

The Supreme Court of South Carolina

The State, Respondent,

v.

Alan L. Burns, Appellant.

Appellate Case No. 2014-002591

RECEIVED

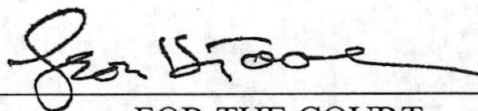
DEC 16 2014

SC Court of Appeals

ORDER

This appeal is pending before the South Carolina Court of Appeals.¹ By letter dated November 6, 2014, the Clerk of the Court of Appeals refused to accept a *pro se* document for filing because appellant is represented by counsel in this appeal. Petitioner has now filed a document with this Court "appealing" the action taken by the Clerk of the Court of Appeals.

By statute and rule, this Court reviews final decisions of the Court of Appeals, not actions taken by its Clerk of Court. S.C. Code Ann. § 14-8-210; Rule 242 of the South Carolina Appellate Court Rules. If any error has been committed by the Clerk of the Court of Appeals, then that is a matter for consideration by the Chief Judge or the members of the Court of Appeals. Accordingly, no action will be taken on this *pro se* motion by this Court.



C.J.

FOR THE COURT

Columbia, South Carolina
December 12, 2014

cc: Susan Barber Hackett, Esquire
Deborah R.J. Shupe, Esquire
The Honorable Jenny Abbott Kitchings (with copy of motion and attachments)

¹ Before the Court of Appeals, the Appellate Case Number is 2012-212760.

Nov. 12, 2014

Alan L. Burns, #143218
Lee Corr. Inst., Richland D-141
990 Wisacky Hwy.
Bishopville, SC 29010-1775

RECEIVED

DEC 11 2014

Office of the Clerk
South Carolina Supreme Court

S.C. SUPREME COURT

Dear Sir/Ma'am:

Please be informed that this letter is in regards to an **ERROR** committed by the Clerk of the S.C. Court of Appeals. This letter and enclosures are being submitted as a **complaint and APPEAL of the action of the Clerk of the Court of Appeals.**

I ask that this Clerk's Office take whatever steps and procedures are necessary to correct the below stated **ERROR**:

On Nov. 6, 2014, I attempted to file the enclosed '*Motion For Leave Of Counsel And Stay Of Proceedings With Attached EXHIBITS*' in the S.C. Court of Appeals (Appellate case No. 2012-212760).

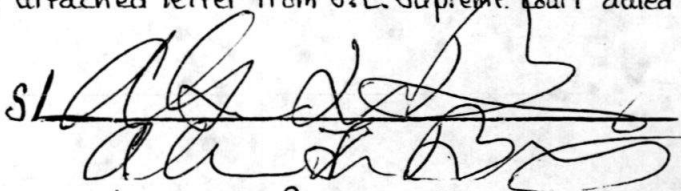
On Nov. 12, 2014, the Court of Appeals Clerk returned my filing with letter stating:
"Since you are represented by counsel in this matter, no action will be taken on this pro se filing. *Miller v. State*, 388 S.C. 347, 697 S.E. 2d 527 (2010); *Jones vs. State*, 348 S.C. 13, 558 S.E. 2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E. 2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E. 2d 907 (1989)."

I state that **ERROR** is being committed by the Clerk of the Court of Appeals, because the very cases that she cite, state there is an exception if the Pro Se motion is a motion for leave of counsel, it must be filed and considered by the court. Please see same cases cited by Court of Appeals Clerk.

Since the enclosed is a *Motion For Leave Of Counsel*, it should be filed with its attached Exhibits, and the court should decide it on its merits. To allow an Appellant to file a Pro Se motion without supporting facts and evidence but deny him that right if it is supported with sufficient and substantial facts and evidence is within itself a mockery of our very court system.

As a matter of fact, this Supreme Court Clerk, wrote me a short while ago in response to a complaint, and did inform me that motions for leave of counsel must be filed and decided by the court. Please see attached letter from S.C. Supreme Court dated July 16, 2013.

I so APPEAL and Complain:


Alan L. Burns



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
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

July 16, 2013

Mr. Alan L. Burns, #143218
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472-0205

Re: The State v. Alan L. Burns
Appellate Case No. 2012-212760

Dear Mr. Burns:

This responds to your letter to Chief Justice Toal regarding the above appeal. Please be advised that the Chief Justice cannot assist you with this appeal since it is pending before the South Carolina Court of Appeals.

Since you are represented by counsel in this appeal, I remind you that, except for a *pro se* motion to relieve counsel, you are not permitted to make any other *pro se* motion or other request for relief since you are represented by counsel in this matter. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989). However, since your letter appears, in part, to seek to have your current counsel relieved, I am forwarding a copy of your letter to the South Carolina Court of Appeals.

Finally, please remember that any correspondence that you send to either this Court or the South Carolina Court of Appeals must be provided to the counsel for the State. Neither this Court nor the South Carolina Court of Appeals can act on *ex parte* communications. I am providing a copy of your letter and attachments to

the counsel in this matter.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a series of loops and a long horizontal stroke extending to the right.

CLERK

cc: Salley Susan Barber Hackett, Esquire (with copy of letter and attachments)
John Benjamin Aplin, Esquire (with copy of letter and attachments)
The Honorable Jenny Abbot Kitchings (with copy of letter and attachments)



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 06, 2014

Alan L. Burns, 143218
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

Re: The State v. Alan L. Burns
Appellate Case No. 2012-212760

Dear Mr. Burns:

This responds to your recent correspondence received November 6, 2014. According to our records, attorney Susan Barber Hackett is your counsel of record. Since you are represented by counsel in this matter, no action will be taken on this *pro se* filing. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989). Therefore, we are returning your correspondence with this letter. A copy of your correspondence will be forwarded to Ms. Hackett. Any future filings or inquiries must be filed by your counsel of record.

Very truly yours,

Handwritten signature of Jenny A. Kitchings in black ink.
CLERK

cc: Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
Susan Barber Hackett, Esquire

Low
Copy

Oct. 30, 2014

Alan L. Burns, #143218

Lee C.I., Richland 0-141

990 Wisacky Hwy.

Bishopville, S.C. 29010-1775

Hon. Jenny A. Kitchings, Clerk

S.C. Court of Appeals

P.O. Box 11629

Col., SC 29211

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NOV 10 2014

SC Court of Appeals

Re. : State v. Burns, Appellate Case No. : 2012-21-2760

Dear Ms. Kitchings :

Enclosed for filing please find my Motion for Leave of Counsel and Stay of Proceedings with supporting Exhibits.

Please Click and Return the additional copy of each document via Inter-Agency Mail.

Respectfully submitted,



ALB/alb

Enclosures

cc : S.C. Attorney General's Office

Susan Hackett, Esq., Appellate Defense Office

Court Copy

State Of South Carolina
Court Of Appeals

Appeal From Charleston Co. Court Of General Sessions

R. Markley Dennis, Jr., Judge

Indictment No. : 2011-GS-10-3387 etal

Appellate Case No. : 2012-2, -2760

RECEIVED

NOV 10 2014

SC Court of Appeals

State of S.C.

Respondent,

vs.

Burns, Alan L.

Appellant.

Certificate Of Service

Appellant hereby certifies that he has served the S.C. Attorney General at P.O. Box 11549 Col., SC 29211; and Appellate Defense Counselor Susan Hackett at P.O. Box 11589 Col., SC 29211-1589, on this 30th day of Oct-2014, a true copy of his *Motion For Leave Of Counsel and Stay of Proceedings* by placing same in the mail.

I so move :

Dated : Oct. 30, 2014



Alan L. Burns, #143218

Lee C.I., Richland D-141

990 Wisacky Hwy.

Bishopville, SC 29010-1775

The State Of South Carolina
Court Of Appeals

Appeal From Charleston Co. Court Of General Sessions

R. Markley Dennis, Jr., Judge

Indictment No. : 2011-GS-10-3387 et al

Appellate Case No. : 2012-21-2760

RECEIVED

NOV 06 2014

SC Court of Appeals

State of S.C.

Respondent,

vs.

Burns, Alan L.

Appellant.

Motion For Leave Of Counsel
And
Stay Of Proceedings

Comes Now the Appellant above named who hereby respectfully moves this Court for Leave of Counsel and to Stay all Proceedings for an additional SIXTY (60) DAYS.

Please Take Notice That, this motion is based upon the following facts :

- 1) That Appellant by and with the assistance of several family members are hiring private counsel (Ms. Tricia A. Blanchette) to represent Appellant in this appeal,
- 2) That Appellant's presently appointed counsel has already proven to be *Ineffective Assistance of Counsel*, in that Appellant represent himself through the pre-trial and trial proceedings. That immediately upon receipt of several pre-trial transcripts Appellant did inform present appointed counsel (Susan Hackett) that several of the transcripts were inaccurate. He specifically requested that she challenge the accuracy thereof. SHE REFUSED. The Appellant attempted to file challenges himself. Please see **EXHIBIT - B**,
- 3) That however, one Court Reporter (Ms. Anne Bouley Meyer) took opportunity and did review the record and discovered that Appellant was correct, the transcript was not accurately recorded and required correcting. Please see **EXHIBIT - C**,
- 4) That present counsel, Ms. Hackett, is being further *Ineffective* by refusing to include clearly appealable issues in her Brief with total disregard to Appellant's desire and insistence and the fact that Appellant specifically preserved the issue during request for directed verdict at close of both the State's case and Defense's case.

- 5) That these clearly appealable issues are herewith attached in *Brief of Appellant* at Arguments 1 through 4, Issues of Territorial Jurisdiction and Direct Verdict Abuse of Discretion. Territorial Jurisdiction can be raised for the first time on appeal and does not require prior notice. Please see **EXHIBIT - A**,
- 6) The Appellant here asserts that Ms. Hackett's refusal to include these appealable issues will in fact violate Appellant's 4th, 5th, 6th, 8th and 14th Amendment Rights to Due Process and Effective Assistance of Counsel,
- 7) That Ms. Hackett's refusal to include this issue will prohibit Appellant from raising these issues of Territorial Jurisdiction in Federal proceedings.

Please Take Additional Notice That Appellant further states that Ms. Hackett's refusal to include these appealable issues is a violation of Rule 1.2, RPC, Rule 4D7, SCACR (2009), which states:

"Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.---"

Rule 1.4, states in pertinent part:

"(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;---"

Rule 1.0(f), states:

"'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated reasonably adequate information and explanation about the risks of and reasonably available alternatives to the proposed course of conduct."

That Appellant has since filing of the notice of appeal in this action, inform Ms. Hackett that he specifically wanted this issue raised to be preserved for Federal review.

Please Take Further Notice that this motion is based upon the fact that appointed counsel, Ms. Hackett is suppose to include and raise all appealable issues whether she thinks it will be prevailing or not. And to leave out an outright clearly appealable issue because she do not think it will be prevailing is in fact a violation of Appellant's Due Process Rights.

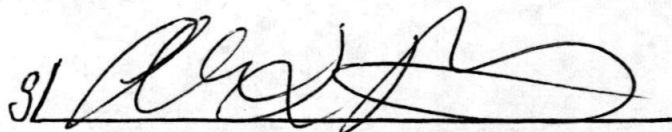
This equals and amounts to a criminal defense lawyer refusing to put forth a defense, the only defense because she/he don't think the jury will believe the defense. The defense has to be made if it is the defendant's decision and it does not violate the law in any respect.

Please Take Final Notice That Appellant hereby respectfully request a STAY of PROCEEDINGS for an additional SIXTY (60) DAYS to effect hiring private counsel .

Appellant here submits as EVIDENCE IN SUPPORT of this Motion for Leave of Counsel and Stay of Proceedings , " Appellant's Brief " marked EXHIBIT - A .

I so move :

Dated: Oct. 28, 2014



Alan L. Burns, #143218
Lee C.I., Richland D-141
990 Wisacky Hwy
Bishopville, SC 29010-1775