

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

J. CORDELL MADDOX, JR., CIRCUIT COURT JUDGE

Appellate Case No. 2015-0000759
Trial Court No. 2014CP2305969

Billy Joe Cartrette, 122434, Appellant,

vs.

South Carolina Department of Corrections, Respondent.

TO: Lake E. Summers
339 Heyward Street, Ste. 200
Columbia, S.C. 29201

PETITION FOR REHEARING UNDER SOUTH
CAROLINA APPELLATE COURT RULES
(SCACR) 240(j)

Appellant respectfully requests the Court's panel reviews the 12-4-15 Order; it was received by Cartrette on or about 12-9-15 which addressed the motion to remand that was submitted and served in late September 2015. Rule 240(j) set forth, "Any review of an order issued by an individual judge or justice shall be by petition for rehearing."

1. This appeal asserts error in the trial court which granted respondent's motion to dismiss specifically on lack of subject matter jurisdiction rather than Rule 12(b)(6): Stiles v. Onorato, 456 S.E.2d 6-1, 602 (1995) and under the view "it must consider the fact(s) alleged in the complaint as true." Woodell v. Warion

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School District, 414 S.E.2d 794 (Ct.App. 1992);

2. Because the failure to state a claim is not the basis for granting the motion to dismiss and trial court permitted including material(s) in record at hearing (9. __.15 P. v. 59 11. 13-15) and/or 12.18.15 P. v. 38 11. 13-15); respondent's first and second motion to strike should have been denied in full;

3. Cartrette raised a jurisdictional issue in the trial court and this Court specifically, appellate jurisdiction as clarified by South Carolina Supreme Court in Allison v. W.L. Gere and Associates, 714 S.E.2d 547 (2011) so any materials proposed by appellant should have been allowed or permitted;

Moreover, should this Court agree with the two strike motions, then this Court should remand to trial court to settle record according to September 2015 motion.

This 21 day of December 2015.

Respectfully submitted,

/s/ 


Billy Joe Cartrette,
P.O. Box 52, P.O. Box 2039
Ridgeland, S.C. 29936

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copy of "Petition for Rehearing ... " to be mailed, postage prepaid, to respondent's attorney set forth above herein this 22 day of December 2015.

/s/ 

Billy J. Cartrette, 12243 +
RIDGELAND C.I.F.
charleston W. Room 52
P.O. Box 2039 29936
Ridgeland, S.C.

CHARLESTON SC 294

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HON JENNY A. KITCHINGS, CLERK
SOUTH CAROLINA COURT OF APPEALS
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RIDGELAND CORRECTIONAL
INSTITUTION

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THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

RIIDGELAND CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS



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