

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No: 2014-001848

RECEIVED
JUN 17 2015
SC Court of Appeals

THE STATE,

Respondent,

vs.

BENNIE L. WEBB,

Appellant.

MOTION TO DISMISS APPEAL OR, ALTERNATIVELY, TO REQUIRE APPELLANT TO PROPERLY SERVE RESPONDENT WITH THE INITIAL BRIEF OF APPELLANT AND DESIGNATION OF MATTER AND TO STRIKE APPELLANT'S FINAL BRIEF AND ALL DEADLINES FOR RESPONDENT BASED UPON APPELLANT'S FAILURE TO PROPERLY SERVE RESPONDENT WITH HIS INITIAL BRIEF, MOTION TO CALCULATE THE DUE DATES FOR RESPONDENT'S INITIAL BRIEF AND DESIGNATION OF MATTER THIRTY DAYS FROM THE DATE APPELLANT PROPERLY SERVES HIS INITIAL BRIEF AND DESIGNATION OF MATTER ON COUNSEL FOR RESPONDENT, AND REQUEST TO HOLD ALL OF RESPONDENT'S DEADLINES IN ABEYANCE PENDING THIS COURT'S RULING ON RESPONDENT'S MOTIONS

Respondent, by and through undersigned counsel, moves this Court to require Appellant to properly serve counsel for Respondent with the Initial Brief of Appellant and Designation of Matter, for this Court to strike Appellant's final brief and all deadlines pertaining to Respondent, to calculate the time for filing and serving the Initial Brief of Respondent and Respondent's Designation of Matter as due thirty days from the date Appellant accomplishes proper service on

counsel for Respondent, and to hold all of Respondent's deadlines in abeyance pending this Court's ruling on Respondent's motions. The motions are made for the reasons set forth below:

1. *Pro se* Appellant Benny L. Webb was convicted in Horry County Magistrate's Court of assault and battery, third degree. Assistant Solicitor J. Scott Hucks prosecuted this case in magistrate's court.¹ Appellant served notice of appeal from the Magistrate's Court conviction and a hearing on the appeal was held in the Horry County Court of Common Pleas on May 14, 2014, with the Honorable D. Craig Brown presiding. Appellant was represented by John A. O'Leary, Esquire, and the State was represented by Assistant Solicitor J. Austin Thomas. In an order dated July 27, 2014, Judge Brown affirmed Appellant's conviction.
2. Appellant filed a *pro se* Notice of Appeal and served the Notice of Appeal on August 21, 2014, on then Assistant Solicitor J. Scott Hucks who did not participate in the circuit court proceeding. The undersigned counsel became aware of the appeal when she received copies of this Court's letters dated September 8, 2014, notifying Appellant of deficiencies and advising Appellant the Court was in receipt of the Notice of Appeal, changing the case caption, advising Appellant that all filings must comply with the appellate court rules, and directing attention of the parties to the order regarding personal identifiers. After communicating with the Solicitor's office about the existence of the appeal, the undersigned forwarded a letter to *pro se* Appellant Webb at the address Appellant lists on his briefs directing that communications about the appeal should be addressed to the undersigned counsel Appellant until after

¹ Mr. Hucks recently entered private practice.

serves his initial brief when other counsel within the Attorney General's Office may be assigned to the appeal. (See attached letter dated October 9, 2014). This Court was provided with a copy of that letter from the undersigned counsel for Respondent.

3. Without the knowledge of the undersigned and from a review of the Appellate Court Case Management System, it appears *pro se* Appellant Webb ordered the transcript in September 2014, and served his initial brief and designation of matter on the magistrate's court prosecutor and not the prosecutor who appeared at the circuit court hearing on appeal or the undersigned counsel for Respondent despite the undersigned counsel's notice to Appellant. Appellant's initial brief was filed by this Court on March 20, 2015. The certificate of service does not provide a date the brief was served on the original prosecutor.
4. This Court corresponded twice with *pro se* Appellant Webb advising him of deficiencies in the initial brief and directing Appellant to correct the deficiencies within ten (10) days. The undersigned received copies of those letters from this Court. It appears Appellant might have corrected the deficiencies but the undersigned counsel for Respondent was not served with corrected documents and was inexplicably not thereafter copied with correspondence from the Court to Appellant dated April 9, 2015, confirming the corrections and notifying Respondent that its brief was due to be served no later than thirty days from the date of the letter. The undersigned counsel for Respondent was also not copied with the letter of this Court dated May 28, 2015, notifying Appellant that a Respondent's brief had not been filed and that Appellant should prepare the

record on appeal. The undersigned counsel for Respondent discovered the filings when the victim in this case reviewed the documents filed on the South Carolina Appellate Court Case Management System and notified undersigned counsel.

5. As of this date, the undersigned counsel for Respondent has not been served with an initial brief and designation of matter of Appellant. Respondent moves for dismissal of the appeal for Appellant's failure to comply with Rules 208 and 209, SCACR, respecting timely service of Appellant's initial brief and designation of matter.
6. Alternatively, Respondent moves this Court to require Appellant to serve the undersigned counsel for Respondent with the corrected Initial Brief of Appellant and Designation of Matter as follows:

Salley W. Elliott
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211
7. Respondent also moves this Court to strike Appellant's final brief and all of the deadlines calculated for Respondent in this appeal and to calculate the due date for the Initial Brief of Respondent and Designation of Matter for 30 days after Appellant properly serves counsel for Respondent as outlined above. Appellant should forward a copy of the certificate of service to this Court when he serves counsel for Respondent with his Initial Brief and Designation of Matter so that this Court can properly calendar all due dates.
8. Respondent also moves this Court to hold all of Respondent's deadlines in abeyance pending this Court's ruling on Respondent's motions.

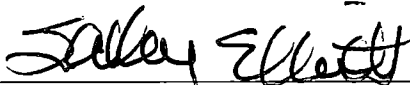
WHEREFORE, Respondent prays that this Court to dismiss the appeal or, alternatively, to require Appellant to properly serve counsel for Respondent with his Initial Brief of Appellant and Designation of Matter at the address listed herein, that this Court strike Appellant's final brief and all of Respondent's deadlines in this appeal, that this Court calculate the date for filing and serving the Initial Brief of Respondent and Designation of Matter for thirty days after Appellant properly serves undersigned counsel for Respondent with his initial brief and designation of matter, and for this Court hold the to hold the time for filing and serving its Initial Brief of Respondent and Designation of Matter in abeyance pending this Court's ruling on Respondent's motions.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

JIMMY A. RICHARDSON, II.
Solicitor, Fifteenth Judicial Circuit

BY: 

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

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

June 17, 2015

ATTORNEYS FOR RESPONDENT



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

JUN 17 2015

SC Court of Appeals

October 9, 2014

Benny L. Webb
710 Windrow Drive
Sumter, South Carolina 29150

RE: The State v. Benny L. Webb
(Horry County)

Dear Mr. Webb:

Our Office has received a Notice of Appeal in the above case. This case will be assigned to a lead attorney once the Initial Brief of Appellant and Designation of Matter are filed and served. I would appreciate you sending any correspondence pertaining to the above matter directly to me. You will be notified of lead counsel once assignment has been made.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General

SWE:ab

cc: The Honorable Jimmy A. Richardson
The Honorable Jenny A. Kitchings
Ms. Trisha Allen

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The Honorable D. Craig Brown, Circuit Court Judge

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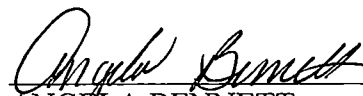
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Motion to Dismiss or, Alternatively, to Require Appellant to Properly Serve Respondent with the Initial Brief of Appellant and Designation of Matter, Motion to Strike all Deadlines, Motion to calculate the due Date, and Request 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 Bennie L. Webb, 710 Windrow Drive, Sumter, South Carolina 29150.

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

This 17th day of June, 2014.



ANGELA BENNETT
Administrative Assistant

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



ALAN WILSON
ATTORNEY GENERAL

June 17, 2015

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SC Court of Appeals

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

Re: The State v. Bennie L. Webb
Appellate Case N: 2014-001848

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Motion to Dismiss or, Alternatively, to Require Appellant to Properly Serve Respondent with the Initial Brief of Appellant and Designation of Matter, Motion to Strike all Deadlines, Motion to calculate the due Date, and Request 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: Bennie L. Webb
Ms. Trisha Allen