

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2014-002666

RECEIVED
APR 02 2015
SC Court of Appeals

THE STATE,

Respondent,

vs.

JAMES B. CURRY,

Appellant

**MOTION TO DISMISS APPEAL AND TO HOLD RESPONDENT'S DEADLINES IN
ABEYANCE**

The State, moving to dismiss Appellant's appeal and to hold the State's deadlines in abeyance pending this Court's action on the motion, would respectfully show the Court:

I.

It appears Appellant was convicted in 2008 in the Chester County Court of General Sessions of the offenses of burglary in the first degree, armed robbery, kidnapping, and assault and battery of a high and aggravated nature. It also appears Appellant appealed the convictions but the appeal was dismissed by this Court in 2008. The order on appeal indicates Appellant pursued collateral actions challenging the convictions. He also pursued previous motions for new trial based upon after-discovered evidence. The actions and motions were unsuccessful.

II.

It appears Appellant again pursued a motion for new trial based on after-discovered evidence in the Chester County Court of General Sessions pursuant to Rule 29(b), SCRCrimP. The Honorable Brian M. Gibbons issued an order dated December 4, 2014, denying Appellant's motion for new trial after considering lengthy presentations. Appellant served Notice of Appeal from Judge Gibbons' order on December 10, 2014. The appeal is currently pending before this Court.

III.

By letter dated February 6, 2015, this Court informed Appellant of his obligation to provide notification respecting the transcript of the proceedings in circuit court and directed Appellant to provide the Court with the status of the transcript request and receipt within ten days of the date of the letter and to copy the State with all correspondence concerning the transcript. The State has not received a copy of any communication from Appellant ordering the circuit court transcript. The State also has not received Appellant's response to this Court's request for a report on the status of the transcript

On March 27, 2015, the State received Appellant's Motion to Dismiss and Grant New Trial contending the order on appeal contains an error. On March 27, 2015, the State also received a Request for Oral Argument within 30 Days and Initial Brief of Appellant. The Motion to Dismiss and Grant a New Trial is not a matter for resolution by motion as it presents a purported irregularity with the order on appeal and is a matter for consideration after briefing and presentation of a full Record on Appeal to this Court. As to the request for oral argument, the appellate court rules favor resolution of motions without oral argument and nothing presented by

Appellant establishes that oral argument is necessary to resolve Appellant's motion. See Rule 240 (h), SCACR.

IV.

The State moves to dismiss this appeal on the ground Appellant failed to order the transcript as required by Rule 207 (a), SCACR. Additionally, Appellant failed to respond to this Court's request for information about the status of the transcript on or before February 16, 2015 as directed by this Court. Because Appellant failed to comply with the appellate rules requiring the timely perfection of the appeal and ignored this Court's deadline for information, the appeal must be dismissed. See Rule 260, SCSCR ("Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal"); Henning v Kaye, 307 S.C. 436, 415 S.E.2d 415 S.E.2d 794 (1992)(appellate court rules are not technicalities but provide for orderly processing of appeals).

V.

Respondent also moves this Court to hold its deadlines in abeyance pending this Court's ruling on the motion to dismiss pursuant to Rule 240(b), SCACR.

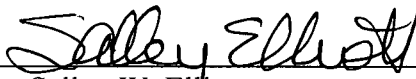
WHEREFORE, the State respectfully asks this Court to dismiss Appellant's appeal and to hold the State's deadlines in abeyance pursuant to Rule 240(b), SCACR, pending this Court's ruling on the motion to dismiss

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit

BY: 
Salley W. Elliott
S.C. Bar No. 1871

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ATTORNEYS FOR RESPONDENT

April 2, 2015

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THE STATE,

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Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Motion to Dismiss Appeal and to Hold Respondent's deadlines in Abeyance on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to James B. Curry, #186737, Lee Correctional Inst. 1204 East Church Street, Bishopville, South Carolina 29010.

I further certify that all parties required by Rule to be served have been served.

This 2nd day of April, 2015.


ANGELA BENNETT
Administrative Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

April 2, 2015

The Honorable Jenny A Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. James B. Curry
Appellate Case No: 2014-002666

Dear Mr. Kitchings.

Enclosed please find the original and six copies of the Motion to Dismiss Appeal and to Hold Respondent's deadlines in Abeyance along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C Bar No: 1871

SWE/ab
Enclosures

cc: James B. Curry, #186737
Ms Trisha Allen

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