

The Supreme Court of South Carolina

Heyward Cecil Dempsey, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-000393

Lower Court Case No. 1997GS3801138

RECEIVED

MAR 03 2015

SC Court of Appeals

ORDER

By order dated February 13, 2015, the South Carolina Court of Appeals dismissed the appeal in this matter.¹ Petitioner has now filed a notice of appeal, seeking review of the decision of the South Carolina Court of Appeals in this matter. Since review of a decision of the Court of Appeals is commenced by serving and filing a petition for a writ of certiorari under Rule 242 of the South Carolina Appellate Court Rules (SCACR), the notice of appeal has been construed as a petition for a writ of certiorari.

Under Rule 242(a), SCACR, this Court will only review a final decision of the Court of Appeals, and a decision is not final for the purposes of review until a petition for rehearing or reinstatement has been acted on by the Court of Appeals. Rule 242(c), SCACR. Since no petition for rehearing or reinstatement has been ruled on by the Court of Appeals in this matter, there is no final decision for this Court to review. Accordingly, the petition for a writ of certiorari is dismissed.

Petitioner also moves for a rehearing or an extension of time to perfect the appeal. Since this motion should be made to the Court of Appeals rather to this Court, the

¹ Before the Court of Appeals, the Appellate Case Number is 2014-000333.

motion shall be forwarded to the Court of Appeals for its consideration.

 C.J.
FOR THE COURT

Columbia, South Carolina
March 2, 2015

cc: Donald J. Zelenka, Esquire
Mr. Heyward Cecil Dempsey, 00134171
The Honorable Jenny Abbott Kitchings (with copy of Petition for
Rehearing/Extension of Time and Affidavit in Support)
The Honorable Winnifa Brown-Clark

Mr. Heyward Dempsey 134171
MacDougall Conn East
1516 Old Gilland Rd
Ridgexille SC 29472

The Honorable Daniel Sheanour
Clerk of Court Po Box 11330
Columbia SC 29211

The Honorable Jenny Abbott Kitchings
Clerk of Court Po Box 11629
Columbia SC 29211

Mr Donald J Zelenka Esquire
Po Box 11549
Columbia SC 29211-1549

PLEASE find Enclosed Documentation Pertaining to
Dempsey vs state Appellate Case No: 2014-000333
Counsel Robert M Dudek, failed to represent
Mr Dempsey on His Appeal therefore it was
Dismissed. It is Appellant's Hope that this
Appeal can be Revised.

Deborah Cecil Dempsey III
February 24th 2015

The state of south CAROLINA

In The Supreme Court

Appeal from The Court of Appeals

Appellate Case No: 2014-000333

Lower Case No: 1999 GS-38-001138

The state of south CAROLINA - - - - Respondent

Heyward C Dempsey - - - - - Appellant

Notice of Appeal

Heyward C Dempsey Appeals The Order of The
Court of Appeals Dismissing The Above-Captioned
Case Appellate's Counsel Robert M Dudek Esq
Failed To Comply With The Requirements
of Rule 247(b) of The south CAROLINA
Appellate Court Rules (SCACR). The Order
of Dismissal Was filed on February 13, 2015

February 24th 2015

Counsel of Record

Alan Mc Crony Wilson Esq

Donald J Zelenka Esq

Robert Michael Dudek Esq

Heyward Cecil Dempsey III

Heyward C Dempsey

MACDougal Court East

1516 Old Gillard Rd

Ridgeway SC

29472

The state of south CAROLINA
In the supreme Court
In the Court of Appeals

Appellate CASE No. 2014-000333
lower CASE No. 1997-65-38-001138

"Petition for Re-HEARING / Extension of Time"

Mr Heyward C Dempsey Petitioner's This
Honorable Court for A Re HEARING of the
Above NAMED CASE on for AN EXTENSION
of TIME TO PERFECT HIS APPEAL PRO - SE
Wherefor Appellant Pray THAT THE RELIEF
Requested be granted

2/24/15

Heyward Cecil Dempsey
Heyward C Dempsey 13471
MAC DOUGALL CORN TRST
1516 Old Gilliland Rd
Ridgeville SC 29422

IN The state of south CAROLINA
IN The Supreme Court

Heyward Cecil Dempsey 134171
Appellant

v s
The state of south CAROLINA
Respondent

Appeal from the Court of Appeals
Appellate Case No. 2014-000333
Lower Case No. 1997-G5-38-1138
Affidavit in support of
Notice of Appeal and
Petition for Rehearing

RECEIVED

FEB 27 2015

If it would PLEASE This Honorable Court, S.C. Supreme CC
I Heyward & Dempsey would like to present this
matter to the attention of this court. The above
captioned case No. 2014-000333) was transferred
to the south Carolina Court of Appeals by an
order of this court dated february 26 2014
In a letter dated December 4 2014 Appellant
received notice from this court instructing
all parties to this matter to comply with
Rule 247 of the south Carolina Appellate
Court Rules (S.C.A.C.R.) This letter was
addressed to Mr Donald J Zelenka Esq
and Mr Robert M. Dudek Also dated
December 4, 2014 Appellant received notice
from the Court of Appeals advising him
to complete proof of service to all parties
and to send a copy of the order under
appeal. In other words to perfect the appeal.

This letter was also addressed to Mr. Zelenka and Mr. Dudek. Mr. Alan Wilson was also added. JANUARY 29th 2015. A letter from the Court of Appeals was sent to Mr. Dempsey and Mr. Dudek. It advised Counsel Dudek and Mr. Dempsey to correct deficiencies in the case. Appellant was under the assumption that Mr. Dudek would perfect the appeal on correspondence from this court and the Court of Appeals. His name is listed for Mr. Dempsey as "Counsel" however, the order from the Court of Appeals dismissing this case does not bear Mr. Dudek's name as Counsel. The situation concerning Mr. Dudek's representation is ambiguous. Prior to Mr. Dudek Appellant submitted a brief and copies of the order under appeal to the Court of Appeals. If Appellant were to proceed pro se Mr. Dudek "should" not have been listed as Counsel since he "represents" indigent defense. However, Appellant is indigent. It is this confusion that has caused the procedural default in this case. If Mr. Dudek was Appellant's Counsel then he is responsible for this grave error and Appellant should not be penalized. Mr. Dudek should have at least advised Appellant to proceed on his own. Instead Mr. Dempsey received no correspondence from Mr. Dudek.

Certificate of service

I Hayward C Dempsey do hereby certify that
The information in this Affidavit is true
and correct to the best of my knowledge
under penalty of perjury

Hayward C Dempsey
Hayward C Dempsey 134171
Mac Dougall Court East
1516 Old Gillard Rd
Ridgeway SC 29472

sworn and subscribed before me this 24th
day of February 2015

Notary Public for South Carolina Lisa M Cross
My Commission Expires Jan 16, 2024

LISA M. CROSS
Notary Public, State of South Carolina
My Commission Expires 1/16/2024

The state of south Carolina
IN The Supreme Court

Appeal from The Court of Appeals
Appellate Case No: 2014-000333
Lower Case No: 1997-6538-001138

Heyward Cecil Dempsey - - - - - Appellant

The state of south Carolina - - - - - Respondent

Proof of service

I certify that I have served the notice of Appeal,
A Petition for Rehearing and an Affidavit in
support of these on All Parties listed below by
U.S. Postal Service via MAC DUGALL Inst
Mailroom.

South Carolina Court of Appeals
Po Box 11629 Columbia SC 29211

ALAN MC CRARY Wilson Esq
DONALD J ZELENSKA Esq
P.O. Box 11549
Columbia S.C. 29211-1549

Robert Michael Dudak
Po Box 11589
Columbia SC 29211

2/24/15
Heyward Cecil Dempsey III
Heyward C Dempsey 13401
MAC DUGALL Conn Inst
1516 Old Gilliland Rd
Ridgerville SC 29472

The Supreme Court of South Carolina

Heyward Cecil Dempsey, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000333

Lower Court Case No. 1997-GS-38-001138

ORDER

Pursuant to Rules 204(a) and 247(b) of the South Carolina Appellate Court Rules, this case is hereby transferred to the South Carolina Court of Appeals.

FOR THE COURT

BY



CLERK

Columbia, South Carolina
February 26, 2014

cc: Mr. Heyward Cecil Dempsey, 00134171
Salley W. Elliott, Esquire
The Honorable Jenny Kitchings



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

December 04, 2014

Heyward Cecil Dempsey, 00134171
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville SC 29472

Mr. Donald J. Zelenka, Esquire
PO Box 11549
Columbia SC 29211-1549

Re: Heyward Cecil Dempsey v. State of South Carolina
Appellate Case No. 2014-000333

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 247 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert Michael Dudek, Esquire



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

December 04, 2014

Heyward Cecil Dempsey, 00134171
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville SC 29472

Re: Heyward Cecil Dempsey v. State of South Carolina
Appellate Case No. 2014-000333

Dear Counsel:

Upon reviewing your Notice of Appeal the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

Proof of service showing that all parties have been served.

Copy of order/judgment that you are appealing.

Very truly yours,

V. Claire Allen, Deputy
CLERK

cc: Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
Donald J. Zelenka, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 29, 2015

Mr. Robert Michael Dudek, Esquire
PO Box 11589
Columbia SC 29211

Heyward Cecil Dempsey, 00134171
MacDougall Correctional Institution
1516 Old Gilliard Road
Ridgeville SC 29472

Re: Heyward Cecil Dempsey v. State of South Carolina
Appellate Case No. 2014-000333

Dear Counsel and Mr. Dempsey:

At this time the Court is requesting a status update on the ordering of your transcript and for correcting the below mentioned deficiencies in this case. The status update is due within ten days of the date of this letter, or the Court will take further action, including dismissal of the appeal.

- Proof of service showing that all parties have been served.
- Copy of order/judgment that you are appealing.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire

The South Carolina Court of Appeals

Heyward Cecil Dempsey, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000333

Orangeburg County
Trial Court Case No. 1997GS3801138

ORDER

Appellant has failed to provide a copy of the order on appeal and failed to provide a proof of timely service on the respondent, as required by Rule 247(b) of the South Carolina Appellate Court Rules (SCACR), and this Court's letter dated January 29, 2015. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
Heyward Cecil Dempsey, 00134171

FILED

2/13/15

Heizwano
MacDougall
1516 Old Gilliland Rd
Ridgerville SC 29472
M-2-C-12



The Supreme Court of South Carolina
"Daniel E Shearman"
Clerk of Court
Post Office Box 11330
Columbia SC 29211

MacDougall Corr. Inst.
Mailroom

RECEIVED

FEB 24 2015

UNITED STATES POSTAL SERVICE
EAGLE
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02 1P
00031677
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\$001.40
FEB 24 2015

The Department of Corrections has not censored this item, therefore, the Department does not assume responsibility for its written contents - MacDougal Correctional Institution.

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