

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2014-001150

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NOV 06 2015

SC Court of Appeals

THE STATE,

Respondent,

vs.

WALTER JACOB MERKA,

Appellant.

**MOTION TO DISMISS APPEAL
FOR FAILURE TO SERVE
PROOF OF SERVICE OF RECORD
AND FOR A FALSE DATE IN
THE PROOF OF SERVICE
ATTACHED TO THE RECORD
RECEIVED; MOTION TO HOLD
TIMELINES IN ABEYANCE**

Respondent now moves for this Court to dismiss Appellant's appeal from his guilty plea conviction due to Appellant's failure to comply with Rule 210, SCACR. Respondent further moves to hold all timelines in abeyance pending this Court's ruling on the motion. Appellant has previously sent the Court and Respondent two different records on appeal that were deficient. Respondent received the third record on appeal from Appellant on November 3, 2015. The certificate of service attached to the record indicated it was served on October 21, 2015; however, this is demonstrably incorrect because the postmark is dated October 28, 2015. Further, it is

Respondent's understanding that the Court has not received either the record on appeal or the proof of service.

Rule 210(a), SCACR provides as follows: "Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief. **Proof of service of the Record shall be immediately filed with the clerk of the appellate court.**" (Emphasis added).

First, the certificate of service should be struck because it is simply incorrect. The certificate of service purports to mail the record to Respondent on October 21, 2015. However, the postmark indicates it was postmarked on October 28, 2015. It is therefore defective. Second, the certificate of service was not filed with the clerk of appellate court as required by Rule 210(a).

Accordingly, this appeal should be dismissed for Appellant's failure to comply with the rules. Further, Respondent respectfully requests all timelines be held in abeyance pending resolution of this motion.

[SIGNATURE BLOCK APPEARS ON THE FOLLOWING PAGE]

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

BY:

A handwritten signature in black ink, appearing to read "David Spencer", is written over a horizontal line. The signature is stylized and cursive.

DAVID SPENCER

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

ATTORNEYS FOR RESPONDENT

November 6, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal From Greenville County
Honorable Letitia H. Verdin, Circuit Court Judge

NOV 06 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

vs.

WALTER JACOB MERKA,


APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the Motion To Dismiss Appeal For Failure To Serve Proof Of Service Of Record And For A False Date In The Proof Of Service Attached To The Record Received; Motion To Hold Timelines in Abeyance on Appellant's Attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to William G. Yarborough, III, Esquire, 522 North Church St., Greenville, SC 29601.

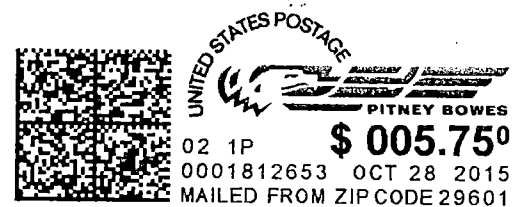
I further certify that all parties required by Rule to be served have been served.

This 6th day of November, 2015.


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

Office of William G. Yarborough III
North Church Street
Columbia, SC 29601

David A. Spencer, SAAG
PO Box 11549
Columbia, SC 29211



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

November 6, 2015

VIA HAND DELIVERY

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

RE: **State of South Carolina v. Walter Jacob Merka**
Appellate Case No: 2014-001150

Dear Ms. Kitchings:

Enclosed please find the Original Motion To Dismiss Appeal For Failure To Serve Proof Of Service Of Record And For A False Date In The Proof Of Service Attached To The Record Received; Motion To Hold Timelines in Abeyance in the above case.

Sincerely,

Dave Spencer
Senior Assistant Attorney General
Bar No: 68571

DS/nb

Enclosures

cc: William G. Yarborough, III, Esquire
Trisha Allen