

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Thomas L. Hughston, Circuit Court Judge

Appellate Case No. 2016-000100

RECEIVED

FEB 19 2016

SC Court of Appeals

Adrian Smalls,

Respondent,

v.

Brenda Lee Barnett,

Appellant.

**RETURN TO MOTION TO FILE
LETTER ORDERING TRANSCRIPT
OUT OF TIME**

COMES NOW Respondent Adrian Smalls, by and through his undersigned counsel, and files this Return to Motion to File Letter Ordering Transcript Out of Time. Respondent would show unto this honorable Court as follows:

1. The Notice of Appeal in this matter was filed with the Dorchester County Circuit Court on January 4, 2016.
2. The Notice of Appeal was then filed with the Court of Appeals on January 19, 2016 without a copy of the Order being challenged on appeal, without the filing fee, without a letter indicated that the transcript of the lower court proceedings had been ordered, and outside the

time for filing under Rule 203(d)(1)(B) SCACR.

3. The Clerk of the South Carolina Court of Appeals, Jenny Abbott Kitchings, sent two deficiency letters to the Appellant's Counsel on January 21, 2016, the second of which instructed the Appellant's Counsel to file a letter showing that he had ordered the transcript directly from the court reporter and a motion requesting permission to order the transcript outside the filing deadlines set by Rule 207, SCACR. The deficiency letter further stated that Appellant's appeal would be dismissed if no motion was filed within ten (10) days from the date of the letter.
4. The Appellant's Counsel then filed the instant Motion to File Letter Ordering Transcript Out of Time with this Court on February 3, 2016, which was thirteen (13) days after the date of the Clerk's deficiency letter. The envelope filed with Appellant's Motion was Fedex postmarked February 2, 2016, which was twelve (12) days after the date of the deficiency letter.
5. From the outset of this Appeal, Appellant's Counsel has consistently disregarded the South Carolina Appellate Court Rules as they pertain to filing requirements and deadlines. When given an opportunity to correct these filing deficiencies by the Clerk, Appellant's Counsel filed the instant Motion outside of the time allowed by the Clerk in her January 21 deficiency letter.
6. Rule 260(a), SCACR, provides that "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk **shall** issue an order of dismissal." Rule 260(a), SCACR (emphasis added).
7. Appellant's Counsel has failed to comply with the requirements of the South Carolina

Appellate Court Rules on multiple occasions, and this Appeal should be dismissed.

8. Appellant has failed to show good cause as to why the instant Motion should be granted, and has simply stating that the late filings were due to inadvertence and excusable neglect.
9. Further delay of these proceedings will continue to prejudice the Respondent.

WHEREFORE, Respondent opposes the relief requested in Appellant's Motion to File Letter Ordering Transcript Out of Time and requests that this Honorable Court dismiss this Appeal as required by Rule 260(a), SCACR.

Respectfully Submitted,



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The Moore Law Firm, LLC of Charleston
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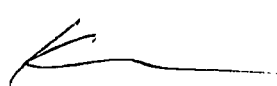
Brenda Lee Barnett,

Appellant.

PROOF OF SERVICE

I, Kevin D. Hackler, undersigned attorney, hereby certify that I have served the Return to Motion to File Letter Ordering Transcript Out of Time on Louis S. Moore, attorney for Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on February 11, 2016, addressed as follows:

Louis S. Moore, Esquire
27 Gamecock Avenue, Suite 200
Charleston, South Carolina 29407


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*Reply to Charleston Office

February 11, 2016

VIA US FIRST CLASS MAIL

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Adrian Smalls v. Brenda Lee Barnett
Appellate Case No.: 2016-000100

Dear Ms. Kitchings:

Enclosed for filing please find one original and six copies of Respondent's Return to Motion to File Letter Ordering Transcript Out of Time in the above referenced matter, along with an original proof of service.

Please do not hesitate to contact me if you have any questions or concerns. Thank you.

Best Regards,



Kevin D. Hackler

Enclosures: As Stated

cc: Louis S. Moore, Esquire
Attorney for Appellant

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SC Court of Appeals



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