

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 23 2014

SC Court of Appeals

The Honorable Maite' Murphy
Dorchester County

APPELLATE CASE NO.: 2014-000944

TRIAL CASE NO: 2012GS1800714; 2012GS1800715;
2012GS1800716; 2012GS1800717; 2012GS1800718;
2012GS1800719

THE STATE, RESPONDENT

VS.

TEVIN HART, APPELLANT

MOTION TO VACATE ORDER OF DISMISSAL AND
MOTION TO REINSTATE APPEAL

COMES NOW THE APPELLANT by and through his undersigned attorney and does request this Court to Vacate the Order of Dismissal that was filed in this case on June 16, 2014 and reinstate the Appeal of the Appellant. This Motion is based on the following:

1. Appellants filed a Notice of Intent to Appeal in this case on April 17, 2014. The Notice of Appeal was hand delivered to the Assistant Solicitor, Donald Sorenson on that date in the Dorchester County courthouse in a timely manner as evidence by the email from Mr. Sorenson. See Exhibit 1.
2. Appellant's undersigned attorney forwarded the Notice of Intent to Appeal to this Court. This Court notified the undersigned attorney that the Appellant failed to provide a Proof of Service to the Court.

3. Appellant's undersigned attorney prepared and filed a Proof of Service indicating that the Assistant Solicitor Mr. Donald Sorenson had been provided a copy of the Original Notice of Intent to Appeal. This document was filed on June 3, 2014.
4. Appellant was notified by this Court that the Notice of Intent to Appeal was defective and the undersigned attorney prepared and filed an Amended Notice of Intent to Appeal that was filed on May 16, 2014.
5. The undersigned attorney erroneously stated in the Proof of Service that was filed on behalf of Appellant on June 3, 2014, that the Notice of Intent to Appeal was sent to the Assistant Solicitor Mr. Sorenson on June 3, 2014, when in fact he had been personally served the Notice of Intent to Appeal on April 17, 2014. See Exhibit 1.
6. Appellant's undersigned attorney received the Order of Dismissal on June 17, 2014 and immediately contacted this Court to take whatever steps were necessary to preserve Appellant's right to Appeal.
7. The undersigned attorney was advised that the Proof of Service indicated that Mr. Sorenson had been served outside of the statutory required time frame,

however the date of service for Appellant's Notice of Intent to Appeal was in fact April 17, 2014, a date that was within the statutory time allowed.

8. Immediately, the undersigned attorney contacted Mr. Sorenson and the Dorchester County Clerk of Court to rectify and correct the Proof of Service in this case.

9. The Corrected Proof of Service which indicates that Appellant's Notice of Intent to Appeal was hand delivered to the Assistant Solicitor Mr. Donald Sorenson on April 17, 2014 has been filed in the Dorchester County Clerk of Court's office on June 19, 2014. See attached Exhibit 2.

10. This Court dismissed Appellant's case based on the erroneous date listed in the Proof of Service filed on June 3, 2014. There does not appear to be any other reason for the Court's decision.

11. The error in the Proof of Service was the mistake of the undersigned attorney and not the Appellant. The Appeal was dismissed by no fault of the Appellant.

12. The Appellant would respectfully request that this court Vacate the Order of Dismissal issued on June 16, 2014, and Reinstate his Appeal to allow him to go forward with this case.
13. The State of South Carolina has in no way been prejudiced by the erroneous document that was filed on behalf of the Appellant by the undersigned attorney in that the Assistant Solicitor Mr. Donald Sorenson has been in possession of a cope of Appellant's Notice of Intent to Appeal since the day it was filed on April 17, 2014.
14. In furtherance of judicial economy, the Appellant would ask this Court to grant the relief sought in this Motion and Vacate the Order of Dismissal and Reinstate his Appeal case.



MELISA W. GAY
ATTORNEY FOR APPELLANT
P.O. BOX 2144
MT. PLEASANT, SC 29465
ATTORNEY FOR TEVIN HART

Other counsel of record are:
Donald Sorenson
Assistant Solicitor
First Circuit Solicitor's Office
140 N. Main Street
Suite 102
Summerville SC 29483

Subject: RE: Tevin harts appeal
From: Donald Sorenson (dsorenson@scsolicitor1.org)
To: mgaylaw@yahoo.com;
Date: Wednesday, June 18, 2014 5:07 PM

RECEIVED
JUN 23 2014
SC Court of Appeals

Lisa,

I double checked in my file and verified that you personally served me at the Dorchester County Courthouse on April 17, 2014 with the initial Notice of Intent to Appeal. It had been clocked into the Clerk of Court's Office that morning. If you need any additional information please let me know.

Sincerely,
Donald N. Sorenson
Sr. Asst. Solicitor
First Judicial Circuit

-----Original Message-----

Exhibit 1

RECEIVED
JUN 23 2014
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEALS
APPEAL FROM DORCHESTER COUNTY
HONORABLE ALAN WILSON

CASE NO.: 2012-GS-18-0714; 2012-GS-18-0715; 2012-GS-18-0716 2012-GS-18-0717 2012-GS-18-0718- 2012-GS-18-0718

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

TEVIN HART

2014 JUN 19 PM 5:00
CERTIFIED MAIL
CLEER OF COURT
DORCHESTER COUNTY

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Assistant Solicitor Don Sorenson by placing a copy of this Notice in the United States Mail. The Notice of Intent to Appeal was hand delivered on April 17, 2014 and sent to:

Don Sorenson
First Circuit Solicitor's Office
140 N. Main Street
Suite 102
Summerville SC 29483

June 19, 2014



MELISA W. GAY
ATTORNEY FOR APPELLANT
P.O. BOX 2144
MT. PLEASANT, SC 29465
ATTORNEY FOR TEVIN HART

Exhibit 2 page 1

Other counsel of record are:
Donald Sorenson
Assistant Solicitor
First Circuit Solicitor's Office
140 N. Main Street
Suite 102
Summerville SC 29483

CERTIFIED
2014 JUN 19 PM 5:00
Christina...
CLERK OF COURT
DORCHESTER COUNTY

Exhibit 2 page 2

Melisa W. Gay, LLC
Attorney and Counselor at Law

Melisa W. Gay

Post Office Box 2144

Office (843) 856-0580

Mt. Pleasant, South Carolina 29465-2144

Facsimile (843) 856-0590

June 20, 2014

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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JUN 23 2014

SC Court of Appeals

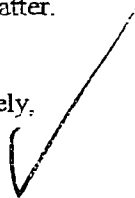
RE: State vs. Tevin Hart
Appellate Case No.: 2014-000944

Dear Madam Clerk:

Enclosed please find the motion to vacate order of dismissal and motion to reinstate appeal and proof of service that has been sent to the South Carolina Court of Appeals on June 20, 2014.

Thank you for your assistance in this matter.

Sincerely,



Melisa W. Gay

MELISA W. GAY, LLC
Attorneys and Counselors at Law
Post Office Box 2144
Mt. Pleasant, South Carolina 29465-2144
Telephone 843-856-0580
Fax 843-856-0590

FACSIMILE TRANSMITTAL SHEET

To: County of Appeals
Joergensen Fax: (803) 734-1496

From: Melisa W. Gay Date: 6/20/14

Re: _____ Page: _____

Case: _____ CC: _____

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Forward

Comments:

*I'm mailing this
so as to file*

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA COURT OF APPEALS
APPEAL FROM DORCHESTER COUNTY
HONORABLE ALAN WILSON

CASE NO.: 2012-GS-18-0714; 2012-GS-18-0715; 2012-GS-18-0716 2012-GS-18-0717 2012-GS-18-0718- 2012-GS-18-0718

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

TEVIN HART

CERTIFIED COPY
2014 JUN 19 PM 5:00
CLERK OF COURT
DORCHESTER COUNTY

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Assistant Solicitor Don Sorenson by placing a copy of this Notice in the United States Mail. The Notice of Intent to Appeal was hand delivered on April 17, 2014 and sent to:

Don Sorenson
First Circuit Solicitor's Office
140 N. Main Street
Suite 102
Summerville SC 29483

June 19, 2014



MELISA W. GAY
ATTORNEY FOR APPELLANT
P.O. BOX 2144
MT. PLEASANT, SC 29465
ATTORNEY FOR TEVIN HART

Other counsel of record are:
Donald Sorenson
Assistant Solicitor
First Circuit Solicitor's Office
140 N. Main Street
Suite 102
Summerville SC 29483

CERTIFIED COPY
2014 JUN 19 PM 5:00
Christina [Signature]
CLERK OF COURT
DORCHESTER COUNTY

MELISA W. GAY, LLC
 Attorneys and Counselors at Law
 Post Office Box 2144
 Mt. Pleasant, South Carolina 29465-2144
 Telephone 843-856-0580
 Fax 843-856-0590

FACSIMILE TRANSMITTAL SHEET

To: Joeyneal Fax: (803) 734-1496
 From: Melisa W. Gay Date: 6/19/14
 Re: _____ Page: _____
 Case: _____ CC: _____

- Urgent For Review Please Comment Please Reply Please Forward

Comments:

Proof of Service
In making the Motion Tomorrow