

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County  
J. Derham Cole, Circuit Court Judge

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OCT 14 2015

S.C. Supreme Court

DERRICK L. CHEEKS, PETITIONER

v.

STATE OF SOUTH CAROLINA, RESPONDENT

APPELLATE CASE NO. 2014-002647

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PETITION FOR WRIT OF CERTIORARI

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DERRICK L. CHEEKS 343108

LEE CI F6A1140

990 Wisacky Highway

Bishopville, SC 29010

ATTORNEY FOR PETITIONER

# INDEX

INDEX . . . . .	1
ISSUE PRESENTED . . . . .	2
STATEMENT OF THE CASE . . . . .	3
ARGUMENT . . . . .	11
CONCLUSION . . . . .	18

## ISSUE PRESENTED

Did the Court of Appeal error in denying petitioner's motion to Remstate, where the record unequivocally reveal the petitioner timely corrected the deficiencies in both letters dated January 26, and February 27, 2015.

## STATEMENT OF THE CASE

### Procedural History

(12/13/13 Order)

On December 13, 2013, a forfeiture hearing was held in front of the Honorable J. Derham Cole, Circuit Court Judge, in the Court of Common Pleas in Spartanburg County. The forfeiture was confirmed on the above date and the petitioner was told he would receive the order by mail.

(1/8/14 Envelope)

Petitioner received the order on January 8, 2014, due to the fact the order was mailed to a P.O. Box in Columbia, SC, and without the petitioner's inmate number on it.

(2/21/14)(Letter)

The order was received at a time the institution was on lockdown due to a flu epidemic and snow storm. Without any access to the Law Library the petitioner did the best he could in filing a Notice of Appeal and Motion for Extension of Time.<sup>1</sup> A copy was mailed to The Honorable M. Hope Blackley and Tanya A. Gee. M. Hope Blackley responded petitioner had to file his own appeal, but petitioner never received a response from Tanya A. Gee.

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<sup>1</sup> Petitioner cannot find copy of Notice of Appeal, but there is a copy in the record, because the petitioner mailed a copy with Motion To Reinstate, and see response from <sub>41</sub> M. Hope Blackley.

(11/24/14 Letter)

On November 24, 2014, the petitioner wrote The Honorable Daniel E. Shearouse inquiring about his appeal.

(1/26/15 Letter)

On January 26, 2015, the petitioner received a letter from The Honorable Jenny Abbott Kitchings, asserting a appellate case no, and that the petitioner had to correct some deficiencies.

(2/3/15 Appeal, order, proof of service)

On February 3, 2015, the petitioner corrected the deficiencies and mailed a copy to M. Hope Blackley and Jenny Abbott Kitchings.

(2/13/15 Letter)

On February 13, 2015, the petitioner received

a response that the Court received the Notice of Appeal, the case was assigned another case no, and the only deficiency the petitioner had to correct was a \$100.00 dollar filing fee.

(2/19/15 Letter)

On February 19, 2015, the petitioner wrote Daniel E. Shearouse, inquiring why he had to pay a filing fee but received no response.

(2/27/15 Letter)

On February 27, 2015, Jenny Abbott Kitchings, mailed another letter in equipose to the January 26, 2015, letter asserting the petitioner had to correct the same deficiencies he corrected on February 3, 2015.

(3/10/15 Letter)

On March 10, 2015, the petitioner wrote to Chief Justice Jean Toal, asserting that the Clerk Jenny Abbott Kitchings, refuse to file his appeal.

(3/12/15 Letter)

On March 12, 2015, Daniel E. Shearcase, responded that Jean Toal couldnt consider Ex parte Communication.

(4/3/15 Order)

On April 6, 2015, the petitioner received an order that the appeal was dismissed for failing to comply with the two letters dated January 26, and February 27, 2015.

(4/13/15 Writ of Mandamus)

On April 13, 2015, the petitioner filed a writ of Mandamus compelling Clerk, Jenny Abbott Kitchings to file petitioner's NOTICE OF Appeal.

(4/22/15 Order on Appeals)

On April 22, 2015, The Honorable Chief Justice Jean Toal sent petitioner an order asserting that two Notice of Appeal were filed.

(6/12/15 Order Dismissal of Consolidated Appeal)

On June 2, 2015, the Honorable Paul E. Short Jr, signed an order dismissing the consolidated appeal for failure to provide a proof of service and pay the \$100.00 filing fee.

(6/15/15 Motion To Reinstate And Letter)

On June 15, 2015, the petitioner filed a motion to reinstate appeal, and a letter requesting the date appeal was filed.<sup>2</sup>

(6/23/15 Letters)

On June 23, 2015, Jenny Abbott Kitchings asserted a date the Court received the appeal and a filing fee of \$25.00.

(7/8/15 Letter)

On July 8, 2015, the petitioner asserting he wanted to know the date the appeal was filed.

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<sup>2</sup> Petitioner cannot find copy of Motion To Reinstate Appeal, but the record unequivocally reveal the petitioner filed the motion. See June 23, 2015 letter, and September 9, 2015 order.

Petitioner never received a response in reference to the exact date the appeal was filed by the Clerk Jenny Abbott Kitchings.

(9/14/15 Order Dismissing Motion To Reinstate)

On September 14, 2015, the petitioner received an order signed by the Court of Appeal Panel, that the panel was unable to discover that any material fact or principle of Law had been overlooked or disregarded, and as a result the petitioner's Motion To Reinstate Appeal was denied.

## ARGUMENT

The Court of Appeals erred in denying the petitioner's motion to reinstate appeal, where the record unequivocally reveal the petitioner timely corrected the deficiencies in both letters dated January 26 and February 27, 2015.

The Court of Appeals erred in denying the Petitioner's motion to reinstate appeal, because the Petitioner was denied his right to appeal forfeiture order dated December 13, 2013.

A petitioner is denied his right to appellate review when either; (1) he has requested, yet was denied an opportunity to seek appellate review, or (2) his

right to appellate review was not knowingly and intelligently waived. *Id.* (citing *King v. State*, 308 S.E.3d 348, 417 S.E.2d 868 (1992)).

In this case, the record unequivocally reveals the Petitioner requested for an appeal of the Order Dated December 13, 2013. See Order dated 12/13/13. Subsequent to writing Daniel E. Shearouse, inquiring about his appeal the petitioner received a letter from the Honorable Jenny Abbott Kitchings dated January 26, 2015, asserting an case no. 2014-002647, and that petitioner had to correct some deficiencies. See Letter Dated January 26, 2015.

Petitioner corrected the deficiencies on February 3, 2015. See Letters, Notice of Appeal, Order, And Proof of Service. On February 13, 2015, Jenny Abbott Kitchings responded the Court received petitioner's appeal, the case was assigned another case no. 2015-000238, and that petitioner had only a deficiency of a \$100.00 filing fee. See Letters Dated February 13, 2015. Curiously, on February 27, 2015, the Clerk Jenny Abbott Kitchings mailed petitioner another letter in equivoque to the January 26, 2015, letter asserting petitioner had to correct the same

deficiencies he corrected on February 3, 2015. See Letter Dated February 27, 2015.

By order of the Clerk, Petitioner's appeal was dismissed on April 3, 2015. See Order Dated April 3, 2015. Curiously, on June 2, 2015, by order of Paul E. Short the consolidated appeal was dismissed. See order Dated June, 2, 2015. Petitioner filed a motion to reinstate<sup>1</sup>

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<sup>1</sup> Petitioner cannot find motion to reinstate but the record reveal he filed one. See June 23, 2015, letter from Clerk, and September 11, 2015 order.

The Court of Appeal erred in unequivocally overlooking that the April 3, 2015, order was a dismissal based on petitioner's failure to comply with letters dated January 26, and February 27, 2015. At the time petitioner received the January 26, 2015, letter which was a year after he requested his appeal there was an appellate case no. In addition, on April 22, 2015, Jean Teal, responded to petitioner's writ of Mandamus asserting that two appeals was filed in this matter.

The second order dated June 2, 2015, unequivocally reveal that the order was attached to the Notice of Appeal

The January 26, 2015, unequivocally  
reveal

but assert the consolidated appeal was dismissed for failure to provide a proof of service and failure to pay \$100.00 filing fee.

The order fail to assert that the proof of service was also attached. See proof of service dated February 3, 2015.

The order fail to assert that the Clerk Jenny Abbott Kitchings filed the appeals prior to her asserting a filing fee to petitioner.

The order fail to assert that on the February 13, 2015, the Clerk asserted the court received the Notice of Appeal and the only deficiency petitioner had was a \$100.00 filing fee.

In addition subsequent to petitioner filing his motion to reinstate appeal the filing fee was reduced to \$25.00

The order fail to assert that the January 26 and February 27, 2015 letters are in equipoise. Petitioner's correction to the deficiencies to the former letter dated January 26, 2015, corrected the deficiencies to the latter letter dated February 27, 2015.

Under these circumstances, the Courts decision denying motion to reinstate appeal and denying petitioner appellate review should be reversed.

## CONCLUSION

For the reasons set forth herein, petitioner Derrick L. Cheekles, respectfully request this Court grant his petition for certiorari and reverse the Court of Appeals denying of motion to reinstate appeal.

cc. Mitzye Blackley      Respectfully Submitted,  
P.O. Box 3483      Derrick L. Cheekles  
Spartanburg, SC 29304 3483

Jenny Abbott Kitchings      Daniel E. Shearouse  
P.O. Box 11629      P.O. Box 11330  
Columbia, SC 29211      Columbia, SC 29211

This 8<sup>th</sup> day of October, 2015.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County  
J. Derham Cole, Circuit Court Judge

DERRICK LICHECKS, PETITIONER

v.

BARRY J. BARNETTE RESPONDENT

APPELLATE CASE NO. 2014 CO 2647

CERTIFICATION OF SERVICE

I certify that a true copy of petition for writ of certiorari and a copy of appendix have been served on Daniel E. Shearouse; P.O. Box 11330, Columbia, SC 29221, Jenny Abbott Kitchings; P.O. Box 11629, Columbia, SC 29211, and M. Hope Blackley; P.O. Box 3483, Spartanburg, SC 29304-3483

Derrick Cheeks 343108

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990 Wisacky Highway

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"Inter-Agency"  
"Mail"

Daniel E. Shearduse  
Clerk, Supreme Court  
P.O. Box 11330  
Columbia, SC 29211



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