

**RECEIVED**  
OCT 13 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Spartanburg County  
J. Derham, Cole, Circuit Court Judge

DERRICK L. CHEEKS, PETITIONER,

v.

BARRY J. BARNETTE, RESPONDENT

APPELLATE CASE NO. 2014-002647

APPENDIX X

DERRICK CHEEKS 343108  
LEE CIFGA 1140  
990 Wisacky Highway  
Bishopville, SC 29010

ROBIN C. FILE  
180 MAGNOLIA ST 3<sup>rd</sup> FLOOR  
SPARTANBURG, SC 29306

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**M. HOPE BLACKLEY**

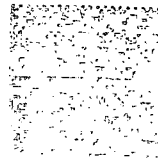
Clerk of Court, Spartanburg County

Post Office Box 3483

Spartanburg, South Carolina 29304-3483

RETURN SERVICE  
NECESSARY

POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES



UNITED STATES POSTAGE  
POSTAGE WILL BE PAID BY ADDRESSEE  
NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

*Lee*

RECEIVED

Derrick L Checks  
Pc Box 21767  
Columbia, SC 29221

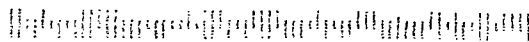
JAN 8 2011

LEE M. HOPE BLACKLEY

343108

F201100

28 JAN 11 29221



STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2011CP4200753

Barry J Barnette

Derrick L Cheeks

Tracy Markley

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  
 Rule 43(k), SCRCP (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRCP;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

*forfeiture confirmed*

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*[Signature]*  
Circuit Court Judge

2053

Judge Code

*12/13/13*

Date

For Clerk of Court Office Use Only

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
DEC 13 AM 11:53

12/13/13

12/13/13

2

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Barry J Barnette As Solicitor

Robin Clark File 180 Magnolia St., 3Rd Floor Spartanburg, SC 29306

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*M. Hope Blackley*  
M Hope Blackley - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2013 DEC 13 AM 11:44  
M. HOPE BLACKLEY

Notice of Motion for Extension of Time to Appeal

PLEASE TAKE NOTICE, that upon the annexed affidavit of Derrick L. Cheeks Sworn to on the ~~10~~<sup>13</sup> day of February, 2014, and upon all the proceedings in this Case, a Motion for Extension of Time to Appeal is made to this Court for an order reinstating the time for taking an appeal from the judgment order imposed by the Court of Common Pleas of the County of Spartanburg rendered on the 13 day of December, 2013 an order was entered upon the above named defendant for the forfeiture of funds, upon the ground that said defendant's failure to file a notice of appeal in a timely fashion resulted from the said order being mailed to the South Carolina Department of Correction P.O. Box address and not mailed to the appellant's institutional address and without inmates number, so that appellant could receive the order in time to file the necessary appeal within the thirty day time limit, and for such other and further relief as the court may deem just and proper.

DATED:

Derrick L. Cheeks, Pro-Se.  
Lee Correctional Institution  
990 Wisacky Hwy.  
Bishopville, S.C. 29010

Other Counsel of Record:  
Barry J. Barnette, Solicitor  
Spartanburg County 7<sup>th</sup> Cir. Solicitor's office  
180 Magnolia St.  
Spartanburg, S.C. 29304

Affidavit In Support Of Motion For Extension Of Time To Appeal

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Derrick L. Cheeks, being duly sworn, deposes and says:

That I am the defendant herein and submit this affidavit in support of my application for leave to serve a notice of appeal within thirty days after the granting of an order permitting me to file a motion for extension of time of civil procedure law of the State of South Carolina.

On December 13, 2013, an order was entered for the forfeiture of funds by the Hon. Decham Cole.

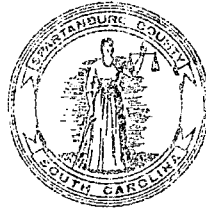
I failed to file a Notice of Appeal within thirty days because:

Though no fault of appellant's own, on December 13, 2013, the appellant was summoned to court by Spartanburg County without any type of notice from Lee Core Inst to appear in civil court for the forfeiture of funds. Appellant didn't find out what he was being transferred to Spartanburg County for until he got there. The case was dismissed on the 13th day of December 2013, and judge stated that he would send appellant the decision. The appellant then asked the court for a continuance so that he could show the court that the case was in fact dismissed and that the funds involved in this civil proceeding should be returned to him. The appellant stated to Judge that his charge had already been dismissed, and (See) Exhibit A. But for some reason the courts proceeded with hearing and entered an order for the forfeiture of funds. Then mailed the imposed order to the South Carolina Department of Correction P.O. Box Address, which is not the appellant's inmate number or address (see Exhibit B) and mailed it without appellant's inmate number, so that appellant could receive the order in time to file the necessary appeal with the thirty day time limit, and appellant would further state that upon receiving said order on January 8, 2013, the appellant's institution was on lockdown and the entire institution was quarantined for two weeks making it hard for appellant to even file a timely notice of appeal. After institution came off lockdown from being quarantined because of flu epidemic, the institution went back on lockdown because of the snow and ice. Last after institution came off lockdown because of snow the dorm appellant reside in had a gang riot and the dorm appellant reside in is still on lockdown as of now. The appellant haven't been to the law library in over 2 months but if the order would have sent the order to appellant's institution he would have had plenty of time to appeal the order prior to the lockdown situation that occurred.

Wherefore, I respectfully pray this court extend the time within which a notice of appeal may be served and filed appellant should not be held responsible for failure to file because this was done on purpose so appellant couldn't appeal Judge's decision in a timely manner the judge and solicitor didn't send for the P.O. Box Address when I was transferred to Spartanburg County because if they would have, I wouldn't have been present for my hearing.

# Spartanburg County

Spartanburg County Court House  
180 Magnolia Street  
P. O. Box 3433  
Spartanburg, SC 29104-3433



Phone (864) 596-2591  
Fax (864) 596-2239

4

**M. Hope Blackley**  
Clerk of Court

**Gail Merritt**  
Assistant Clerk of Court

February 21, 2014

Derrick L. Cheeks #343102  
Lee Correctional Institution North 1140  
990 Wisacky Highway  
Bishopville SC 29010

Re: Letter Requesting Appeal to be sent to Court of Appeals  
2011-CF-4200753

Mr. Cheeks,

It is the responsibility of the party filing an appeal to send that appeal to the Court of Appeals. The Clerk of Court does not forward those. Enclosed are the documents you sent us to forward to the Court of Appeals.

M. Hope Blackley  
Clerk of Court

By: *Pat Gobites*  
Pat Gobites  
Common Pleas Division

Derrick L. Cheeks

Lee CI Flo North 1140  
790 Whiskey Highway  
Bishopville SC 29010

November 24, 2014

Daniel Shearouse

PO Box 11330  
Columbia SC 29211

P.S: The Status Of Notice Of Intent  
To Appeal

Dear Shearouse!

On December 13, 2013 I went to a forfeiture hearing in Spartanburg County. The hearing was heard by the Honorable William Cole. Pursuant to the judge's ruling I was told that the order would be mailed to me. I finally received the order on January 8, 2014 due to the fact that the

order was mailed to a P.O. Box in ~~South~~ Columbia without my Inmate Number. At the time I received the order the institution was on lockdown continuously for a flu epidemic, the snow and ice, and a big riot. I wrote Spartanburg County in the month of February requesting a notice of Intent To Appeal and Extension of Time To Appeal due to the Judge purposely mailing my order to the wrong address. The County responded that I had to file my own appeal. I then sent a Notice of Intent to the Honorable Tanya A. Gee's P.O. Box. At this time I haven't received any notice from her informing me of anything about my Appeal. I even have the Deem Sgt to verify her walking me to the Mail Room to forward this Appeal. Please, I would like to know something about my Appeal.



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

January 26, 2015

Derrick L. Checks, 343108  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville SC 29010

Re: The State v. Derrick L. Checks  
Appellate Case No. 2014-002647

Dear Mr. Checks:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the date you received copies of the order(s) and/or sentencing sheet(s) on appeal is not stated.
- The notice of appeal is not accompanied by a redacted copy of the order(s) and/or sentencing sheet(s) challenged on appeal.
- A proof of service has not been provided showing service upon opposing counsel. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

*v. Claire Allen, Deputy*

CLERK

cc: Barry Joe Barnette, Esquire  
Robin Clark File, Esquire

Derrick Lamar Cheeks

Lee CI Florence North 1140  
990 Wisacky Highway  
Bishopville, NC 29010

February 3, 2015

The Honorable M. Hope Blackley  
Clerk of Court for Spartanburg County  
Post Office Box 3483  
Spartanburg, SC 29104-3483

RE: ROBIN C. FILE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF  
BARRY A. DAEMETTEL, RESPONDENT, V. DERRICK L. CHEEKS, APPELLANT  
CASE NO. 2011-CO-42-05753

Dear Ms. Blackley:

Enclosed is a notice of appeal in the above case. Please clock stamp, forward a copy back to me, and forward a copy to Robin C. File.

Sincerely,

Derrick L. Cheeks 343108  
Lee CI Florence North 1140  
990 Wisacky Highway  
Bishopville, SC 29010

CC: Robin C. File, Assistant Solicitor  
Spartanburg County Judicial Center  
180 Magnolia Street, 3<sup>rd</sup> Floor  
Spartanburg, SC 29306  
Attorney for Respondent

Derrick Lamar Cheeks

Lee CI Florence North 1140  
990 Wisacky Highway  
Bishopville, SC 29010

February 3, 2015

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

RE: ROBIN C. FILE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF  
BARRY J. BARNETTE, RESPONDENT V. DERRICK L. CHEEKS, APPELLANT  
CASE NO: 2011-CP-42-00753

Dear Ms. Kitchings:

Enclosed is a notice of appeal in the above case. Also enclosed are the following:

1. A copy of the order(s) (judgment) which (are) to be challenged on appeal.
2. Proof of service of the notice of appeal on the respondent(s).

Sincerely,

Derrick L. Cheeks 343108  
Lee CI Florence North 1140  
990 Wisacky Highway  
Bishopville, SC 29010  
Attorney for Appellant

Other Counsel of Record:  
Robin C. File, Assistant Solicitor  
Spartanburg County Judicial Center  
180 Magnolia Street, 5<sup>th</sup> Floor  
Spartanburg, SC 29306  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM SPARTNABURG COUNTY  
IN THE COURT OF COMMON PLEAS

Honorable Derham Cole  
Circuit Court Judge of the Seventh Judicial Circuit

---

CASE NO: 2011-CP-42-00753

---

Robin C. File, as Personal Representative of the Estate of Barry J. Barnette,

Respondent

v.

Derick L. Checka,

Appellant

---

**NOTICE OF APPEAL**

---

Appellant appeals the order of forfeiture, dated December 13, 2013 of the Honorable Derham Cole. This appeal is taken pursuant to the December 13, 2013 order signed by the Honorable Derham Cole that was received by Appellant on January 8, 2014.

Sincerely,

Derrick L. Cheeks 343108  
Lee Ct Florence North 1140  
990 Wisacky Highway  
Bishopville, SC 29010  
Attorney for Appellant

Robin C. File, Assistant Solicitor  
Spartanburg County Judicial Center  
180 Magnolia Street, 3<sup>rd</sup> Floor  
Spartanburg, SC 29306  
Attorney for Respondent

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM SPARTNABURG COUNTY  
IN THE COURT OF COMMON PLEAS

Honorable Derham Cole  
Circuit Court Judge of the Seventh Judicial Circuit

---

CASE NO: 2011-CP-42-00753

---

Robin C. File, as Personal Representative of the Estate of Barry J. Barnette,  
Respondent

v.

Derrick L. Cheeks,  
Appellant

---

**PROOF OF SERVICE**

---

I certify that I have served the Notice of Appeal on Barry J. Barnette by depositing a copy of it in the United States Mail, postage prepaid, on February 3, 2015 addressed to his attorney of record, Robin C. File, 180 Magnolia Street, 36d Floor, Spartanburg, SC 29306 [by personally delivering a copy of it to his attorney of record, Robin C. File, at his office at 180 Magnolia Street, 3<sup>rd</sup> Floor, Spartanburg, SC 29306 on February 3, 2015].

Sincerely,

Derrick L. Cheeks 343108  
Lee CI Florence North 1140  
990 Wisacky Highway  
Bishopville, SC 29010  
Attorney for Appellant

M. Hope Blackley  
Clerk of Court  
Post Office Box 3483  
Spartanburg, SC 29304-3483

Robin C. File, Assistant Solicitor  
Spartanburg County Judicial Center  
180 Magnolia Street, 3<sup>rd</sup> Floor  
Spartanburg, SC 29306  
Attorney for Respondent

7

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2011CP4200753

Barry J Barnette

Derrick L Cheeks

Tracy Markley

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 43(k), SCRPC (Settled);
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit).
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court: *Perfection confirmed*

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2011 DEC 13 AM 11:21  
M. C. BLAUGHER

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*[Signature]*  
Circuit Court Judge

2053      12/13/13  
Judge Code      Date

For Clerk of Court Office Use Only

12/13/13

12/13/13

7

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Barry J Barnette As Solicitor ,

Robin Clark File 180 Magnolia St., 3Rd Floor Spartanburg, SC 29306

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*M. Hope Blackley*  
M Hope Blackley - Clerk of Court *Pat Roberts*

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2013 DEC 13 AM 11:44  
M. HOPE BLACKLEY



8

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

February 13, 2015

Derrick L. Cheeks, 343108  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville SC 29010

Re: Barry J. Barnette v. Derrick L. Cheeks  
Appellate Case No. 2015-000238

Dear Mr. Cheeks:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at [www.sccourts.org/courtreg](http://www.sccourts.org/courtreg). Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at [www.sccourts.org/courtOrders/HTMLFiles/2014-04-15-02.htm](http://www.sccourts.org/courtOrders/HTMLFiles/2014-04-15-02.htm). Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Barry J. Barnette, Respondent,

v.

Derrick L. Cheeks and Tracy Markley, Defendants,

Of Whom Derrick L. Cheeks is the Appellant.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

*V. Christine Allen, Deputy*

CLERK

cc: Robin Clark Hale, Esquire



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## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11529  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

February 13, 2015

Derrick L. Cheeks, 343108  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville SC 29010

Re: Barry J. Barnette v. Derrick L. Cheeks  
Appellate Case No. 2015-000238

Dear Mr. Cheeks:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The required filing fee has not been submitted. The correct filing fee is \$100.00.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Robin Clark File, Esquire

Derrick Lamar Cheeks

10

Lee CI Florence North 1140

990 Wisockey Highway

Bishopville SC 29010

February 19, 2015

The Honorable Daniel E. Shearouse

Clerk, Supreme Court

Post Office Box 11330

Columbia, South Carolina 29211

RE: Barry J. Barnett v Derrick L. Cheeks

Appellate Case No. 2015-000238

Dear Mr Shearouse:

Would you please explain to me why do I have to pay a filing fee as an indigent appellant. Ms Jenny Abbot Kitchings forwarded me two letters one on January 26, 2015 and one on February 13, 2015. Curiously she didn't assert anything about the filing fee being a deficiency in the January 26, 2015 letter. In addition she asserts in the February 13, 2015 that I only have a ten day deadline to pay the filing fee or my appeal

will be dismissed. Mr Shearouse you are very cognizant<sup>10</sup> of the fact that I have been trying to file this appeal since the beginning of 2014 but Ms Jenny Abbott Kitchings wait a whole year later to inform me of a filing fee deadline, as if I'm out in society getting paid for my work hours. To put a filing fee burden on me as an indigent appellant would be a violation of my equal protection rights of the United States Constitution 5<sup>th</sup> and South Carolina Constitution Article 1<sup>st</sup> § 3. I'm similarly situated to each and every individual incarcerated in the Department of Corrections that's appealing a plethora of judicial orders. In closing I have yet to see a ruling by the United States or South Carolina Supreme Court asserting that all indigent appellants have to pay their filing fees. Enclosed are copies of the letters dated January 26, 2015 and February 13, 2015. Please forward a copy of this letter to Jenny Abbott Kitchings.

Sincerely,

Demick S. Cheek



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMNER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

February 27, 2015

Derrick L. Cheeka, 343108  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville SC 29010

Re: The State v. Derrick L. Cheeks  
Appellate Case No. 2014-002647

Dear Counsel:

This is our second letter regarding deficiencies.

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the date you received the copies of the order(s) and/or sentencing sheet(s) on appeal is not stated.
- The notice of appeal is not accompanied by a redacted copy of the order(s) and/or sentencing sheet(s) challenged on appeal.
- A proof of service has not been provided showing service upon opposing counsel. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

*V. Charles Allen, Deputy*

CLERK

cc: Gary Joe Bonnette, Esquire  
Robin Clark Hill, Esquire

Derrick L. Cheeks

Lee CI FSA 1140

990 Wisacky Highway

Bishopville, SC 29010

March 10, 2015

Jean Toal

Chief Justice, Supreme Court South Carolina

Post Office Box 11330

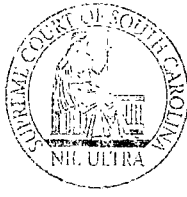
Columbia, South Carolina 29211

RE: Barry J. Barnette v Derrick L. Cheeks

Appellate Case No. 2014-002647.

Dear Chief Justice Toal:

On December 13, 2013, a forfeiture hearing was held in front of the Honorable Bertram Cole in the Court of Common Pleas in Spartanburg County. The order was signed the same day but I didn't receive it til January 8, 2014. I have been trying to file my appeal since 2014 but your clerk's refuse to file it please investigate this matter for me.



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## The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE: (803) 734-1080  
FAX: (803) 734-1499

March 12, 2015

Mr. Derrick L. Cheeks, #343108  
Lee Correctional Institution  
990 Wilsacky Highway  
Bishopville, SC 29010

Re: *The State v. Cheeks*, Appellate Case No. 2014-002647  
and *Hansen v. Cheeks*, Appellate Case No. 2015-000238  
Lower Court Case No. 2011CP4200753

Dear Mr. Cheeks:

This responds to your letter to Chief Justice Toal dated March 10, 2015. Please be advised that the Chief Justice cannot consider this *ex parte* communication about the above appeals that are pending before the South Carolina Court of Appeals.

Instead, you need to correct the deficiencies that the Court of Appeals has identified in its letters to you, or if you feel that some deficiency does not exist, you need to raise that issue to the Court of Appeals. I do warn you that a failure to correct the deficiencies or to respond to the letters of the Court of Appeals may result in the dismissal of these appeals by the Court of Appeals.

Very truly yours,

CLERK

cc: Earl-Debra Greig, Rawlin (with copy of letter and attachments)  
Robert G. McQuire (with copy of letter and attachments)  
The Honorable Jerry Abbott King (with copy of letter and attachments)

# The South Carolina Court of Appeals

The State, Respondent,

v.

Derrick L. Cheeks, Appellant.

Appellate Case No. 2014-302647

The Honorable J. Derham Cole  
Spartanburg County  
Trial Court Case No. 2011CP4200753

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## ORDER

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Appellant has failed to comply with the two letters sent by this Court dated January 26, 2015 and February 27, 2015 requesting the following corrections: a redacted copy of the order(s) and/or sentencing sheet(s) challenged on appeal, as required by Rule 203(d)(1)(B)(ii) of the South Carolina Appellate Court Rules and a proof of service showing timely service upon opposing counsel, as required by Rule 203(d)(1)(B)(i), SCACR. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Christine Allen, Deputy  
CLERK

Columbia, South Carolina

cc:  
Derrick L. Cheeks 343108  
Barry Joe Barnett Esquire  
Robin Clark Fife, Esquire

**FILED**  
April 3, 2015



STATE OF SOUTH CAROLINA	)	IN THE SUPREME COURT OF
	)	
COUNTY OF SPARTANBURG	)	SOUTH CAROLINA
	)	
BARRY J. BARNETTE, AL	)	2011-CP-42-0753
ACTING SHERIFF FOR	)	
THE SEVENTH JUDICIAL	)	APPELLANT'S WRIT
CIRCUIT	)	OF MANDAMUS TO COMPEL
	)	COURT OF APPEAL TO FILE
v.	)	NOTICE OF INTENT TO
	)	APPEAL
	)	
DERHAM COLE	)	

Now comes the Appellant, who moves pursuant to authority of Writ of Mandamus, for an order compelling the South Carolina Court of Appeal Clerk Jenny Abbott Kitchings to file

Notice of Intent to Appeal.

On December 14, 2014, a forfeiture hearing was held in front of the Honorable Derham Cole in the court of common pleas in Spartanburg County. I received the order signed by the Judge on January 8, 2014, due to the fact the order was mailed to a P.O. Box in Columbia, SC, instead of the institution and without my inmate number on it. (See Attachment Envelope Dated January 8, 2014). At the time I received the order the institution was on lockdown due to the flu epidemic and snow storm. Without any access to the Law Library I did the best I could in writing up a Notice of Appeal and a Motion for Extension of Time. I mailed a copy to the clerk M. Hester Blackley of Spartanburg County and the Clerk Tonya A. Gee's P.O. Box. Spartanburg County clerk responded that I had to file my own Appeal. (See Attachment Letter Dated February 21, 2014). I never received a response from Tonya Gee so I wrote the Honorable Daniel E. Sheerorse inquiring about my Appeal. (See Attachment Letter Dated November 24, 2014). He responded that he searched the records and didn't find where any appeal had been filed. (See Attachment Letter Dated December 1, 2014). I responded back to him asserting did

he check ms. Gee's P.O. Box and enclosed a copy of the Notice of Appeal mailed to Spartanburg County (See Attachment Letter Dated December 9, 2014). Curiously on January 26, 2015, I

received a letter from the Honorable Jenny Abbott Kitchings, asserting an Appellant Case No: 2014-002647 asserting that I had to correct some deficiencies, *See Attachment Letter Date 1/26/15*

Blackley and Jenny-Abbott Kitchings. (See Attachments Letters, Notice of Appeal, Copy of *On February 3, 2015, I corrected the deficiencies and mailed a copy to M. Hope*

Order and the court's decision dated February 3, 2015). On February 13, 2015, Jenny Abbott Kitchings responded to the court received my Notice of Appeal, the case had been assigned another case file: 2015-002138, and asserted the only deficiency I had to correct was a \$100.00 filing fee. (See Attachment Letter Dated February 13, 2015).

I wrote Daniel E. Shearouse, inquiring why the filing fee was \$100.00 since I was an indigent Appellant but received no response. (See Attachment Letter Dated February 19, 2015).

Curiously, on February 27, 2015, Jenny Abbott Kitchings mailed a letter in equivoque to the January 26, 2015, letter asserting that I had to correct the same deficiencies I had just corrected on February 3, 2015. (See Attachment Letter Dated February 27, 2015).

I wrote to Chief Justice Jean Toal asserting that the Court of Appeal clerk refuse to file the appeal. (See Attachment Letter Dated March 10, 2015).

On March 12, 2015, Daniel E. Shearouse responded the Chief Justice cannot consider Ex Parte Communication. (See Attachment Letter Dated March 12, 2015).

Curiously, on April 6, 2015, I received an order from the Court of Appeals stating that I failed to comply with the letters dated January 26, 2015, and February 27, 2015, and as a result my appeal was dismissed. (See Attachment Letter Dated April 6, 2015).

The record unequivocally reveal the January 26, and February 27, 2015 letters are in equivoque in reference to the deficiencies I had to correct, I corrected the deficiencies on February 3, 2015, as a result the Court of Appeal's responded my appeal was received, filed, and the only deficiency I had to correct was \$100.00 filing fee. Due to the fact

the letters are in equiptise my correction to the former letter dated January 26, 2015 corrected the deficiencies in the letter letter dated February 27, 2015.

The failure to file the Appellant's Appeal would result in a violation of his Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States, as well as Article 1 § 3 of the South Carolina Constitution, and otherwise act to deprive the Appellant of due process of law, as well as his fundamental right to an appeal

Respectfully Submitted,

S/  
Derek L. Cheeks #343108  
Lee C.I. F6A 1140  
990 Wisacky Hwy.  
Bishopville SC 29010

## The Supreme Court of South Carolina

Barry J. Banette, as Acting Solicitor for the Seventh  
Judicial Circuit, Respondent,

v.

Derrick L. Checks, Petitioner

Appellate Case No. 2015-000815

Lower Court Case No. 2011CP4200753

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### ORDER

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Petitioner seeks a writ of mandamus to compel the Clerk of the South Carolina Court of Appeals to file his notice of appeal.

The Court of Appeals has filed two notices of appeal<sup>1</sup> in this matter. This renders moot the only relief that has been requested in the petition for a writ of mandamus.

Further, to the extent that petitioner may be asking this Court to review the actions taken by the Clerk of the Court of Appeals once the notices of appeal were filed, the Court has no jurisdiction. Instead, any issue of this nature is a matter for the Court of Appeals to consider at the first instance,<sup>2</sup> assuming the issue is timely and properly

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<sup>1</sup> These appeals are filed as Appellate Case Numbers 2014-002647 and 2015-000815. Since both appeals apparently involve the same order, it is unclear why two appellate appeals have been opened.

<sup>2</sup> If, of course, petitioner is aggrieved by a final decision of the Court of Appeals, he may seek review as provided by Rule 242 of the South Carolina Appellate Court Rules.

raised to the Court of Appeals.

Accordingly, the petition for a writ of mandamus is denied.



\_\_\_\_\_  
C.J.  
FOR THE COURT

Columbia, South Carolina

April 22, 2013

cc: The Honorable Jenny Abbott Kitchings  
 Derrick L. Cheeks, 343108  
 Johnitor Barry Joe Barnette  
 Robin Clark Wm. Esquire

# The South Carolina Court of Appeals

Barry J. Barnette, as Acting Solicitor for the Seventh  
Judicial Circuit, Respondent,

v.

Derrick L. Cheeks, Appellant.

Appellate Case No. 2014-002647

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## ORDER

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On April 3, 2015, this Court dismissed State v. Derrick L. Cheeks, Appellate Case Number 2014-002647, for failure to correct deficiencies in the notice of appeal; namely, the failure to provide a copy of the order and/or sentencing sheet(s) challenged on appeal, or a proof of services showing timely service upon the State. However, on February 6, 2015, we received a document entitled "Notice of Appeal" bearing the caption Robin C. File, as Personal Representative of the Estate of Barry J. Barnette v. Derrick L. Cheeks. An order confirming the forfeiture was attached to this filing. We opened a new appeal and assigned the Appellate Case Number 2015-000238.

At this time, these two cases are consolidated using the caption and appellate case number shown above. Furthermore, the consolidated appeal is dismissed for the failure to provide a proof of timely service of the notice of appeal and failure to pay the \$100 filing fee. The remittitur will be sent fifteen days after the date of filing of this order, as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

  
\_\_\_\_\_, J.  
FOR THE COURT

**FILED**  
APR 15 2015  
COURT OF APPEALS  
COLUMBIA, SOUTH CAROLINA

Derrick L. Cheeks 343108

Lee CIFGA 1140

990 Wisacky Highway

Bishopville, SC 29010

June 15, 2015

Jenny Abbott Kitchings

P.O. Box 11629

Columbia, SC 29211

RE: Appellate Case No. 2014-002647

Dear Ms Kitchings:

I am a party to the above appellate case no. I would like to know the date this appeal was filed.

Sincerely  
Derrick Cheeks



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## The South Carolina Court of Appeals

JENNY ABBOTT KITCHENS  
CLERK

M. CLAIR ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1321 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1690  
FAX: (803) 734-1839  
www.sccourts.org

June 23, 2015

Derrick Cheeks, #41108  
Lee Correctional Institution  
990 Wilsack Highway  
Bishopville SC 29010

Re: Barry J. Barnette v. Derrick Cheeks  
Appellate Case No. 2014-002647

Dear Mr. Cheeks:

The Court is in receipt of your letter dated June 15, 2015, requesting when this Court receives your formal notice of appeal. According to our records, we received your initial notice of appeal on December 11, 2014.

Very truly yours,

*M. Claire Allen, Deputy*

CLERK

cc: Barry Joe Barnette, Esquire  
Robin Clark File, Esquire

cc: Barry Joe Barnette, Esquire  
Robin Clark File, Esquire



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## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE (803) 734-1890  
FAX (803) 734-1839  
www.sccourts.org

June 23, 2015

Derrick L. Cheeks, 343102  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville SC 29010

Re: Barry J. Barnett v. Derrick Cheeks  
Appellate Case No. 2014-002647

Dear Mr. Cheeks:

Upon reviewing your motion to reinstate, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or the Court will not consider your motion and will remit your appeal:

- The required filing fee has not been submitted. The correct filing fee is \$25.00.
- A proof of service has not been provided showing service upon opposing counsel. You must serve and file a proof of service substantially in the format shown on Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK.

cc: Barry Joe Barnette, Esquire  
Robin Clark File, Esquire

Derrick L. Cheeks

21

Lee CI F6A 1140

990 Wisacky Highway

Bishopville, SC 29010

July 8, 2015

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals

Post office Box 11629

Columbia, SC 29211

RE: Appellate Case No: 2014-002647

Dear Jenny:

I'm in receipt of your letter dated June 23, 2015, asserting you received my notice of appeal on December 11, 2014. This is my third letter and I never asserted in my first two letters I was requesting a date when the

Court received my notice of appeal. I unequivocally asserted in my letters that I wanted to know the date my appeal was filed by the Clerk.

The Court's appellate case number contradicts the Court's assertion that I have to correct the deficiency of a \$25.00 filing fee. The record unequivocally reveals an appellate case no: 2014-002647. In addition Chief Justice Jean Toal ruled in her response to appellant's summary judgement motion that appellant's appeal had been filed. For the third time appellant's requesting the "date" the Court filed appellate case no: 2014-002647.

July 8, 2015

S/ Derrick Charles

# The South Carolina Court of Appeals

Barry J. Barnette, as Acting Solicitor for the Seventh  
Judicial Circuit, Respondent,

v.

Derrick L. Cheeks, Appellant.

Appellate Case No. 2014-002647

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## ORDER

---

After careful consideration of the motion to reinstate, which this Court construes as a petition for rehearing of the dismissal of this appeal, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

*Paul E. Shertzer, Jr.*

J.

*John D. Smith*

J.

*Joseph M. Carreter*

A.J.

Columbia, South Carolina

cc:  
Derrick L. Cheeks, 343708  
Barry Joe Barnette, Esquire  
Robin Clark Fife, Esquire  
Derrick L. Cheeks 343708

**FILED**  
9/11/15

Derrick L. Cheeks 343108

Lee CI FGA 1140

990 Wisacky Highway

Bishopville, SC 29010

RECEIVED

OCT 13 2015

SC Court of Appeals

October 8, 2015

Ms. Hope Blackley

P.O. Box 3483

Spartanburg, SC 29304-3483

RE: Appellate Case No. 2014-002647

Dear Ms Blackley:

Enclosed is a writ of certiorari and appendix to the above case no. Please clock stamp, file, forward a copy back to me, and Robin C. File; 180 Magnolia St, 3rd Floor; Spartanburg, SC 29306. CC. Jenny Abbott Kitchings; Daniel E. Shearouse

Derrick L. Cheeks 343108

Lee CI FGA 1140

990 Wisacky Highway

Bishopville, SC 29010

**RECEIVED**

OCT 13 2015

SC Court of Appeals

October 8, 2015

The Legislative Black Caucus

Valerie Tresvant

1105 Pendleton Street Suite 207

207 Solomon Blatt Building

Columbia, SC 29201

RE: Appellate Case No. 2014-002647

Dear Ms Tresvant:

Thank you for responding to my letter and reviewing the documents that I mailed to you. Enclosed is the writ of certiorari to the above case no. As you are already aware of

I have been denied my constitutional right to appeal the Judge's Order. The worst feeling in the World is having a voice and not being able to be heard.

At the time this Judge confirmed this forfeiture to the State he was cognizant that he had no evidence to support his ruling that's why my order was mailed to a P.O. Box instead of the institution in mat. It's not the appellate court's duty to take me threw unnecessary hurdles to afford me my right to appellate review to cover up what this judge did.

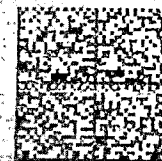
CC. Mitipe Blackley; Jenny Abbott Kitchings  
Daniel E. Shearcase

Derrick Cheeks 343108

Lee CI F6A 1140

990 Wisacley Highway

Bishopville, SC 29010



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**RECEIVED**

OCT 13 2015

SC Court of Appeals

Jenny Abbott Kitchings

Clerk, Court of Appeals

P.O. Box 11629

Columbia, SC 29211