

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Clifford Thompson, Appellant

~~RECEIVED
JUL 14 2014
SC Court of Appeals~~

v.

State of South Carolina, Respondent.


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JUL 15 2014
SC Court of Appeals

Appellate Case No.: 2010-161446

PETITION FOR REHEARING

Date: 14 July 2014

Pro Se Litigant


Clifford Thompson
BR01/274805/Moultrie Dorn
4460 Broad River Road
Columbia, SC 29210

The Appellant, Clifford Thompson, respectfully moves this honorable Court to rehear the Appellate Case No. 2010-161446 pursuant to S.C.A.C.R. Rule 221 (a), and, upon rehearing this case, issue a new opinion granting relief to the Appellant to each issue outlined in the appeal.

ISSUE I

The honorable Court of Appeals reviewed, considered and made determinations based upon evidence and facts which do not appear in the Record on Appeal and thereafter rendered an opinion of law based on said facts although the South Carolina Appellate Court Rules and South Carolina Case laws prohibits such manners of resolution of issues on appeal.

The honorable Court of Appeals noted in footnote number 3 of its Opinion No. 5244 submitted September 1, 2013 and filed June 30, 2014 that:

- (1) it determined as a matter of fact that Appellant Thompson is not currently registered on the sex offender registry as of June 30, 2014;

- (2) it determined as a matter of fact that the S.C. Department of Corrections has recently updated its website as of June 30, 2014; and
- (3) it determined as a matter of fact that the S.C. Department of Corrections' update no longer indicates Appellant Thompson will be required to register as of June 30, 2014.

Each and every one of the three (3) enumerated factual determinations made by the honorable Court of Appeals is based on facts which do not appear in the Record of Appeal in this appellate case. Each and every one of the three (3) enumerated factual determinations made by the honorable Court of Appeals is based on facts that are external to the official submitted Record on Appeal. These three enumerated facts impacted this appeal.

The Court of Appeals is prohibited from considering any fact which does not appear in the Record on Appeal. The S.C.A.C.R. Rule 210 (h) explicitly prohibits this manner of resolving an appeal by expressly stating, "Except as provided by Rule 212 and Rule 208 (b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal."

The South Carolina jurisprudence establishes that it is equivalent to court error for an appellate court to consider facts that do not appear in the Record on Appeal. (See: Spreeuw v. Barker, 682 SE2d 843 (S.C. App. 2009) (appellate court considering father's challenge to child support award could not consider a fact that did not appear in record); Beverly S. v. Kayla R., 718 SE2d 224, 395 S.C. 399 (S.C. App. 2011) (same); Tobias v. Rice,

665 SE2d 216 (same); Griffin v. Rice, 57 SE2d 69 (same); and Columbia & Greenville R. Co. v. Gibbes, 24 S.C. 60 (same).

Furthermore, if the Respondent intended to include these purported facts, the Respondent has an affirmative obligation and burden to provide a sufficient record for the Record on Appeal or otherwise bear the consequence of waiver of appellate review. The S.C.A.C.R. Rule 212 provides a mechanism through which the Respondent could have supplemented the Record on Appeal with facts the Respondent deems necessary to allow the appellate court to make a decision. The Respondent opted to not supplement the Record on Appeal with any records from the Sex Offender Registry nor from the S.C. Department of Corrections but instead chose to move forward on the appeal with the Record on Appeal as it stands. The Respondent has this right, the Respondent exercised its rights. The waiver of appellate review on this point is a natural consequence of Respondent's choice to not supplement the Record on Appeal and this honorable Court of Appeals is prohibited from interfering the natural consequences of this appellate proceedings.

Even more importantly, Appellant Thompson, as a party to this litigation, is under the same obligation as the Respondent to present a sufficient record to allow the appellate court to make a decision ... Appellant Thompson met his burden by properly submitting a Record on Appeal which factually reflects that Appellant Thompson is to be included in the sex offender registry. The Court of Appeals acknowledges the Record on Appeal contains

a record which indicates Thompson is to be included in the sex offender registry in footnote number 3 of its Opinion No. 5244 submitted September 1, 2013 - filed June 30, 2014.

The case law in this state is crystal clear, the appellant has the burden of presenting a record sufficient to allow the appellate court to make a decision or suffer appellate review waiver. (See: Medlock v. One 1985 Jeep Cherokee, 470 SE2d 373; Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 339, 611 SE2d 485, 487-88 (2005) (same); Germain v. Nichol, 298 S.C. 508, 509, 299 SE2d 335, 335 (1983) (same); State v. Knighton, 334 S.C. 125, 136, 512 SE2d 117, 123 (Ct. App. 1999) (refusing to review a jury charge not in the record); Hobgood v. Pennington, 300 S.C. 309, 314, 387 SE2d 690, 693 (Ct. App. 1989) (same); Dennis v. S.C. Nat'l Bank, 299 S.C. 34, 41, 382 SE2d 237, 240 (Ct. App. 1988) (same); and Scruggs v. Quality Elec. Servs., Inc., 282 S.C. 542, 545, 320 SE2d 49, 51 (Ct. App. 1984) (same).

The facts regarding the June 30, 2014 purported "updates" to the Sex Offender Registry and S.C. Department of Corrections' websites noted in the Court of Appeals' Opinion No. 5244 footnote number 3 is prohibited from being considered, reviewed and determined by this honorable Court of Appeals. The Court of Appeals' issued analysis and opinion run contrary to this prohibition and requires a rehearing where this honorable Court of Appeals will determine this appeal with total disregard to any and all facts which do not appear in the Record on Appeal. The Court of Appeals should conduct a rehearing to evaluate this appeal strictly in the posture in which the facts on the Record of Appeals presents itself.

THE STATE OF SOUTH CAROLINA
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Clifford Thompson,
Appellant

v.

State of South Carolina,
Respondent.

Appellate Case No.: 2010-161446

CERTIFICATE OF SERVICE

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~~SC Court of Appeals~~

I, Clifford Thompson, do hereby certify that I have served ^{two} true copy of the "Petition for Rehearing" to the Respondent and the S.C. Court on July 14, 2014 by depositing said documents in the U.S. Mail, postage pre-paid, via hand delivery to the Broad River Prison mailroom personnel addressed to the following:

1) S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

2) S.C. Attorney General Office
P.O. Box 11549
Columbia, SC 29211

SWORN and Subscribed before me
this 14th day of July 2014.

Susan H. Frye
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____
My Commission Expires
March 5, 2018

Clifford Thompson
BECT/274805 / Maltrie Dam
4460 Broad River Rd.
Columbia, SC 29210

Clifford Thompson
BEEL/294805/Maultrie
4460 Broad River Rd.
Columbia, SC 29210

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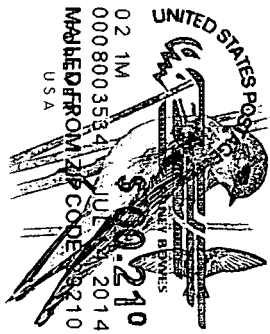
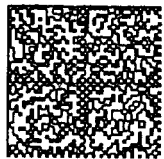
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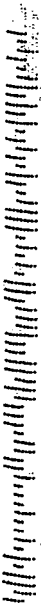
S.C. Court of Appeals

Attn: Honorable Jenny Kitchings, Clerk
P.O. Box 11629
Columbia, S.C. 29211



Bank Swallow

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ASSUME RESPONSIBILITY FOR ITS WRITTEN CONTENT.
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