

Tuesday, December 01, 2015

RECEIVED

DEC 03 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street, Suite 201  
Columbia, South Carolina 29201

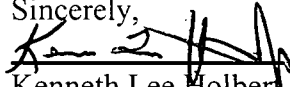
RE: Kenneth Lee Holbert Jr., Appellant v. Greenville Technical College,  
Respondent, Case No. 2015-000140

Dear Ms. Kitchings:

Please find my Motion to reinstate case due to Administrative remittitur and Petition for Rehearing of Administrative remittitur. I am submitting this response in compliance with the SC Judicial department Rule 240, and submitted to the lower court.

I respectfully request that the court reinstate the case based on the information found in the motion.

Sincerely,

  
Kenneth Lee Holbert, Jr.  
104 Sun Blvd  
Easley, SC 29642  
(864) 350-4578  
Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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DEC 03 2015

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

SC Court of Appeals

Alexander S. Macaulay, Circuit Court Judge

Court of appeals Case No. 2015-000140  
COURT OF COMMON PLEAS Case No(s):2013CP2300613

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
2015 NOV 30 PM 3 48

Kenneth Lee Holbert, Jr.

Appellant

v.

Greenville Technical College

Respondent.

Motion to reinstate case due to Administrative remittitur and Petition for  
Rehearing of Administrative remittitur

This Motion and grievance for Petition for rehearing of appeal based on the appeals court  
Remittitur error in calculations and our not receiving documents sent through the U.S. Mail.

**Background and History**

I presume that the court has these rules in place to ensure compliance and not to dismiss  
lawsuits. In this matter I have worked tirelessly to make sure that I have notified the court and  
made sure that the status of the transcript was known and its delivery date completed in  
compliance with instructions. I notified the SC court of appeals by letter which was entered into  
the file on July 10, 2015, see (*exhibit 001*), that I had ordered the transcript from the trial in the  
Greenville County court of common pleas COURT OF COMMON PLEAS Case  
No(s):2013CP230061. The court reporter Teresa Johnson's records have a deposit date of the

check as being July 31, 2015, see (Exhibit 2). According to SC rule 207 the transcript must be received no later than 60 days after the date of request. Also, The Office of Court Administration may grant an extension of up to ninety (90) days. An extension was granted to the court reporter according to rule 207 and the Office of Court Administration notified all parties and the clerk of the appellate court in accordance with rule 207, which filed the extension on October 28, 2015 into the file.

However, the court of appeals states that they sent a transcript overdue letter to me on August 31, 2015, see (Exhibit 01) which I did not receive, with a request to advise the court of the status within 10 days, according to the information I downloading using the C-Track system. The letter sent on August 31, 2015 was sent prematurely. The court dismissed the case on October 20, 2015 and states that they notified me by mail which I did not receive. However, the court granted an extension to deliver the transcript on October 28, 2015 and entered into the court of appeals system.

According to the South Carolina Rule 207, In a letter sent to me that I never received dated August 31, 2015, it states that the transcript was delinquent. This letter appears to be in error. The transcript was not delinquent based on the filings in the court case management system. There was an error in the entry to the case management system that apparently generated the letter. The dismissal of the suit on October 20 is indirectly due to not receiving the transcript update. However in accordance with rule 207(4) , “Upon the granting of any extension of time for delivery of the transcript, the Office of Court Administration shall notify all parties and the clerk of the appellate court”. The court administration did notify the court of appeals of the extension and it was entered into the file on October 28, 2015. This notification should have satisfied the requirements of the court of appeals regarding notification.

This motion is made due to the miscommunication that has occurred outside the normal process and control of all parties.

Based on the information in the South Carolina Appellate case management system see attached Exhibit 1, The South Carolina Court of Appeals shows an event of granting of extension to file the transcript was filed by the SC Court Administration on October 28, 2015

which is within the 15 day time limit for filing a motion for rehearing in accordance with rule 221, and in compliance with rule 240. The file date of October 28, 2015 does in fact directly answer the court's request for a transcript status dated August 31, 2015 which I located on the case management system.

The letter from the court dated August 31, 2015 appears to be in error based on the filed date of my notification to the court of the ordering of the transcript. On the date, August 31, 2015 the transcript was not delinquent as other documents correlate.

Teresa Johnson's email dated September 10, 2015 which is attached Exhibit 2, states that her records show a deposit date of July 31, 2015, so the 60 days allowable to produce the transcript has not expired as of August 31, 2015.

My records show a payment for transcript delivery date of July 10, 2015 according to the case management system which would provide a transcript due date of September 10, 2015 which is after the erred letter date of August 31, 2015.

Ms. Johnson notified me that the transcript was ready so I contacted the court of appeals by phone on November 13, 2015 to immediately advise the court that the transcript was ready to be delivered to the court as required in their letter dated July 28, 2015. However, on Friday November 13, 2015, for the first time, I was notified by Phone, that my case, 2015-000140, has been dismissed as of October 20, 2015. I was then notified for the first time by phone that I had to file a motion for reinstatement. I was then placed on hold and after a few minutes, I was notified that the case would be remitted that day so I would not be able to petition for rehearing.

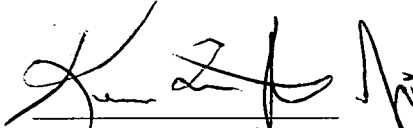
The person I spoke with could not provide me with the details of the courts letter dated August 31, 2015. However, they did notify me of the ability to view the letter on the Case Management system which I immediately did. In the case management system, the extension for filing the transcript was granted and filed in the court of appeals on October 28, 2015.

I believe that the rules of the court are put in place to make sure that legitimate efforts are being made to ensure that documents are presented in accordance with the time requirements of the rules. I paid for the transcript on July 10, 2015 and was told by the court reporter in exhibit 2 that according to her calculations the time had not expired and that if needed she would contact

me with an update. She did contact me and told me that she was filing an extension which she did and it was granted.

It is for the reason listed above and the corresponding dates that provide evidence of compliance and continual request for updates that I am petitioning the court to reinstate my appeal based on those attached documents and following reasons. I have not received any correspondence from the court by mail since I began working out of State on August 27, 2015 with my out of state project completion of November, 11, 2015. However, I have received email correspondence from Teresa Johnson dated September 10, 2015 regarding the transcript and from the South Carolina Court Administration dated October 28, 2015 granting an extension for the delivery of the transcript. Since the extension provides the answer sought by the court and was file on October 28, 2015 I am asking that the court reinstate the case based on that filing as being in compliance. I also sent a status update request email on November 8, 2015 regarding the transcript status update, see (Exhibit 3)

Tuesday, December 01, 2015



Kenneth Lee Holbert, Jr.  
104 Sun Blvd  
Easley, SC 29642  
(864) 269-2838  
Appellant

Exhibit 01



## 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](http://www.sccourts.org)

August 31, 2015

Kenneth Lee Holbert, Jr.  
104 Sun Blvd.  
Easley SC 29642

Re: Kenneth Holbert v. Greenville Technical College  
Appellate Case No. 2015-000140

Dear Mr. Holbert:

Our records indicate that the transcript in the above matter should have been delivered. As of today's date, we have not received any information indicating that the court reporter has been granted an extension. Further, you have not notified us that you have failed to receive the transcript, nor have we received your initial brief.

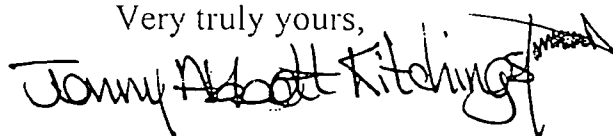
If you have not yet received the transcript, Rule 207 of the South Carolina Appellate Court Rules requires you to contact the Office of Court Administration. The address for Court Administration is as follows:

South Carolina Office of Court Administration  
1220 Senate Street, Suite 201  
Columbia, SC 29201

Be sure to copy the Court and opposing counsel with all correspondence concerning the transcript.

Please advise the Court of the status of the transcript within ten (10) days of the date of this letter, or your appeal will be dismissed.

Very truly yours,

Handwritten signature of Jonny Abbott Kitching in black ink. The signature is written in a cursive style and includes a flourish at the end.

CLERK

cc: Courtney Michelle Laster, Esquire  
Charles J. Boykin, Esquire



Exhibit 1

The Supreme Court of South Carolina

**RECEIVED**  
OCT 28 2015  
SC Court of Appeals

( Kenneth Lee Holbert Jr.  
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 (  
 (  
 TITLE OF ( V. 2013CP2300613  
 CASE (  
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 (  
 ( Greenville Technical College  
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Notice

Upon request and for good cause shown, Teresa Johnson, Court Reporter, is hereby granted an extension up to and including October 31, 2015 to prepare and deliver the Transcript of Record in the above case.

*Desiree Allen*  
Court Services Manager  
South Carolina Court Administration

Columbia, South Carolina  
10/26/2015

cc: Kenneth Lee Holbert, Jr.  
Courtney M. Laster  
Teresa Johnson

Exhibit D

**Ken Holbert**

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**From:** Johnson, Teresa B. <TJohnson@sccourts.org>  
**Sent:** Thursday, September 10, 2015 11:41 PM  
**To:** Kholbert@charter.net  
**Subject:** Kenneth Lee Holbert v. Greenville Technical College

Mr. Holbert,

My calculations were incorrect. I have rechecked my files and see that I have noted that I actually received your deposit on or about 7/31/2015. If you find that to be incorrect, please let me know. But based on my notation, the 60 days allowable by our rules to produce this transcript has not yet expired so I don't need to request an extension of time as of yet.

As I mentioned by phone, I am presently currently working on your request and anticipate having it completed and delivered to you by the end of next week. If I find that I am unable to meet that anticipated deadline, I will contact you and give you a status report. If you have any questions, please feel free to contact me. Thank you.

Teresa B. Johnson  
Circuit Court Reporter  
P.O. Box 2812  
Greenville, S.C. 29602

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**Ken Holbert**

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**From:** Ken Holbert <kholbert@charter.net>  
**Sent:** Sunday, November 08, 2015 7:06 PM  
**To:** 'Owens, Michele A.'; 'Johnson, Teresa B.'; 'claster@boykinlawsc.com'  
**Subject:** RE: Extension Letter

Hello Ms. Owens,

Can you please update me on the current status? I know Ms. Johnson has been working very diligently to complete the transcript.

Regards,

Ken Holbert  
104 Sun Blvd  
Easley, SC 29642  
(864)269-2838 Home  
(864)350-4578 Cell

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**From:** Owens, Michele A. [<mailto:mowens@sccourts.org>]  
**Sent:** Monday, October 26, 2015 11:36 AM  
**To:** Johnson, Teresa B.; [kholbert@charter.net](mailto:kholbert@charter.net); [claster@boykinlawsc.com](mailto:claster@boykinlawsc.com)  
**Subject:** Extension Letter

Please see the attached extension letter.

*Thank you,*  
*Michele A. Owens*  
*Administrative Assistant*  
*SC Court Administration*  
*1220 Senate St., Ste 200*  
*Columbia, SC 29201*  
*803-734-1800*  
*803-734-0269 (fax)*

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