

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

JUL 29 2015

SC Court of Appeals

Appeal from Jasper County  
The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No: 2014-001212

THE STATE,

Respondent,

vs.

GARY WAITERS,

Appellant.

**MOTION TO DISMISS APPEAL**

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

Appellant's *pro se* notice of appeal states that Appellant is appealing a ruling of the court of general sessions denying a Rule 29, SCRCrimP, motion for a new trial respecting a conviction arising from a 2009 indictment. Appellant is not represented by counsel.

II.

Upon receipt of the notice of appeal, this Court notified Appellant by letter dated June 10, 2014, that he must correct deficiencies regarding his appeal within ten (10) days, to include

providing a copy of the order Appellant challenges on appeal and the name and address of opposing counsel. By letter dated November 25, 2014, this Court again asked Appellant to provide information to correct deficiencies with his appeal and notified Appellant that a copy of the order Appellant challenges on appeal and the proof of service establishing the notice of appeal was served on opposing counsel must be provided within ten (10) days to avoid dismissal of the appeal. By letter dated May 22, 2015, this Court made a third request for a copy of the order Appellant intends to appeal and proof that Appellant has ordered the transcript. This Court notified Appellant that he must provide the information within ten (10) days. Respondent has not received responses from Appellant to any of this Court's requests.

### III.

Appellant filed and served a *pro se* petition for appeal bond dated May 6, 2015. Respondent moved to hold the time for responding to the petition in abeyance until Appellant establishes that he has complied with the appellate court rules and this Court's repeated requests for a copy of the order Appellant challenges on appeal, the proof of service for the notice of appeal, and proof that he has ordered the transcript as required. This Court issued an Order filed July 1, 2015, acknowledging that Appellant has not responded to its requests for a copy of the order on appeal and proof that he ordered the transcript, and notifying Appellant that his appeal will be dismissed unless the information is provided within ten (10) days of its Order. The Court also extended Respondent's time for filing a return to the petition for appeal bond. Respondent has not received a copy of Appellant's response if a response was submitted.

### IV.

Respondent moves this Court to dismiss the appeal. This Court has instructed Appellant in

clear and unambiguous terms beginning in June 2014 that specified deficiencies must be corrected and warned that the appeal would be dismissed if Appellant failed to comply with the Court's directives. Respondent has not received any documentation or information from Appellant indicating that he has acknowledged the Court's requests. This appeal has languished for one year while this Court repeatedly requested information from Appellant, which Appellant appears to ignore. More than ten (10) days have elapsed from the last order of this Court indicating the appeal would be dismissed for Appellant's failure to respond. The appeal must be dismissed for Appellant's failure to comply with the appellate court rules and requests of this Court. See Rule 203(a), SCACR ("A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules."); Rule 203 (d)(1)(B)(i) & (ii), SCACR (stating the notice of appeal must be accompanied by a copy of the order being challenged on appeal and proof of service showing the notice was served on all respondents); Rule 207, SCACR (the appealing party must order the transcript within thirty (30) days of service of the notice of appeal from the court of general sessions and Appellant must contemporaneously furnish all counsel of record, the Office of Court Administration and the clerk of the appellate court with copies of correspondence with the court reporter).

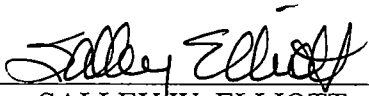
WHEREFORE, Respondent respectfully prays that this Court dismiss the appeal; that all time limits for this appeal be held in abeyance until this Court's disposition of this motion; and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

ISAAC MCDUFFIE STONE  
Solicitor, Fourteenth 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

ATTORNEYS FOR RESPONDENT

July 29, 2015

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\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I, Angela Bennett, certify that I have served the Motion to Dismiss Appeal on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to appellant, Gary Waiters, #273876, Walden Correctional Inst. 4340 Broad River Road, Columbia, South Carolina 29210.

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

This 29<sup>th</sup> day of July, 2015.

  
\_\_\_\_\_  
ANGELA BENNETT  
Administrative Assistant

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



ALAN WILSON  
ATTORNEY GENERAL

July 29, 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. Gary Waiters  
Appellate Case No: 2014-001212

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion to Dismiss Appeal 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: Gary Waiters, #273876  
Ms. Trisha Allen