

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002614

RECEIVED

MAY 17 2016

SC Court of Appeals

The State of South Carolina
v.
John Garvin Appellant.

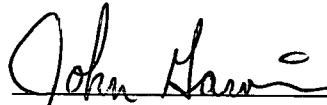
NOTICE OF MOTION TO VACATE
AND SET ASIDE DISMISSAL
AND TO REINSTATE ACTION

To: Respondent, John B. Aplin, Assistant Attorney General:

Notice is given that as soon as this motion can be heard, in the Law and Motion Department of the above-entitled court, at The South Carolina Court of Appeals, 1220 Senate Street, Columbia, S.C. 29201, the above-named Appellant will move the court for and order setting aside and vacating the dismissal entered on May 4, 2016, and reinstating the above-entitled cause, for the reason that the dismissal was ordered for failure to timely serve the notice of appeal upon the respondent, as required by Rule – 203(b)(2) of the South Carolina Appellate Court Rules.

This motion is based on this notice, the pleadings records, and files in this action, the attached Memorandum of Law and documentary evidence that may be presented at the hearing of the motion, and the attached affidavit of John Garvin, filed and served with this notice.

Dated: May 13, 2016


John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2015-002614


The State of South CarolinaRespondent,
v.
John Garvin Appellant.

MOTION TO VACATE
AND SET ASIDE DISMISSAL
AND TO REINSTATE ACTION

John Garvin, the Appellant in the above-entitled action proceeding as pro-se, moves the court pursuant to Rule – 260(a), S.C.A.C.R. to set aside its order of May 4, 2016, dismissing this action, for the reason that Appellant has failed to timely serve the notice of appeal upon the respondent, as required by Rule-203(b)(2) of the South Carolina Appellate Court Rules (S.C.A.C.R.).

This motion is based on the notice of motion served on May 13, 2016, on the attached affidavit of John Garvin, sworn to on May 13, 2016, and on all the pleadings, papers, and record in this action.

Dated: May 13, 2016


John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions**

R. Lawton McIntosh, Circuit Court Judge

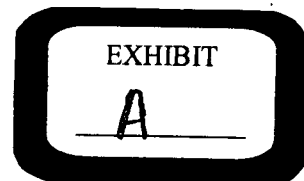
Appellate Case No. 2015-002614

The State of South Carolina Respondent,
v.
John Garvin Appellant.

**AFFIDAVIT IN SUPPORT
OF MOTION TO VACATE
AND SET ASIDE DISMISSAL
AND TO REINSTATE ACTION**

I, John Garvin, being first duly sworn, depose and say:

1. I am the Appellant in the above-entitled action.
2. This affidavit is in support of Appellant's motion for an order setting aside the order of the dismissal entered on May 4, 2016, and reinstating the above-entitled action. (See Exhibit - A & B)
3. This action was commenced on November 20, 2015, by the filing of a notice to appeal the denial of a motion for a new trial order, issued by the Honorable R. Lawton McIntosh on November 9, 2015. Whereas, the written notice of entry of the order was received on November 19, 2015. (See Exhibit - C & D)
4. On December 29, 2015, Appellant received a letter from the Deputy Clerk of Court for the South Carolina Court of Appeals dated December 23, 2015, advising appellant of deficiency or deficiencies with his proof of service that was not in compliance with South Carolina Appellate Court Rules in the Format shown by Form 7 in Appendix C to the rules. (See Exhibit - E)



5. On January 5, 2016, Appellant re-submitted his notice of appeal and corrected proof of service on the respondent, which involves every party in the appeal. (See Exhibit - F)

6. On May 11, 2016, Appellant signed and received his legal mail from Lee Correctional Institution by via U.S. Mail from the Deputy Clerk of Court for The South Carolina Court of Appeals, whereas an order of dismissal was issued for failure to timely serve the notice of appeal upon the respondent.

7. Appellant had served a copy of his notice of appeal with corrected Proof of Service on the respondent, on January 5, 2016, to the South Carolina State's Attorney General's Office, addressed to Alan M. Wilson. (See Exhibit F)(Proof of Service)

8. Appellant re-asserts that he has complied with the South Carolina Appellate Court Rules and has served the notice of appeal upon the respondent. Because appellant mailed off a corrected proof of service along with the notice of appeal to every party involved in the appeal on January 5, 2016. (See Exhibit - G)(S.C.D.C. Form 10-14 Inmate Debit Account, where a total of \$4.77 was deducted from his account for one (1) being, sent certified mail to the court of appeal clerk for \$3.67 and the other five (5) with additional postage for 0.22¢ was served upon every party involved in the appeal for a total of \$1.10).

9. The exhibits in this affidavit contradicts the clerks claim that respondent has failed to follow South Carolina Appellate Court rules.

10. By reason of the above-specified facts, Appellants Motion to Vacate and Set Aside Dismissal and to Reinstate action should be granted.

WHEREFORE, it is respectfully requested that the court grant the appellant's motion, so that his appeal to the South Carolina Court of Appeals can be heard in the interest of justice to prevent a total miscarriage of justice. Executed on this 13 day of May, 2016.

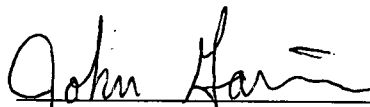


John Garvin, # 355509, Pro-se
Lee Correction Institution
990 Wisacky Highway
Bishopville, S.C. 29010

AFFIDAVIT

State of South Carolina)
) s.s.:
County of Lee)

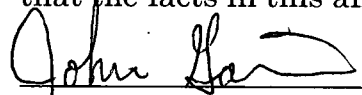
I declare under penalty of perjury that the foregoing is true and correct.
Executed on this 13 day of May, 2016.



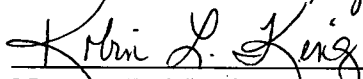
John Garvin, # 355509, Pro-se

State of South Carolina)
) s.s.:
County of Lee)

On May 13, 2016, John Garvin personally appeared before me, a Notary Public for the State of South Carolina in the county of Lee. Being duly sworn, John Garvin deposed and said that he is a defendant in the above action and that the facts in this affidavit are true.



Subscribed and Sworn to before me
This 13th day of May, 2016



Notary Public for South Carolina
My Commission expires 9-22-2021

The South Carolina Court of Appeals

The State, Respondent,

v.

John Garvin, Appellant.

Appellate Case No. 2015-002614

The Honorable R. Lawton McIntosh
Spartanburg County
Trial Court Case No. 2012GS4205979

ORDER

Appellant has failed to timely serve the notice of appeal upon the respondent, as required by Rule 203(b)(2) of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.



FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

John D Garvin, 355509

Robert Michael Dudek, Esquire

Alan McCrory Wilson, Esquire

John Benjamin Aplin, Esquire

James Edward Hunter, Esquire

FILED
514114

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS

State of South Carolina,)
)
Plaintiff,)
)
-vs-)
)
John Garvin,)
)
Defendant.)
_____)

ORDER

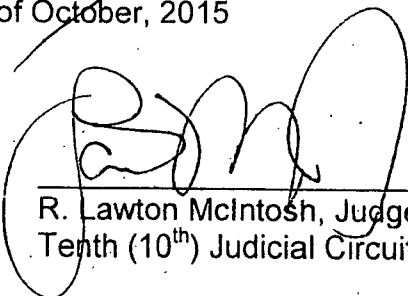
Indictment No. 2012-GS-42-5979

Defendant was convicted on May 23, 2013 and sentenced to twenty five (25) years and Two Hundred Thousand (\$200,000) Dollars. On August 25, 2015, Defendant filed a motion for a new trial pursuant to rule 29(b) S.C.R.Crim.P. based upon newly discovered evidence.

Defendant's Affidavit fails to recite facts sufficient to constitute newly discovered evidence. Further, the grounds recited in the Motion are manifestly without merit. Accordingly, Defendant's Motion is denied without formal hearing.

Defendant's Motion is denied without the necessity of a hearing as untimely and without merit.

IT IS SO ORDERED This 9th ^{Nov ROK} Day of October, 2015



R. Lawton McIntosh, Judge
Tenth (10th) Judicial Circuit

Anderson, South Carolina.



FILED
CLERK OF COURT
2015 NOV 13 PM 2:42
M. HOPE BLACKLEY

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 30 AM 10:42
John Garvin - #355509
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010
M. HOPE BLACKLEY

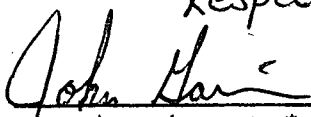
ATTN: Ms. M. Hope Blackley, Clerk of Court
Spartanburg County Clerk of Courts
180 Magnolia Street
Spartanburg, S.C. 29304-3483

RE: State v. Garvin, (Indictment No.: 2012-GS-42-5979)
Motion for New Trial

Dear Ms. Blackley,

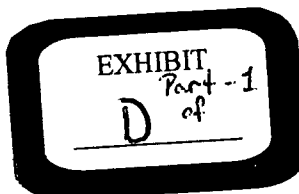
Enclosed please find a NOTICE OF APPEAL and CERTIFICATE OF SERVICED to be filed on this date as given to prison official to be filed with the courts.

DATED: November 20, 2015

Respectfully,

John Garvin, #355509, Pro-se.

Enclosures

cc: Ms. Jenny A. Kitching, Clerk of Court of Appeals



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 30 11:10:12
M. HOPE BLACKLEY

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-GS-42-05979

The State of South Carolina.....Respondent,

v.

John Garvin.....Appellant.

NOTICE OF APPEAL

John Garvin appeals the denial of his Motion for New Trial. This appeal is taken from the order of the Honorable R. Lawton McIntosh, dated November 9, 2015, which denied appellant's Motion for a New Trial. Appellant received written notice of entry of this order on November 19, 2015.

DATED: November 20, 2015

John Garvin
John Garvin, #355509, Pro-se.
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, S.C. 29010

EXHIBIT
Part - 2
D of

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

CLERK OF COURT
SPARTANBURG COUNTY

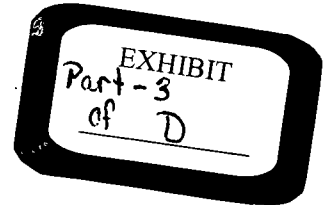
2015 NOV 30 AM 10:22

M. HOPE BLACKLEY

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Case No. 2012-GS-42-05979



The State of South Carolina Respondent,

v.

John Garvin Appellant.

CERTIFICATE OF SERVICE

I, John Garvin, proceeding as pro-se, do hereby swear or declare that on this 20th day of November, 2015, that I have served the enclosed NOTICE OF APPEAL to be filed on this date as given to prison official an envelope containing the above documents in the prison internal mail system via United States mail properly addressed to the party in the above proceeding with first-class postage prepaid to the following names and addresses listed below:

To: Ms. Jenny A. Kitching, Clerk
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, S.C. 29201

To: Ms. M. Hope Blackley, Clerk of Court
~~Mrs. Tonya Camp, Chief Admin. Asst.~~ (J.G.)
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, S.C. 29304-3483

RESPECTFULLY SUBMITTED on this 20th day of November/2015

John Garvin
John Garvin, #355509, PID - Se.



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

December 23, 2015

John D Garvin, 355509
Lee Correctional Inst.
990 Wisacky Highway
Bishopville SC 29010

Re: The State v. John Garvin
Appellate Case No. 2015-002614

Dear Mr. Garvin:

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 may be dismissed:

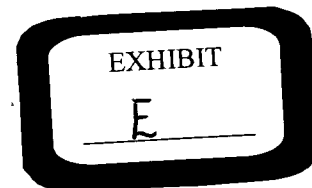
- The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. Specifically, your proof of service should copy every party involved in the appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire



John Garvin
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

ATTN: Ms. M. Hope Blackley, Clerk of Court
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, S.C. 29304-3483

RE: State v. Garvin, (Notice of Appeal for Motion for New Trial)
Case No.: 2012-GS-42-5979; Appellant Case No. 2015-002614

Dear Ms. Blackley:

Enclosed for filing is a NOTICE OF APPEAL in the above case. Also enclosed are the following:

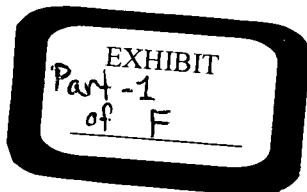
(1) A corrected PROOF OF SERVICE of the NOTICE OF APPEAL on the respondent, in the format shown by Form 7 in Appendix C to part II of the S.C.A.C.R., which involves every party in the appeal.


(2) A copy of the order/judgment which is to be challenged on appeal.

(3) A copy of your letter instructing me to correct the deficiencies of my PROOF OF SERVICE within ten (10) days of the date of the letter.

DATE: January 5, 2016

Respectfully,



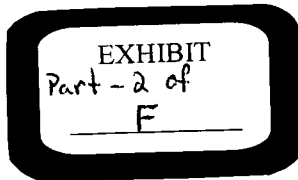

John Garvin, #355509, Pro-se.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 JAN 26 AM 10:30
M. HOPE BLACKLEY

Other Counsel of Record:
Mr. James E. Hunter, Esquire
Spartanburg County Solicitor's Office
180 Magnolia Street
Spartanburg, S.C. 29304-3483

Enclosures

cc: Jenny A. Kitchings, Clerk of Appellate Court
Hon. R. Lawton McIntosh, Circuit Court Judge
Alan M. Wilson, Esquire
Scott D. Robinson, Esquire



M. HOPE BLACKLEY
2016 JAN 26 AM 10:30
CLERK OF COURT
SPARTANBURG COUNTY
FILED

EXHIBIT
Part - 3 of
F

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTAINBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002614

The State of South Carolina Respondent,

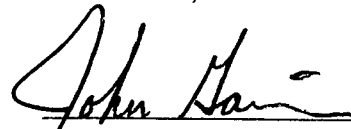
v.

John Garvin Appellant.

NOTICE OF APPEAL

John Garvin appeals the denial of his Motion for New Trial. This appeal is taken from the order of the Honorable Judge R. Lawton McIntosh, dated November 9, 2015, which denied appellant's motion for a New Trial. Appellant received written notice of entry of this order on November 19, 2015.

DATED: January 5, 2016


John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

M. HOPE BLACKLEY

2016 JAN 26 AM 10:30

FILED
CLERK OF COURT
SPARTAINBURG COUNTY

EXHIBIT
Part - 4 of
F

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTAINBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge


Appellate Case No. 2015-002614

The State of South Carolina Respondent,
v.
John Garvin Appellant.

PROOF OF SERVICE

I, John Garvin, Certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid on January 5, 2016, addressed to every party involved in the appeal. James E. Hunter, Spartanburg County Solicitors Office, 180 Magnolia Street, Spartanburg, S.C. 29304-3483; Scott D. Robinson, 9 East Ave., Greenville, S.C. 29603; M. Hope Blackley, Spartanburg County Clerk of Court, 180 Magnolia Street, Spartanburg, S.C. 29304-3483; Jenny A. Kitchings, S.C. Clerk of Court of Appeals, 1220 Senate Street, Columbia, S.C. 29201; Hon. R. Lawton McIntosh, 100 South Main Street, Anderson, S.C. 29622-8002; and Alan Wilson, 1000 Assembly Street, Columbia S.C. 29211.

DATED: January 5, 2016


John Garvin, # 355509, Pro-se
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

M. HOPE BLACKLEY

2016 JAN 26 AM 10:30

FILED
CLERK OF COURT
SPARTANBURG COUNTY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-002614

RECEIVED
MAY 17 2016
SC Court of Appeals

The State of South Carolina Respondent,
v.
John Garvin Appellant.

PROOF OF SERVICE

I, John Garvin, Certify that I have served a Motion to Vacate and Set Aside Dismissal and to Reinstate Action on the respondent, The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid on May 13, 2016, addressed to every party involved in the appeal. John B. Aplin and Alan Wilson, 1000 Assembly Street, Columbia, South Carolina 29211; V. Claire Allen, 1220 Senate Street, Columbia S.C. 29201; Robert Dudek, 1330 Lady Street, Columbia, S.C. 21211; and James E. Hunter, 180 Magnolia Street, Spartanburg, S.C. 29304-3483

Dated: May 13, 2016

John Garvin
John Garvin, # 355509, Pro-se
Lee Correction Institution
990 Wisacky Highway
Bishopville, S.C. 29010

John Garvin
Lee Correction Institution
990 Wisacky Highway
Bishopville, S.C. 29010

RECEIVED

MAY 17 2016

SC Court of Appeals

ATTN: Ms. V. Claire Allen, Deputy Clerk
% Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

RE: State v. Garvin, (Motion to Set Aside Dismissal and to Reinstate Action)
Case No.: 2012-GS-42-5979; Appellate Case No.: 2015-002614

Dear Ms. Allen,

MOTION

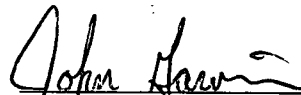
J.G.

Enclosed for filing is a ~~NOTICE~~ TO SET ASIDE DISMISSAL AND TO REINSTATE ACTION in the above case. Also enclosed are the following:

- (1) A Notice of Motion to Vacate and Set Aside Dismissal and to Reinstate Action to respondents.
- (2) An affidavit in support of Motion
- (3) A Memorandum of Law in Support of Motion.
- (4) A PROOF OF SERVICE of the MOTION on the respondent, in the format shown by Form 7 in Appendix C to part II of the S.C.A.C.R., which involves every party in the appeal.
- (5) A copy of the order dismissing the appeal.

Date: May 13, 2016

Respectfully,

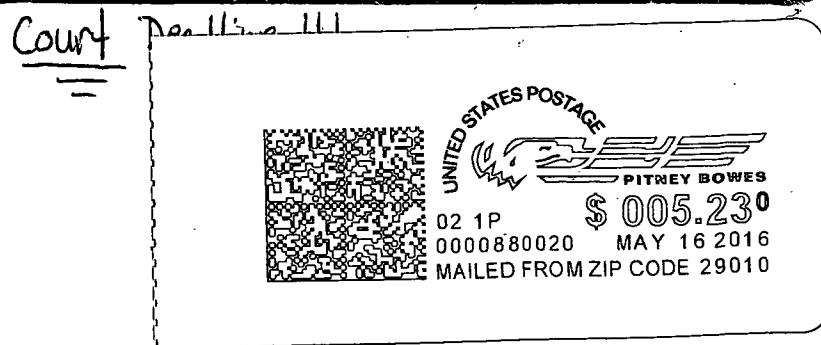
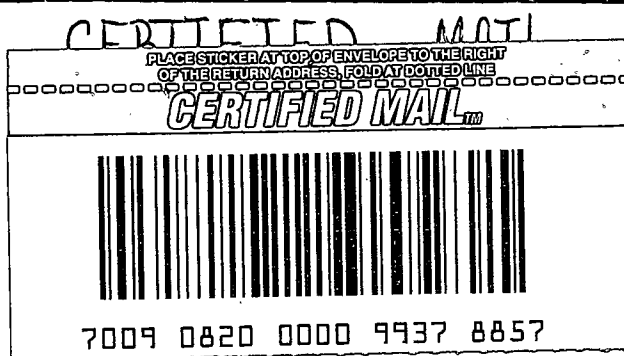


John Garvin, # 355509, Pro-se

Enclosures

cc: Alan M. Wilson, Esquire
John B. Aplin, Esquire
Robert M. Dudek, Esquire
James E. Hunter, Esquire

John Garvin - #355509
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, S.C. 29010



ATTN: Ms. V. Claire Allen, Deputy Clerk
% Ms. Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, S.C. 29201

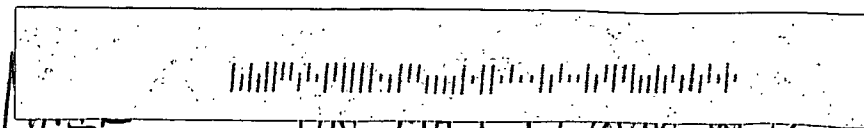
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MAY 17 2016

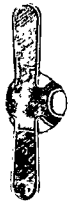
SC Court of Appeals

LEGAL MAIL

PLACED IN INSTITUTIONAL



P.M.



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