

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Case No. 12-ALJ-22-0503-AP

Appellate Case Number: 2013-001230

Fredrick S. Pfeiffer,

Appellant,

v.

South Carolina Department of
Employment and Workforce,
and, Gleaton Wyatt Hewitt,
PA,

Respondents.

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MAR 11 2014

SC Court of Appeals

**RESPONDENT SCDEW'S MOTION TO DISMISS APPEAL
FOR FAILING TO SERVE RECORD ON APPEAL**

Respondent, the South Carolina Department of Employment and Workforce (SCDEW), respectfully moves to dismiss Appellant Fredrick S. Pfeiffer's appeal due to his failure to serve the Record on Appeal.

BACKGROUND

Appellant, although acting *pro se* in this appeal, is an attorney. Appellant was indicted by the State Grand Jury for nine (9) counts of securities fraud and two (2) counts of criminal conspiracy in June 2012. As a result of his indictment, the South Carolina Supreme Court placed Appellant on interim suspension on June 15, 2012. *In re Pfeiffer*, 398 S.C. 591, 730 S.E.2d 855

(2012). Thereafter, because Appellant was no longer able to work as an attorney for his law firm, he filed for unemployment benefits.¹ SCDEW disqualified him from receiving unemployment benefits for a period of seventeen (17) weeks after finding his employer, Respondent Gleaton Wyatt Hewitt, PA (Employer), terminated his employment for cause connected with work. Appellant appealed SCDEW's final decision to the Administrative Law Court which affirmed SCDEW's disqualification decision in an order dated May 17, 2013.

Appellant filed and served a Notice of Appeal (NOA) with this Court on June 3, 2013. Pursuant to Rules 208 and 209, SCACR, his Initial Brief and Designation of Matter were due 30 days later. SCDEW was not timely served with these materials. Moreover, Appellant failed to timely file these documents with the Court. Accordingly, this Court issued an Order **dismissing** Appellant's appeal on July 27, 2013.

On August 7, 2013, Appellant belatedly filed and served his Initial Brief and Designation of Matter. He also filed a single-page "Motion to Reinstate and Enlarge Time." Despite SCDEW's opposition to this motion, the Court granted reinstatement of the appeal on October 21, 2013. SCDEW thereafter timely filed its Initial Brief on November 20, 2013.

Appellant did not file or serve any Reply Brief, and therefore, the Record on Appeal was due to be served by December 20, 2013. *See* Rule 210(a), SCACR ("Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief. Proof of service of the Record shall be immediately filed with the

¹ Furthermore, on or around June 21, 2013, Appellant was indicted again by the State Grand Jury on additional charges of forgery, conspiracy and securities fraud. *See* news articles at <http://www.wspa.com/story/22657933/greenville-attorney-indicted-by-state-grand-jury> and <http://www.thestate.com/2013/06/27/2838189/charges-against-anderson-attorney.html> (last accessed March 9, 2014).

In September 2013, Appellant pled guilty to two counts of securities fraud and one count of conspiracy; he was sentenced to 10 years in prison, suspended to six years.

See <http://www.thestate.com/2013/09/18/2988398/greenville-man-sentenced-to-6.html> (last accessed March 9, 2014).

clerk of the appellate court.”). As of March 10, 2014, SCDEW has not been served with the Record on Appeal.

Because Appellant has once again failed to comply with the Appellate Court Rules, SCDEW requests that the appeal be dismissed, with prejudice.

ARGUMENT

Rule 210(a), SCACR, requires that Appellant serve Respondent with the Record on Appeal after Initial Briefing has completed. SCDEW filed and served its Initial Brief in November 2013, and has not been served with the Record on Appeal. Appellant Rule 260, SCACR, states the following:

Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.

In the instant case, Appellant has failed to comply with the Appellate Court Rules.

This Court has stated that a “party has a duty to monitor the progress of his case.” *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App.1988). Even though Appellant is proceeding *pro se*, this does not excuse any failure to comply with the Appellate Court Rules. Indeed, the South Carolina Supreme Court has stated that a *pro se* litigant “who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003); *see also State v. Hollman*, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) (the “established rules of procedure are not to be discarded, either in the trial court or on appeal, merely because the defendant has been his own lawyer”) *overruled on other grounds by Stevenson v. State*, 335 S.C. 193, 516 S.E.2d 434 (1999).

Accordingly, because of Appellant's repeated instances of failing to comply with the applicable rules governing appeals, the Court should dismiss the appeal, with prejudice. Rule 260, SCACR ("Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, **the clerk shall issue an order of dismissal**) (emphasis added).

CONCLUSION

Due to Appellant's repeated failure to comply with the requirements set out in the Appellate Court Rules, SCDEW respectfully asks this Court to dismiss Appellant's appeal, with prejudice.

Respectfully submitted,



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March 10, 2014

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PROOF OF SERVICE

I certify that I have served the Respondent SCDEW's Motion to Dismiss Appeal for Failing to Serve Record on Appeal, on Appellant Frederick Scott Pfeiffer depositing a copy of it in the United States Mail, postage prepaid, on March 10, 2014, to his address of record, Frederick Scott Pfeiffer, 214 Loblolly Lane, Greenville, SC 29607. A copy has also been sent to the former employer addressed to Mr. Ralph Gleaton, 935 S. Main Street, Suite 203, Greenville, SC 29601

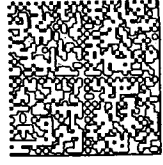
March 10, 2014

Jessica Chesley

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**SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE**

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The Honorable Jenny Abbott Kitchings
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