

IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM ORANGEBURG COUNTY

Honorable Edgar Warren Dickson, Chief Administrative Judge, Presiding

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CASE NO.: 2011-CP-38-1379

APPELLATE CASE NO.: 2014-000168

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William Breland,

Respondent,

-vs-

South Carolina Department of Transportation,

Appellant.

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**NOTICE OF MOTION  
AND  
MOTION FOR REINSTATEMENT**

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YOU WILL PLEASE TAKE NOTICE that the Appellant, moves for reinstatement of the appeal, pursuant to Rule 260, SCACR, following dismissal by order dated April 22, 2014, and will move before the Court on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order reinstating this appeal, on the following grounds: 1) Appellant timely requested the relevant transcripts, by letters copied to all counsel, but, by oversight, the same were not copied to the Court; 2) Appellant has received only one of two requested, relevant transcripts; 3) Appellant has further notified the court reporter, et al, the trial transcript was not timely received; 4) Appellant has not prejudiced any party.

This Motion is supported by a Memorandum.

**RECEIVED**  
APR 28 2014  
**SC Court of Appeals**


April 24, 2014

Bamberg, SC

Respectfully submitted,

NESS & JETT, LLC

By:

  
Richard B. Ness

Norma A. T. Jett

Alison Dennis Hood

Adam C. Ness

Post Office Box 909

Bamberg, SC 29003

(803) 245-5178

Attorneys for Appellant

OTHER COUNSEL OF RECORD:

J. Christopher Wilson, Esquire

Daniel W. Luginbill, Esquire

P. O. Box 1150

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(803) 245-7799

Attorney for Respondent

IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Honorable Edgar Warren Dickson, Chief Administrative Judge, Presiding

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CASE NO.: 2011-CP-38-1379

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William Breland,

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**MEMORANDUM IN SUPPORT  
OF  
MOTION FOR REINSTATEMENT**

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Appellant South Carolina Department of Transportation, moves for reinstatement of the appeal, pursuant to Rule 260, SCACR, following dismissal by order dated April 22, 2014. Appellant's counsel received written notice of entry of the order of dismissal on April 24, 2014.

The basis for the order of dismissal was “[a]ppellant has failed to provide proof of ordering the transcript or to serve and file the initial brief and designation of matter”, as provided for in Rule 207(a), 208(a), and 209(a), SCACR.

Appellant requested the relevant transcripts on January 17, 2014, by letters copied to all counsel; but, by oversight, the same were not copied to the Court. See attached Exhibits 1 and 2.

Two transcripts were requested: the transcripts for Appellant's summary judgment motion hearing and the transcript for the trial, on January 17, 2014 the day the Notice of Appeal was transmitted for filing. The motion transcript was received on or about April 4, 2014. However, Appellant has not received the trial transcript. Appellant has further notified the court reporter, et al, the trial transcript was not timely received. See Exhibit 3.

Appellant asserts it timely requested transcripts, and its error in failing to copy the Court, while regrettable, has not prejudiced any party. Appellant believes it has shown good cause for reinstatement and respectfully requests the appeal be reinstated.


April 24, 2014

Bamberg, SC

Respectfully submitted,

NESS & JETT LLC

By:

  
Richard B. Ness  
Norma A. T. Jett  
Alison Dennis Hood  
Adam C. Ness  
Post Office Box 909  
Bamberg, SC 29003  
(803) 245-5178  
Attorneys for Appellant

OTHER COUNSEL OF RECORD:

J. Christopher Wilson, Esquire  
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IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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APPEAL FROM ORANGEBURG COUNTY

Honorable Edgar Warren Dickson, Chief Administrative Judge, Presiding

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William Breland,

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-vs-

South Carolina Department of Transportation,

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**PROOF OF SERVICE**

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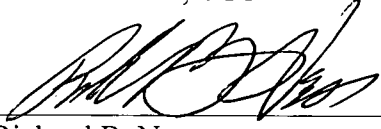
I certify that I have served the Motion for Reinstatement and Memorandum in Support thereof on counsel for Respondent, William Breland, and all other counsel of record, by depositing a copy of it in the United States Mail, postage prepaid, on April 24, 2014, addressed to the persons below-listed:

J. Christopher Wilson, Esquire  
Daniel W. Luginbill, Esquire  
P. O. Box 1150  
Bamberg, SC 29003

Respectfully Submitted,

NESS & JETT, LLC

By:

  
Richard B. Ness  
Norma A. T. Jett  
Alison Dennis Hood  
Adam C. Ness  
Post Office Box 909  
Bamberg, SC 29003  
(803) 245-5178  
Attorneys for Appellant

 2014

Bamberg, SC

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ATTORNEYS AT LAW  
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\*CERTIFIED CIRCUIT COURT MEDIATOR

ALISON DENNIS HOOD  
ADAM C. NESS

JULIUS B. NESS  
1916-1991

January 17, 2014

Bonnie H. Kelly  
Court Reporter  
P. O. Box 50614  
Columbia, SC 29250

Re: William Breland v. South Carolina Department of Transportation  
Case No.: 2011-CP-38-1379  
Orangeburg County

Dear Ms. Kelly:

I represent the defendant in the above referenced case. At this time, I would like to request a copy of the transcript for the following hearing:

Hearing Date: August 9, 2013, Orangeburg, SC  
Presiding Judge: Honorable Edgar W. Dickson

Please advise as to the charge for this transcript, and I will promptly remit payment. Thank you for your attention to this matter.

Sincerely,



Richard B. Ness

RBN:dlh

CC: J. Christopher Wilson, Esq.



**NESS & JETT, LLC**  
ATTORNEYS AT LAW  
P.O. BOX 909  
BAMBERG, SOUTH CAROLINA 29003

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\*CERTIFIED CIRCUIT COURT MEDIATOR

ALISON DENNIS HOOD  
ADAM C. NESS

JULIUS B. NESS  
1916-1991

January 17, 2014

Hilda M. Jordan  
Court Reporter  
P. O. Box 435  
Lexington, SC 29071

Re: William Breland v. South Carolina Department of Transportation  
Case No.: 2011-CP-38-1379  
Orangeburg County

Dear Ms. Jordan:

I represent the defendant in the above referenced case. At this time, I would like to request a copy of the transcript for the following trial regarding the above:

Trial Date: Week of September 2, 2013, Orangeburg, SC  
Presiding Judge: Honorable Edgar W. Dickson

Please advise as to the charge for this transcript, and I will promptly remit payment. Thank you for your attention to this matter.

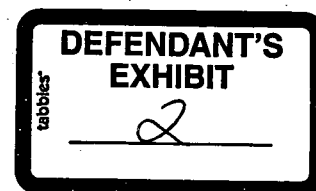
Sincerely,



Richard B. Ness

RBN:dlh

CC: J. Christopher Wilson, Esq.



**NESS & JETT, LLC**  
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P.O. BOX 909  
BAMBERG, SOUTH CAROLINA 29003

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1916-1991

April 24, 2014

Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

via mail and fax to 803-734-1839

Re: William Breland, Respondent, v. South Carolina Department of Transportation,  
Appellant.  
2011-CP-38-1379  
Appellate Case No. 2014-000168

Dear Ms. Kitchings:

Attached please find two letters ordering the relevant transcripts in this appeal. We apologize, on behalf of the Appellant, that, by oversight, the letters were not copied to the South Carolina Court of Appeals. They were, however, copied to counsel of record for the Respondent. The letters were timely transmitted to the court reporters on January 17, 2014, which is the date the Notice of Intent to Appeal was transmitted to the Court of Appeals. Again, we apologize for the oversight in not providing copies of this correspondence to the Court of Appeals.

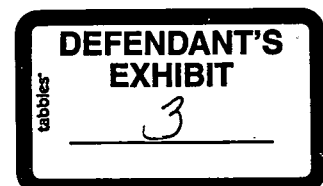
We further notify the Court that we have not yet received the trial transcript, and, therefore, have not yet filed our Initial Brief and Designation of Matter.

Sincerely,

  
Norma A. T. Jett

cc:

J. Christopher Wilson, Esquire  
Daniel W. Luginbill, Esquire  
Office of Court Administration  
Hilda M. Jordan



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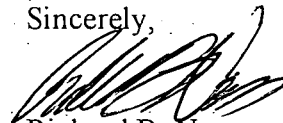
Re: William Breland, Respondent, v. South Carolina Department of Transportation,  
Appellant.  
2011-CP-38-1379  
Appellate Case No. 2014-000168  
Motion for Reinstatement

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of the Appellant's Motion for Reinstatement with certificate of service by mail. It is my understanding that SCACR 240(d) exempts Appellant, the South Carolina Department of Transportation, from paying a filing fee. If this is incorrect, please advise.

Please return one clocked copy to this office in the enclosed envelope. By copy of this letter, I have served one copy of these materials upon counsel for the Respondent.

Sincerely,



Richard B. Ness

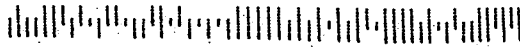
cc:

J. Christopher Wilson, Esquire  
Daniel W. Luginbill, Esquire

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APR 28 2014

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South Carolina Court of Appeals  
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