

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUN 26 2015

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 2015-000797

Deonta Brinston,.....Respondent,

v.

South Carolina Department of Criminal Justice ,.....Appellant.

RETURN TO RESPONDENT'S PETITION TO ACCEPT BRIEF OUT OF TIME

Appellant, pursuant to Rule 240(e), SCACR respectfully files this return to *Respondent's*
Petition to Accept Brief Out of Time as follows:

- 1) The first and primary issue raised by Appellant in this appeal is that Respondent untimely served his Notice of Appeal to the Administrative Law Court (hereinafter, "ALC") on Appellant in violation of Rules 3 and 33, SCALCR, and that, as a result of the late service, the ALC had no jurisdiction to hear or rule on the merits of Respondent's appeal.
- 2) It is of great interest to Appellant that Respondent uses the same excuse to explain his late filing of his Initial Brief to this Court, as he used to explain his failure to timely serve his Notice of Appeal to the ALC on Appellant, i.e. it was lost in the mail.

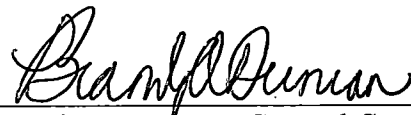
- 3) Further, Appellant would draw the Court's attention to the fact that Respondent admits in his *Petition to Accept Brief Out of Time*, that his Counsel knew on June 10, 2015 his Initial Brief had not been received by this Court. Despite this knowledge, Respondent waited twelve (12) days before attempting to refile his Initial Brief.¹
- 4) Despite Respondent's Counsel's prior, current, and wholly unsupported insistence that the U.S. Postal Service is extremely incompetent in her area and routinely loses mail, Respondent's Counsel persists in only sporadically sending her pleadings via alternate communication methods in addition to the U.S. Postal Service required by rule. For example, Respondent's Counsel sent *Appellant's* [ALC] *Reply [Sic] to Motion to Dismiss* via U.S. Postal Service and e-mail to both the ALC and Council (R. 373-374). Additionally, Respondent's Counsel sent *ALC Brief of Appellant* via U.S. Postal Service and e-mail to the ALC (R. 419). This could have easily been done with the Respondent's Initial Brief on June 3, 2015, but it was not. In fact, Respondent's Counsel's faxing of Respondent's Initial Brief on June 23, 2015 to this Court and the Council demonstrates how easily such a fax could have been done on June 3, 2015. Given the seriousness and gravity of serving pleadings in a timely manner and the numerous and significant issues Respondent's Counsel alleges she has encountered with the U.S. Postal Service, it seems sending pleadings via multiple methods would be most prudent and reasonable, but Respondent's Counsel simple does not do so.

¹ Respondent waited until the Clerk's Office directed him to file his Initial Brief within ten (10) days. According to Respondent, his Counsel received this letter on June 19, 2015. Despite receiving this letter on June 19, 2015, Respondent still did not even attempt to refile his Initial Brief until June 22, 2015. Moreover, as of the filing of this Return, Appellant has still not received Respondent's mailed Initial Brief and *Petition to Accept Brief Out of Time*. Appellant is only aware of Respondent's Initial Brief and *Petition to Accept Brief Out of Time* due to a fax sent to Appellant's Offices on June 23, 2015 at 5:59 p.m.

- 5) Notably, it appears to Appellant, that Respondent's Counsel has only used alternate methods of communication, in addition to the U.S. Postal Service, for those pleadings that have been timely filed/served. All of Respondent's pleadings that have been untimely filed/served have never been sent via an alternate method of communication until after they are already untimely.
- 6) Finally, according to the Product and Tracking Information (USPS Tracking for 9514 8000 0224 5154 0002 22 and 9514 8000 0224 5154 0002 39) that Respondent's Counsel states were created for mailing Respondent's Initial Brief to this Court and Appellant, all Respondent did was send "electronic notification from [USPS's] Self-Service Kiosk (SSK)" so that the U.S. Postal Service would "expect [Respondent's] shipment for mailing" (See attached at Exhibit A). There is nothing further on the Product and Tracking Information for either mailing, indicating that these packages were not, in fact, mailed.

WHEREFORE, the undersigned respectfully prays this Court refuses to allow Respondent to file his Initial Brief Out of Time.

Respectfully Submitted,



Brandy A. Duhcan, General Counsel
Bar #72052

S.C. Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212
(803) 896-7414
(803) 896-8347 (fax)
Attorney for Appellant

June 26, 2015

Exhibit A

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Tracking Number: 95148000224 5154000239

Expected Delivery Day: Saturday, June 6, 2015

Product & Tracking Information

Postal Product:
First-Class Mail®

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 3, 2015, 8:22 pm	Acceptance (SSK)	EASLEY, SC 29640

The U.S. Postal Service has received electronic notification from our Self-Service Kiosk (SSK) in EASLEY, SC 29640 on June 3, 2015 to expect your shipment for mailing.

Available Actions

Return Receipt Electronic

Text Updates

Email Updates

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.

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Tracking Number: 951480000224 5154000222

Expected Delivery Day: Saturday, June 6, 2015

Product & Tracking Information

Postal Product:
First-Class Mail®

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 3, 2015, 8:21 pm	Acceptance (SSK)	EASLEY, SC 29640

The U.S. Postal Service has received electronic notification from our Self-Service Kiosk (SSK) in EASLEY, SC 29640 on June 3, 2015 to expect your shipment for mailing.

Available Actions

Return Receipt Electronic

Text Updates

Email Updates

Track Another Package

Tracking (or receipt) number

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 2015-000797

Deonta Brinston,.....Respondent,

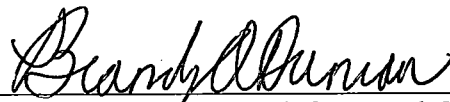
v.

South Carolina Department of Criminal Justice ,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Return to Respondent's Petition to Accept Brief out of Time on Deonta Brinston by depositing a copy of it in the United States Mail, postage prepaid, on June 26, 2015, addressed to his attorney of record, Candy M. Kern-Fuller, Esquire, Upstate Law Group, LLC, 200 East Main Street, Easley, South Carolina 29640-2073.

June 26, 2015



Brandy A. Duncan, Chief General Counsel
SC Bar #72052
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(803) 896-7414
(803) 896-8347 (fax)
Attorney for Appellant



South Carolina Criminal Justice Academy

June 26, 2015

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Deonta Brinston, Respondent v. South Carolina Department of Criminal Justice, Appellant,
Case No. 2015-000797

Dear Ms. Kitchings:

Enclosed for filing in the above referenced case are seven (7) bound copies of Return to Respondent's Petition to Accept Brief Out of Time. Please return one clocked copy to me.

Additionally, please be advised that the undersigned will no longer work at the Criminal Justice Academy after of July 1, 2015. Therefore, please change the attorney of record for Appellant on this case to James Fennell, SC Bar #72576, with the following contact information:

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June 26, 2015

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Attorney for Respondent