

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 14 2014

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge **SC Supreme Court**

Trial Court Case Number 2011-CP-12-0291

SUPREME COURT NUMBER: 2014-001039

Robert H. Breakfield, as attorney-in-fact . . . Respondent,

v.

Mell Woods, Petitioner.

Court of Appeals Number: 2012 212318

Rule 260(a) SCACR Motion to Reinstate Appeal

 ORIGINAL

1. Mell Woods the petitioner herein moves that the above-styled petition for Writ of Certiorari, be reinstated after being administratively dismissed by the Clerk of the Supreme Court. [Order on pg. 6] (of this Motion)

2. Rule 260(a), SCACR, requires that 15 days must first elapse before a remittitur is sent to the lower court, in this case the remittitur was issued the same day, instead of 15 days later. Since the remittitur was not properly sent, this case is still pending in the South Carolina Supreme Court.

3. Under Rule 262(a)(2) filing with the clerk of court is defined as "depositing the document in the U.S. Mail, properly addressed to the clerk, with sufficient first class postage attached. *The date of filing shall be the date of delivery or the date of mailing.*" [Rule 262(a), SCACR requires that petitions for rehearing and motions for reinstatement be actually received by the clerk to be timely filed, but for everything else the date of mailing is sufficient.]

4. In this case, (Number 2014-001039) the Clerk of Court, Mr. Shearouse wrote Petitioner a letter stating that the Petition for Certiorari, was "posted marked" (his words) on June 25, 2014, and that the case was dismissed on June 27, 2014. [letter on pg. 7]

5. It is not true that the box containing the petition for certiorari in this case was postmarked on June 25, 2014, but was actually postmarked, and placed in the U.S. Mail on June 23, which made the filing timely. Petitioner shows the truth of this paragraph 5 by the documents appended hereto, and shown on pages 8, 9, and 10K!; (but this is a digression by everyone involved where there is talk about "postmarks" because the South Carolina Appellate Court Rules do not mention *postmarks*; petitioner just checked Rules 101 through 267 of the SCACR and there is no mention of "*postmarks*" anywhere.)

6. Petitioner previously obtained an extension to file the petition with appendix with the last day being June 21, 2014, since June 21 fell on a Saturday, the date of filing was extended to Monday June 23, 2014. [extension Order shown on pg. 12]

Discussion

There could be several reasons as to why a a postmark day may not match up exactly with the actual day a parcel is mailed. The first of which would be if the letter, or box were placed in the mails on a Saturday afternoon, after the mail has been collected by the post office. If such happened, then the postmark, (if postmarked) would be the following Monday, or Tuesday if the particular Monday fell on a national holiday. Rule 262(a)(2), SCACR requires only that the letter, or box be mailed; it does not say before 5 p.m., or that the box be presented at the post office "window" to be postmarked, or certified, or registered, or sent by overnight delivery; just that it be placed in the mail by 11:59 p.m. on any given night. In addition, any box placed in the mail addressed to a governmental entity such as a supreme court will receive extra attention; any such package will be x-rayed, sniffed by dogs, and perhaps even opened before being delivered to the proper destination. All of which takes extra time. But let's just leave the South Carolina Supreme Court out of the discussion for a moment, does anyone really believe that a box addressed to the U.S. Supreme Court would not receive extra scrutiny from several government agencies before delivery.

With all discussion aside, the South Carolina Appellate Court Rules do not require the clerk of court to become a detective or investigator to determine the day a document is filed with the Court. All that is required is the Rules and the case law. Since the clerk, Mr. Shearouse does not have personal knowledge of when the document in this case was placed in the mail, and thus filed, and petitioner does know the date

of filing based on personal knowledge, the following case is illustrative of the point: in Curtis v. Blake 381 S.C. 189, 672 S.E.2d 576,

the South Carolina Supreme Court reversed the Court of Appeals when the Court of Appeals Ruled that a document was not filed until *received* by the clerk of court, but instead the South Carolina Supreme Court Ruled that the document was filed on the day that it was placed in the mail without regard for the day *received* by the clerk of court.

⁷
The ~~six~~ documents referred to in this Motion are included in the next seven pages; 6, 7, 8, 9, 10, 11, 12; the Conclusion and original signature on page 13; the Certificate of Service for this Motion is last, page 14.

The Supreme Court of South Carolina

Robert H. Breakfield, as Attorney-in-Fact, Respondent,

v.

Mell Woods, Appellant.

Appellate Case No. 2014-001039

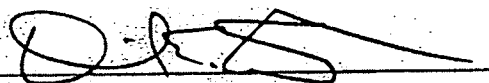
The Honorable The Honorable Brooks P. Goldsmith
Chester County
Trial Court Case No. 2011CP1200291

ORDER

Petitioner has failed to file the Petition for Writ of Certiorari and Appendix, as required by Rule 242 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

June 27, 2014

cc:

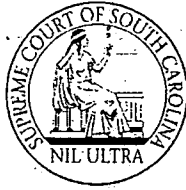
Mell Woods

B. Michael Brackett, Esquire

The Honorable Jenny Abbott Kitchings

The Honorable Sue K. Carpenter

-6-



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

July 7, 2014

Mell Woods
PO Box 2603
Lancaster SC 29721

Re: Robert H. Breakfield, as Attorney-in-Fact v. Mell Woods
Appellate Case No. 2014-001039

Dear Mr. Woods:

This Court has received your petition for a writ of certiorari and appendix posted marked June 25, 2014. Since this matter was dismissed by order dated June 27, 2014, no action will be taken on these documents. I note further that the Court of Appeals sent the remittitur on June 27, 2014.

I am returning your money order in the amount of \$100.

Very truly yours,

CLERK

cc: B. Michael Brackett, Esquire
Jenny Abbott Kitchings, Esquire

STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA SUPREME COURT

Supreme Court Number 2014-001039

Robert H. Breakfield, as Attorney-in-Fact, Respondent,

v.

Mell Woods, Petitioner.

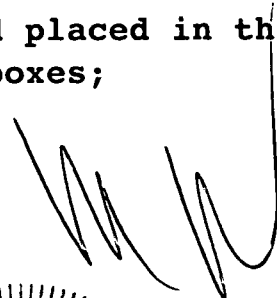
Affidavit

State of South Carolina
County of Chester

Mell Woods, affiant herein after being first deposed makes the following statement upon the personal knowledge of the affiant:

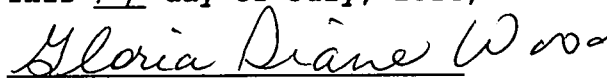
On June 23, 2014 Mell Woods deposited a box containing the Petition for Certiorari with Appendix for filing with the South Carolina Supreme Court for the above case in the U.S Mail at post office 28209, there was not a postal clerk on duty, the time was about 8:30 p.m. the box was properly addressed, postpaid and placed in the box container provided for mailing boxes;

Further, affiant saith not.

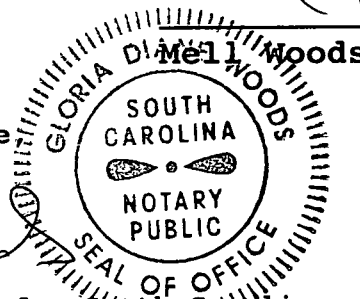


Sworn to, and subscribed before me

This 14 day of July, 2014,



Gloria Diane Woods, Notary Public for South Carolina
my commission expires January 08, 2018



SOUTH CAROLINA SUPREME COURT

Supreme Court Number 2014-001039

Breakfield v. Woods

Appeal from Chester County

Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Proof of Service

Trial Court Case Number: 2011-CP-12-00291

Court of Appeals Internal Tracking Number: 2012 212318

I hereby certify that I have on the 23 day of June, 2014, served the respondents with a true copy of the within and foregoing *Petition for Certiorari*, and also with a copy of the *Appendix*, by placing the copies in the U.S. Mail with sufficient postage addressed to:

Moses Koon & Brackett, PC

C/o: B. Michael Brackett

P.O. Box 100261

Columbia, SC 29202


Mell Woods

P.O. Box 2603
Lancaster, SC 29721

09-

001099

FROM:



		UNITED STATES POSTAL SERVICE		Click-N-Ship®	
P	usps.com	9405 9036 9930 0207 7880 98 0061 6010 1402 9211			
	\$6.16				
	US POSTAGE				
	Regional Box B				
	INSURED				
	06/23/14	Commercial Base Pricing		Mailed from 28209 062S0000001301	
PRIORITY MAIL 2-DAY™					
MELL WOODS PO BOX 2603 LANCASTER SC 29721-2603			Expected Delivery Date: 06/25/2014		
					0024
B099					
SHIP TO:					
SOUTH CAROLINA SUPREME COURT PO BOX 11330 COLUMBIA SC 29211-1330					
USPS TRACKING #					
9405 9036 9930 0207 7880 98					
Electronic Rate Approved #038555749					

-10-

WEIGHT IS AT THE DISCRETION OF THE POSTAL SERVICE

Label Details

Label Number:
9405903699300207788098

Account Number: 53399475

Ship Date: 06/23/2014

Status: Credit Card Charged

Label Actions

USPS Tracking

Ship Again

Return Address:

MELL WOODS
PO BOX 2603
LANCASTER, SC 29721-2603

Delivery Address:

SOUTH CAROLINA
SUPREME COURT
PO BOX 11330
COLUMBIA, SC 29211-1330

Package:

Shipping Date: 06/23/2014
Weight: 10 lbs 14 oz
ZIP Code: 28209
Value of Contents: \$45.00

Service:

Priority Mail® 2-Day Regional Rate Box B
USPS Tracking™

UNITED STATES POSTAL SERVICE®

POSTAL MONEY ORDER

Serial Number: 21908096976

Year/Month/Day: 2014-06-23

Post Office: 297200

U.S. Dollars and Cents: \$100.00

Amount: ONE HUNDRED DOLLARS & 00/100 *****

Pay to: SOUTH CAROLINA Supreme Court Clerk

Address: BREAKFIELD WOODS

From: MELL WOODS

Address: LANCASTER, SC

Memo:

© 2008 United States Postal Service. All Rights Reserved.

SEE REVERSE WARNING: NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS

1:00000080021: 219080969761

-110

The Supreme Court of South Carolina

Robert H. Breakfield, as Attorney-in-Fact, Respondent,

v.

Mell Woods, Appellant.

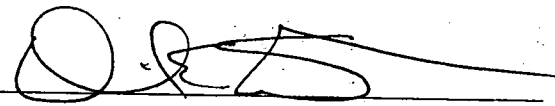
Appellate Case No. 2014-001039

ORDER

The time for serving and filing the Petition for a Writ of Certiorari and Appendix in the above entitled matter is hereby extended until June 21, 2014.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

May 16, 2014

cc:

Mr. Mell Woods

B. Michael Brackett, Esquire

The Honorable Jenny Abbott Kitchings

-12-

Conclusion

For the good cause shown by the documents appended to this Motion, petitioner respectfully asks that this appeal be reinstated.

Respectfully submitted,

This 14 day of July, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

 ORIGINAL

SOUTH CAROLINA SUPREME COURT

Supreme Court Number 2014-001039

Breakfield v. Woods
Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Proof of Service

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within and foregoing Rule 260(a) SCACR Motion to Reinstate
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Columbia, SC 29202



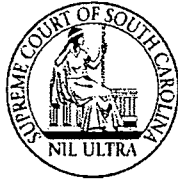
Mell Woods

P.O. Box 2603
Lancaster, SC 29721

99.14



ORIGINAL



The Supreme Court of South Carolina

Gloria Diane Woods

07/15/2014

RECEIPT #72865

Case No: 2014-001039
Case Short Title: Robert H. Breakfield, as Attorney-in-Fact v. Mell Woods
Event:
Fee Type: Motion Fee
Amount: \$25.00
Payment Type: Check
Reference No: 3265
Check/Money Order Date: 07/14/2014
Comments: