PROOF OF SERVICE

REPLY TO RESPONDENTS REQUEST FOR REVIEW BY FULL PANEL
RULE 221 REHEARING & REMITTITUR

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Georgetown County
Court of Common Pleas

Benjamin H. Culbertson, Presiding Circuit Court Judge

Case No. 2012-212102

Unpublished Opinion No. 2015- UP-009

Willie Singleton , pro se Appellant.

v.

Robert Wade Maring. Of Maring Law Firm, P.A., of
Of Georgetown, for Respondent,

PROOF OF SERVICE
REPLY TO RESPONDENTS RULE 221 REHEARING & REMITTITUR

I certify that I have served the Reply to Respondents Rule 221 Rehearing & Remittitur Robert Wade Maring. Of Maring Law Firm, P.A., of
Of Georgetown

1-26-2015

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The Appeal court has erred by ruling to VACATE the circuit's order. The respondent made an argument that the circuit court should have dismissed the case based on the cases named by judge HUFF, SHORT, and KONDUROS, JJ. and S.C. Code 14-25-95. At the hearing the plaintiff informed circuit court judge Benjamin H. Culbertson the he took the judgment the same day the plaintiff received it to the ruling judge Robert O'Donnell the day he received the judgment and informed him that he wanted to appeal the court decision. Judge O Donnell told the plaintiff to take it to his secretary and she would file the appeal. The plaintiff informed the court because he was pro se and because there was no proof of when the judgment was mailed to him, according to **Huston v Lack, 487 U.S. 266 (1988**. While incarcerated in a Tennessee prison, petitioner drafted a pro se notice of appeal from the Federal District Court's judgment dismissing his pro se habeas corpus petition, and, 27 days after the judgment, deposited the notice with the prison authorities for mailing to the District Court. The date of deposit was recorded in the prison's outgoing mail log. Because petitioner lacked the necessary funds, prison authorities refused his requests to certify the notice for proof that it had been deposited for mailing on the day in question, and to send the notice air mail. Although the record contains no evidence of when the prison authorities actually mailed the notice or when the District Court actually received it, the court stamped the notice filed 31 days after the habeas judgment—that is one day after the expiration of the 30-day filing period for taking an appeal under Federal Rule of Appellate Procedure 4(a)(1). For this reason, the Court of Appeals dismissed the appeal as jurisdictionally out of time.

Held; Under Rule 4 (a)(1), pro se prisoners' notices of appeal are "filed" at the moment of delivery to prison authorities for forwarding to the district court. Cf. Fallen v. United States, 378 U. S. 139(Stewart, J., concurring). Unskilled in law, unaided by counsel, and unable to leave the prison, apro se prisoner's control over the processing of his notice necessarily ceases as soon as he hands it over to the only public officials to whom he has access—the prison authorities—and the only

information he will likely have is the date he delivered the notice to those authorities and the date ultimately stamped upon it. The 30-day deadline for filing notices of appeal set forth in 28 U.S.C. 2107, which applies to civil actions including habeas proceeding, does not preclude relief for petioner, since that statute does not define when a notice has been "filed" nor in any way suggests that, in the unique circumstances of a pro se prisoner, it would be inappropriate to conclude that such filing occurs at the moment of delivery to prison officials. Such conclusion is not negated by the fact that Rules 3(a) or Rule4(a)(1) specify that the notice should be "filed with the clerk of the District Court," since the relevant question is one of timing, not destination, and neither Rule sets forth criteria for determining the moment at which the filing has occurred. The general rule that receipt by the court clerk constitutes filing, although appropriate

Page 487 U. S.267

For most civil appeals, should not apply in the pro se prisoner context. Nothing in either Rule 3(a) or Rule4(a)(1) compels the conclusion that the receipt by the clerk must be the moment of filing in all cases, and, in fact, a number of federal courts have recognized exceptions to the general principle. Moreover, the rationale for the general rule is that the appellant has no control over delays after the court clerk's receipt of the notice—a rationale that suggests that the moment of filing here should be the moment when the pro se prisoner necessarily loses control over his notice; the moment of delivery to prison authorities for forwarding. The bright-line rule recognizing receipt by prison authorities as the moment of filing will also decrease disputes and uncertainty as to 2when filing actually occurred, since such authorities keep detail logs for recording the date and time at which they receive papers for mailing, and can readily dispute a prisoner's contrary assertion. Relying on the date of receipt, by contrast, would raise difficult questions as whether the

prison authorities, the Postal Service, or the court clerk is to blame for any delay. Pp. 487 U.S. 269-276.

819 F .2d 289, reversed

Brennan, J., delivered the opinion of the court, in which **White, Marshall, Blackmun, and Stevens, JJ., joined, Scalia., filed opinion, in which Rehnquist , C.J., and O'Connor and Kennedy , JJ., joined , post, p. 487 U.S. 277.**

Because of **Huston v Lack, 487 U.S. 266 (1988** . and the fact the judge O Donnell gave me a continuous on the trial until a hearing at the LLR was held against the city official that wrote the ticket, because the ticket ordered the plaintiff to demolish the house on the lot and according to state laws only the city Building official can order a house demolish and a house can not be ordered demolish by a nuisance ticket ordering a lot cleaned by any city official, also the city official that wrote the ticket was not the Georgetown city official , and also judge O'Donnell held the trial on half of the ticket omitting the part the LLR was holding the hearing on , which put the ticket under the poison tree, because he never notified the plaintiff of the hearing nor did he have the plaintiff permission to rule on half of the ticket. before the LLR hearing. After the plaintiff argument, he judge Benjamin H. Culbertson ordered the plaintiff to rewrite and submit his appeal to his court and the plaintiff did so, therefore judge Benjamin H. Culbertson believed because of **Huston v Lack, 487 U.S. 266 (1988** the plaintiff appeal was under his jurisdiction as so does **White, Marshall, Blackmun, and Stevens, JJ., joined, Scalia., filed opinion, in which Rehnquist , C.J., and O'Connor and Kennedy , JJ.,**

Another rule that may affect this case is RULE 29 POST TRIAL MOTIONS (a) Generally. Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence. In cases involving appeals from convictions in magistrate's or municipal court, post-trial motions shall be made within ten (10) days after receipt

of written notice of entry of the order or judgment disposing of the appeal. The time for appeal for all parties shall be stayed by a timely post-trial motion and shall run from the receipt of written notice of entry of the order granting or denying such motion. The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the circuit judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term. Except by consent of the parties, argument on the motion shall be heard in the circuit where the trial or hearing was held. The motion may, in the discretion of the court, be determined on briefs filed by the parties without oral argument.

The plaintiff is asking this court to reconsider my position raised in all the issues in my Brief on Appeal. The plaintiff is requesting a review of this appeal by the full panel In that, the appeal court erred in Vacating the Circuit Court discussion to hear his case. And also the circuit court erred agreeing with the ruling of the lower court.

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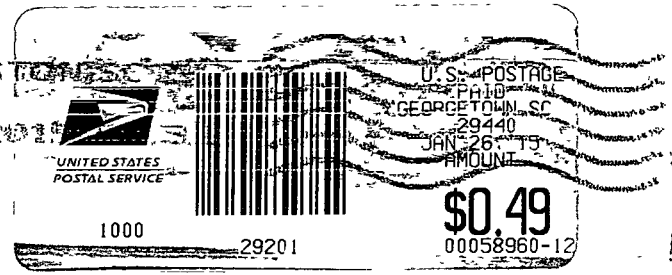

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