

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUN 09 2016

SC 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 CarolinaRespondent,
v.
John Garvin Appellant.

**REPLY TO RESPONDENT'S RETURN / RESPONSE
TO MOTION TO VACATE AND SET ASIDE DISMISSAL
AND TO REINSTATE ACTION**

This Reply is in response to the Respondent's disparaging Return / Response to Appellant's Motion to Set Aside Dismissal and to Reinstate Action. Initially, for the reason set forth below, Appellant submits that the respondent's condemnation of his motion. Would be to deprive him of his right to judicial recourse to correct an abuse of discretion by his Trial Judge, Honorable R. Lawton McIntosh. However, In the interest of justice the appellant makes this Reply / Response to prevent a Miscarriage-of-Justice. And would respectfully show unto this court:

1. The appellant has only a G.E.D. with no legal education. And is just a layman of the law with no actual skill in the science of law.
2. The respondent would have this court to believe that, petitioner's Motion to Set Aside Dismissal and to Reinstate Action is a nullity. Because "At the time of

filing, Appellant did not serve the Notice of Appeal on the State, either by serving the Solicitor or serving the Attorney General's Office."

3. The Appellant states that Spartanburg County Clerk of Court had determined that his notice of appeal was submitted timely and in good faith and was clock stamped on November 30, 2015, See Exhibit – D1 thru D3, and had advised him to send a copy of it to the Attorney Generals Office in a December 2, 2015, notice letter. See Exhibit – AA (A notice letter from Spartanburg County Clerk of Court; advising him that "copies are enclosed, you also need to send Attorney Generals office a Copy.")

4. On December 8, 2015, Appellant mailed copies of his Notice of Appeal and Certificate of Service that was within ten (10) days of Spartanburg County Clerk of Court notice letter, to Respondent. See Exhibit--AA. To whereas, the respondent has admitted to having received on December 10, 2015. Well within the ten (10) days as required by Rule – 203(b)(2), S.C.A.C.R., in a criminal case an appellant must serve a notice of appeal on all respondents within ten (10) days after the sentence is imposed, or within ten (10) days after receipt of written notice of entry of the order or judgment.

5. The Spartanburg County Clerk of Court and The South Carolina Court of Appeals Clerk has determined that appellant's notice of appeal was submitted timely and in good faith. Those two courts notified appellant about deficiencies with his notice of appeal and his proof of service, with a letter indicating the deficiency. See Exhibit - AA and Exhibit – E. Appellant corrected his mistakes in accordance


with South Carolina Appellant Court Rules well within the ten (10) days after the dates of the Clerk's letters, which was deemed timely.

6. Now, despite the fact that the respondent has misled this court in bad faith with the use of the Appellant Court rules as a subterfuge to deprive appellant of his right to appeal, his trial judge's November 9, 2015, order. Whereas, this court does actually have jurisdiction over Appellant's case and must grant this appeal. See Hill v. South Carolina Dept. of Health and Environmental Control, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (Ct App. 1999) ("The service of a notice of appeal is a jurisdictional requirement"); See also Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992)("[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this court with an orderly mechanism through which to guide appeals in this state."). Thus, Appellant's inadvertent negligence should not be a ruse by the respondent's as a way to deprive him of his right to appeal.

WHEREFORE, having made a Reply / Response to Respondent's Return, the Appellant's Motion to Set Aside Dismissal and to Reinstate Action Should be granted by this court in the interest of justice to prevent a Miscarriage-of-Justice.

Dated: June 7, 2016

Respectfully Submitted,

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

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 30 AM 10:22
M. HOPE BLACKLEY

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


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,

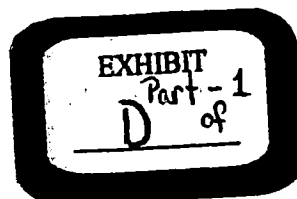
Enclosed please find a NOTICE OF APPEAL and CERTIFICATE OF SERVICED to be filed on this date as given to prison official to be filed with the courts.

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 AM 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 of
D

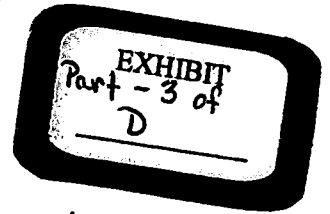
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

CLERK OF COURT
SPARTANBURG COUNTY
2015 NOV 30 AM 11:12
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.

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

Ms. M. Hope Blackley, Clerk of Court
To: ~~Mrs. Tonya Camp, Chief Admin. Ass't.~~ (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, P/D-Se.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
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



Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2259



M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

Date: 12-02-15
Name: John Garvin

We have received your letter on _____. The applicable response is checked below.

- I suggest you contact the Probation Office @180 Library Street, Spartanburg, SC 29306.
- I suggest you contact the Solicitor's Office @ 180 Magnolia Street, Spartanburg, SC 29306.
- I suggest you contact the Public Defender's Office @ 366 N. Church St., Spartanburg, SC 29306.
- I suggest you contact the Spartanburg County Jail @ 950 California Ave, Spartanburg, SC 29303.
- A copy of your letter has been forwarded to the Public Defender's Office.
- A copy of your letter has been forwarded to the Solicitor's Office.
- I suggest you contact your attorney.
- Please provide us with the original document.
- The reference case is not a General Sessions case.
- Grand Jury proceedings are held in private.
- Please provide us with a warrant or indictment number.
- Due to the large volume of requests, this office no longer conducts criminal records research.
- Case History print-out enclosed.
- A court date has not been scheduled for your case(s).
- A Plea/Trial date has been scheduled for _____ (This date is subject to change)
- All copies are \$1.00 per page that must be paid in advance. Please submit a cashier's check or money order in the amount of \$_____.

Other: copies are enclosed, you also need to send Attorney General's Office a copy

If we can be of further assistance to you please let us know.

LaSmith
General Sessions Clerk



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

RECEIVED

R. Lawton McIntosh, Circuit Court Judge JUN 09 2016

SC Court of Appeals

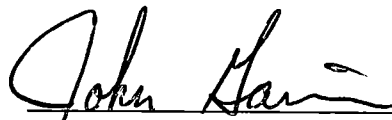
Appellate Case No. 2015-002614

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

PROOF OF SERVICE

I, John Garvin, Certify that I have served a Reply to Respondent's Return to 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 June 7, 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: June 7, 2016


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

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

RECEIVED

JUN 09 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

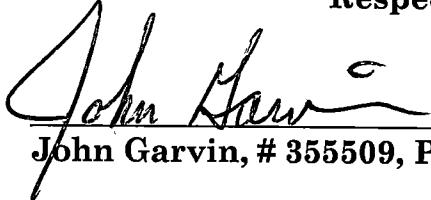
RE: State v. Garvin, (Reply to Respondent's Return to Motion to Set
Aside Dismissal and to Reinstate Action)
Case No.: 2012-GS-42-5979; Appellate Case No.: 2015-002614

Dear Ms. Allen,

Enclosed for filing is a REPLY TO RESPONDENT'S RETURN TO MOTION TO SET ASIDE DISMISSAL AND TO REINSTATE ACTION in the above case with 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.

Date: June 7, 2016

Respectfully,

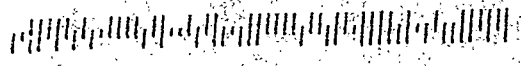

John Garvin, # 355509, Pro-se

Enclosures

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

John
Lee C

990 Wisacky Hwy.
Bishopville, S.C. 29010



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

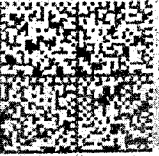
CERTIFIED MAIL



7015 0640 0005 6546 6221

JUN 09 2018

SC Court of Appeals



UNITED STATES
02 1R
0000880
MAILED P

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