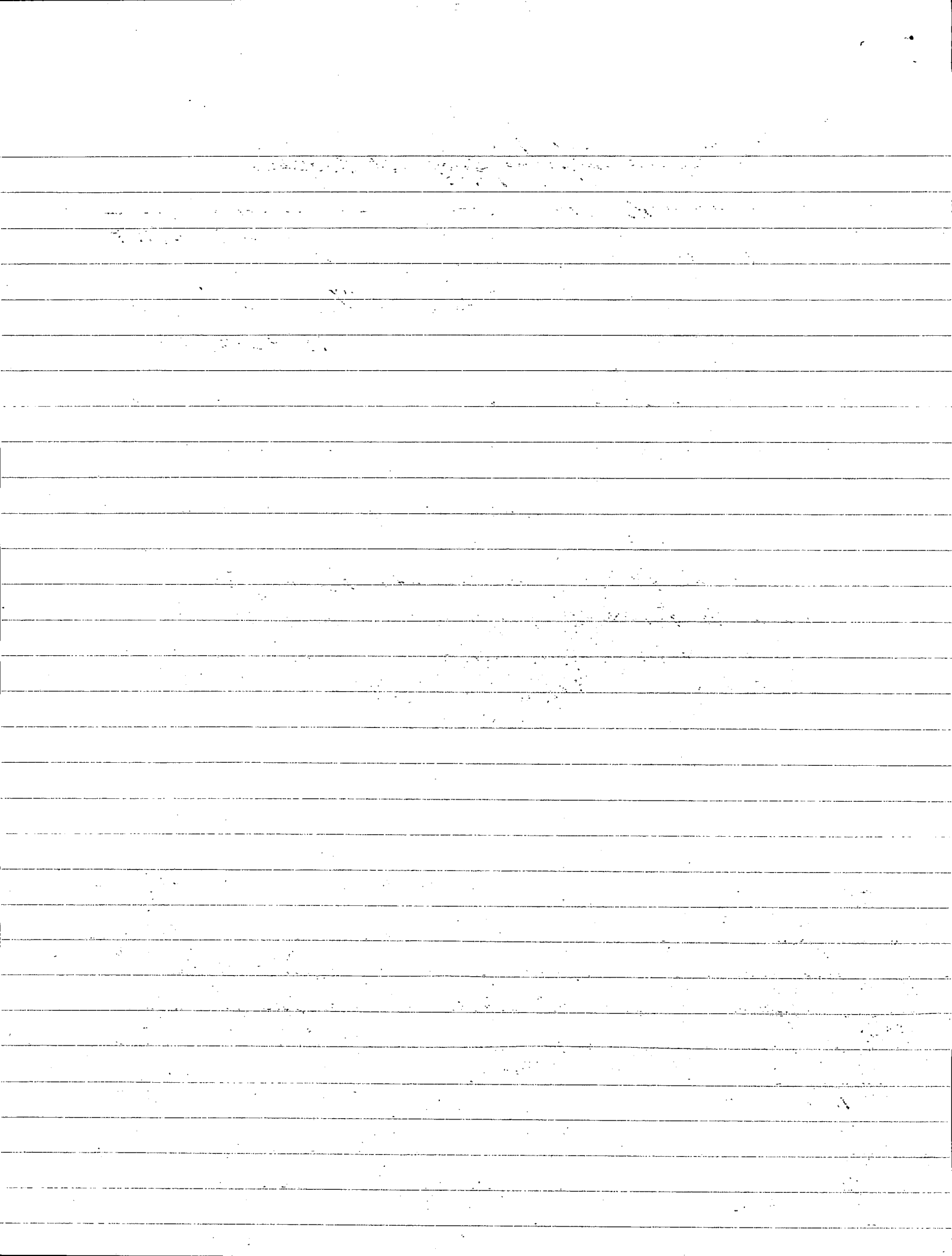
forward to hear back from you soon.
Take care and be blessed.

In Kind Regards,
I remain,

Sincerely,

R

Ray Chestnut



Inmate Name: *Ray Edward Chestnut*
Register Number: *13165-171*
United States Penitentiary
P.O. Box 1000
Lewisburg, PA 17837

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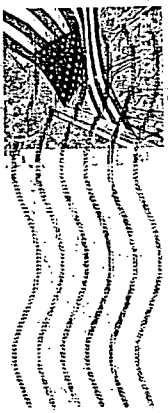
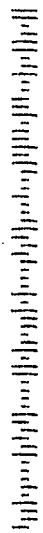
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*The Honorable Jenny A. Kitchings
Clerk, S.C. Court of Appeals
PO Box 11629
Columbia, SC 29211*

LEGAL MAIL

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