

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Appeal from Charleston County  
Court of General Sessions

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Appellate Case No. 2014-000681

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**RECEIVED**

JUN 26 2015

SC Court of Appeals

THE STATE,

Respondent,

vs.

JEFFREY MEMERING,

Appellant.

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**MOTION TO DISMISS APPEAL OR, ALTERNATIVELY, TO HOLD THE TIME FOR  
FILING RESPONDENT'S INITIAL BRIEF AND DESIGNATION OF MATTER IN  
ABEYANCE PENDING APPELLANT'S COMPLIANCE WITH THE REQUESTS OF  
THIS COURT**

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The State moves this Court to dismiss Appellant's *pro se* appeal or to hold the time for filing and serving its initial brief and designation of matter in abeyance by showing the Court:

**I.**

Appellant was indicted at the May 2012 term of the grand jury for Charleston County for two counts of breach of trust (2012-GS-10-1204 and -1205). He was represented by Luke J. Malloy, Esquire, and Martha Kent Runey, Esquire. On February 26, 2014, Appellant appeared before the Honorable Kristi L. Harrington and entered Alford pleas to both charges. Appellant was sentenced to five years, concurrent, suspended upon probation for five years and restitution.

Appellant moved to withdraw the pleas by motion dated March 5, 2014. The motion was heard and denied by Judge Harrington on March 20, 2014.

## II.

Notice of Appeal was filed and served on Appellant's behalf. Appellant did not qualify for representation by the South Carolina Office of Appellate Defense and his county public defender was relieved as counsel by Order of this Court filed December 30, 2014, because Appellant was determined to be financially able to retain counsel.

## III.

Appellant notified this Court by letter that he received the transcript on February 26, 2015. This Court notified Appellant by letter dated March 9, 2015, that his initial brief and designation of matter were due to be served and filed on or before March 30, 2015. Respondent was served with Appellant initial brief on April 11, 2015, and Appellant's attached designation of matter did not designate anything for the record on appeal. By letter to this Court dated April 17, 2015, Respondent confirmed receipt of Appellant's initial brief.

## IV.

By letter dated April 2, 2015, this Court notified Appellant that the caption/title of his initial brief was incorrect, that he failed to submit a designation of matter, and failed to file a proof of service showing timely service on counsel for Respondent, and would be required to submit a motion to file and serve his brief out of time if he could not produce the necessary proof of service. On April 20, 2015, this Court notified Respondent again by letter outlining deficiencies to include the failure to submit a proof of service establishing timely service of his initial brief and designation of matter on Respondent and the need to submit a motion to file and

serve those documents out of time if he could not produce the necessary proof of service. This Court again directed Appellant to correct the deficiencies outlined in the letter within 10 (ten) days and warned that the appeal may be dismissed for failure to do so. Respondent thereafter received an Order of this Court filed May 13, 2015, extending Appellant's time to correct these deficiencies until June 1, 2015. By letter dated June 16, 2015, this Court again notified Appellant of the same deficiencies and directing him to make corrections within ten (10) days.

#### V.

Respondent moves this Court to dismiss this appeal. Appellant's notice of appeal was filed and served on March 28, 2014. After some delay, Appellant's initial brief and designation of matter were due to be filed and served on or before March 30, 2015, one year after Appellant filed and served the notice of appeal. Appellant did not serve Respondent with his initial brief and designation of matter until April 11, 2015. Appellant did not timely file and serve his initial brief and designation of matter and failed to comply with this Court's directives to correct deficiencies respecting proper submission of his brief beginning on April 2, 2015. Appellant ignored the deadlines provided by this Court for proceeding with the appeal. The appeal must be dismissed for failure to comply with Rules 208 and 209, SCACR, and for failure to comply with the written directives of the Court even when warned the appeal could be dismissed if he failed to do so.

#### VI.

Moreover and despite Appellant's failure to establish **timely** service of his initial brief and designation of matter on Respondent and Appellant's failure to submit a motion to allow him to file and serve it out of time so that the brief may be properly accepted, Respondent has been informed that the deadline for its initial brief and designation of matter has been calculated and

must be filed and served. Respondent moves this Court to hold the time for filing the initial brief and designation of matter of Respondent in abeyance until this Court dismisses the appeal or Appellant complies with the directives of the Court and an order is issued permitting the late filing and service of Appellant's initial brief and designation of matter.

WHEREFORE, Respondent moves this Court to dismiss the appeal and to hold the time for filing and serving Respondent's initial brief and designation of matter in abeyance pending this Court's ruling on the motion to dismiss or Appellant's compliance with this Court's directives.

Respectfully submitted,

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

SCARLETT A. WILSON  
Solicitor, Ninth Judicial Circuit

BY:



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

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

ATTORNEYS FOR RESPONDENT

June 26, 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 or to Hold in Abeyance on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to Jeffrey Memering, 322 King Charles Circle, Summerville, SC 29425.

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

This 26<sup>th</sup> day of June, 2015.

  
ANGELA BENNETT  
Administrative Assistant

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



ALAN WILSON  
ATTORNEY GENERAL

June 26, 2015

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JUN 26 2015

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. Jeffrey Memering  
Appellate Case No: 2014-000681

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion to Dismiss or to Hold 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: Jeffrey Memering  
Ms. Trisha Allen