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THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

Appeal from Marlboro County
Court of General Sessions
Howard P. King, Circuit Court Judge

Case No. 1996-GS-34-0984.

Alfonso Staton 241380..... Appellant

v.

State of South Carolina..... Respondent

Notice of Appeal

Alfonso Staton appeals the order of the Honorable Howard P. King dated October 19, 2011. in reference to a 29(b) motion pursuant to SCRrimp, followed by order dated January 15, 2012 in reference to a 59(e) motion to Alter and Amend judgment pursuant to SCRCF which was denied. Appellant received written notice of entry January 24, 2012

February 13th, 2012

SI

Alfonso Staton
Alfonso Staton 241380
Lee C.I.
990 Wisacky Hwy.
Bishopville SC 29010

RECEIVED

FEB 14 2012

SC Court of Appeals



Fourth Circuit Public Defender

A.C. Stephens
Chief Circuit Defender

January 24, 2012

Alfonso Staton
SCDC ID# 00241380
c/o Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

RE: *The State v. Alfonso Staton*

Alfonso:

I hope this letter finds you well. I did not file an appeal of the judge's ruling on your motion to reopen the case because of a conflict. However, the judge did not rule on your issue of new evidence, which was included towards the back of the motion. This is the issue I'd like to present in front of a judge for consideration.

Once I have it scheduled, I will let you know. If that motion fails, then an appeal of that motion can be filed.

Sincerely,

A handwritten signature in black ink, appearing to read "Will E. Grove".

Will E. Grove
Assistant Public Defender
Fourth Judicial Circuit
Bennettsville, SC

RECEIVED
FEB 14 2012

SC Court of Appeals

Alfonso Staton #241380
Lee C.I. Rich C-124
990 Wisacky Hwy.
Bishopville SC 29101

February 13, 2012

Hon. Tanya Gee
Clerk of Court of Appeals
PO Box 11629
Columbia SC 29211

Re: State V. Alfonso Staton
Notice of appeal

Dear Ms. Gee,

Please see enclosed for you filing my notice of Intent to Appeal, including the proof of service and Orders of Dismissal.

Thank you in advance for your time and help given to me in this critical matter.

Respectfully Submitted;

SI Alfonso Staton

enclosures

cc: Hon. William Funderburk, Clerk
Hon. William Rogers Jr., Esquire Solicitor
File

RECEIVED
FEB 14 2012
SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)
STATE OF SOUTH CAROLINA)
V.)
ALPHONSO STATON)
AKA OFONZO STATON)
DEFENDANT)

IN THE COURT OF GENERAL SESSIONS
FOURTH JUDICIAL CIRCUIT

1996-GS-34-0984

ORDER DENYING MOTION FOR A NEW TRIAL

FILED
2011 OCT 20 PM 11 27
WILLIAM H. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

This matter is before the Court on motion of the defendant through his attorney Emily Crayton, Assistant Public Defender. Appearing for the State is Senior Assistant Solicitor Donna Elder from the Fifteenth Judicial Circuit, the Circuit originally assigned to prosecute the defendant. Appearing for the defendant was Will Groves, an Assistant Public Defender for the Fourth Judicial Circuit.

The defendant seeks a new trial based upon alleged after discovered evidence, that being a conflict of interest by his trial defense attorney, Will Rogers, Esq. who at the time was a new prosecutor for the Fourth Circuit Solicitor's office. Rule 29 (b), SCRCrimP controls motions for new trial based on after discovered evidence.

A party requesting a new trial on after discovered evidence must show that the evidence (1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before trial; (4) is material to the issue of guilt or innocence, and (5) is not merely cumulative or impeaching. *State v. Spann*, 334 S.C. 618, 513 S.E.2d 98 (1999), *State v. Freeman*, 319 S.C. 110, 459 S.E.2d 867 (Ct. App. 1995). The defendant has failed to meet these requirements.

The original trial of the defendant took place in March, 1997 and the defendant was found guilty of his charges on March 18, 1997. Prior to the trial in this matter Mr. Rogers had notified all of his clients of his request to be relieved on their cases due to his new position in the solicitor's office. On January 28, 1997 after providing this notification he appeared before Judge Smoak and was relieved, an Order was signed and filed on January 29, 1997. On January 30, 1997, Judge Smoak rescinded that Order as to the defendant Alphonso Staton and that matter was placed on record.

Defendant appealed his conviction and that conviction was upheld on November 8, 2001. He also filed a Post Conviction Relief action which was denied on September 16, 2005.

Defendant asserts that he was unaware of this conflict or Mr. Roger's position until sometime in 2007. However it appears that all these matters were placed on record and the defendant as such is charged with the knowledge of these events. In addition, even taking the defendant's assertion that no knowledge existed until 2007, he failed to act on that information until May 6, 2009 when he filed a *pro se* motion requesting relief.

The Court makes the following findings:

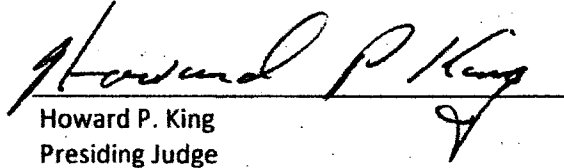
1 of 2
9/20/09

1. The defendant knew or should have know by the exercise of due diligence of the existence of his alleged "conflict" at the time of his trial and could have asserted those claims during his subsequent appeal and post conviction relief;
2. The court finds no reason to now set aside the previous rulings by Judge Smoak as to the issue of any potential conflict on the part of Mr. Rogers, this matter was prosecuted by an agency outside and separate from the Fourth Circuit;
3. Even if the Court did not find the defendant should have had knowledge of this issue at the time of trial, he certainly became aware of it in 2007 and failed to timely file a motion to address his claim;
4. The evidence is not such as would likely change the result if a new trial was held; and
5. Is not material to the guilt or innocence of the defendant.

THEREFORE IT IS ORDERED:

The motion of the defendant for a new trial on after discovered evidence (a possible conflict of interest by Will Rogers, Esq.) is DENIED.

AND IT IS SO ORDERED.


Howard P. King
Presiding Judge

October 19, 2011
Sumter, South Carolina

FILED
2011 OCT 20 PM 11 27
WILLIAM E. FURDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF MARLBORO)
STATE OF SOUTH CAROLINA)
V.)
ALPHONSO STATON)
AKA OFONZO STATON)
DEFENDANT)

IN THE COURT OF GENERAL SESSIONS
FOURTH JUDICIAL CIRCUIT

1996-GS-34-0984

ORDER DENYING MOTION FOR A NEW TRIAL

FILED
2011 OCT 18 PM 11:29
WILLIAM B. JENNINGS
CLERK OF COURT
MARLBORO COUNTY, S.C.

This matter appears before the Court on motion of the defendant through his attorney Emily Crayton. Appearing for the State is Senior Assistant Solicitor Donna Elder from the Fifteenth Judicial Circuit that being the Circuit originally tasked to prosecute the defendant.

The defendant seeks a new trial based upon a conflict with his trial defense attorney, W.P. Rogers, who at the time was a new prosecutor for the Fourth Circuit Solicitor's office.

The original trial of the defendant took place in March, 1997 and the defendant was found guilty of his charges on March 18, 1997. Prior to the trial in this matter Mr. Rogers had notified all of his clients of his request to be relieved on their cases due to his new position in the solicitor's office. On January 28, 1997 after providing this notification he appeared before Judge Smoak and was relieved, an Order was signed and filed on January 29, 1997. On January 30, 1997, Judge Smoak rescinded that Order as to the defendant Alphonso Staton and that matter was placed on record.

Defendant has exercised his right to an appeal on his conviction and that conviction was upheld on November 8, 2011. He also exercised his right to a Post Conviction Relief which was denied on September 16, 2005.

Defendant asserts that he was unaware of this conflict or Mr. Roger's position until sometime in 2007. However it appears that all these matters were placed on record and the defendant as such is charged with the knowledge of these events. In addition, even taking the defendant's assertion that no knowledge existed until 2007, he failed to act on that information until May 6, 2009 when he filed a prose motion requesting relief.

The Court makes the following findings:

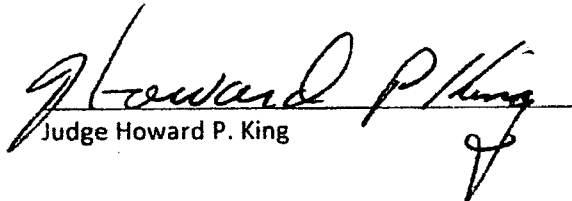
1. The defendant knew or should have know of the existence of his alleged "conflict" at the time of his trial and could have asserted those claims during his subsequent appeal and post conviction relief;
2. The court finds no reason to now set aside the previous rulings by Judge Smoak as to the issue of any potential conflict on the part of Mr. Rogers, this matter was prosecuted by an agency outside and separate from the Fourth Circuit;
3. Even if the Court did not find the defendant should have had knowledge of this issue at the time of trial, he certainly became aware of it in 2007 and failed to timely file a motion to address his claim;

WHEREFORE IT IS ORDERED:

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JHAK

- a. The motion of the defendant for a new trial based upon a possible conflict of interest with his defense attorney Mr. Will Rogers is denied.

AND IT IS SO ORDERED.


Judge Howard P. King

Dated: *Oct 17, 2011*
Bennettsville South Carolina

FILED
2011 OCT 18 PM 11 21
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

292

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FEB 14 2012

SC Court of Appeals

State of South Carolina
County of Marlboro

In the Court Of General Sessions
Indictment # 96-GS-34-0984

Alfonzo Staton
Applicant

Vs

State of South Carolina
Respondent

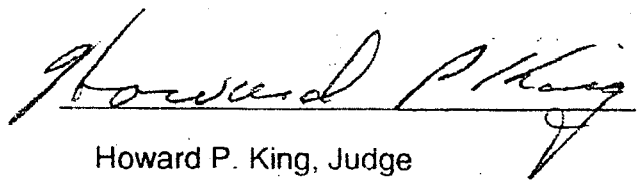
ORDER

FILED
2012 JAN 19 PM 1 19
WILLIAM B. FUNDENBERG
CLERK OF COURT
MARLBORO COUNTY, S.C.

The Applicant, Alfonxo Staton, has made a motion "to alter or amend judgment" pursuant to Rule 59 (e), SCRPC. This is a criminal proceeding and the Rules of Civil Procedure do not apply.

The Court will treat this as a motion for reconsideration of its Order dated October 19, 2011 and served January 4, 2012 pursuant to Rule 29, SCRCrimP. After careful consideration of all matters set forth in the motion the Court has concluded that its initial Order was correct and therefore denies the motion for reconsideration.

And it is so Ordered!


Howard P. King, Judge

January 15, 2012

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM MARLBORO COUNTY
COURT OF GENERAL SESSIONS
HON: HOWARD P. KING, Cir. Ct. Judge

CASE NO. 1996-GS-34-0984

ALFONSO STANTON, 241380,....., APPELLANT,

v.

STATE OF S.C.,....., RESPONDENT.

PETITION TO RESTATE APPEAL

ALFONSO STATON
LEE C.I.
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
PRO SE APPELLANT

OTHER COUNSEL OF RECORD

SALLEY W. ELLIOTT, Esq.
SENIOR ASST. DEPUTY ATTY. GEN.
PO BOX 11549
COLUMBIA, S.C. 29211-1549
RESPONDENT

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TABLE OF AUTHORITIES

HOUSTON V. LACK, (FOURTH CIRCUIT).....4.
6 L ed 2d 1295, L ed INDEX TO ANNO.....3.
55 ALR2d 1072, ALR QUICK INDEX.....3.

US CONSTITUTION 1791

U.S. CONST. SIXTH AMEND.

U.S. CONST. 14th AMEND.

SC APPELLATE COURT RULES

RULE 203, SCACR

RULE 602, SCACR

RULE 249, SCACR

RULE 29(b), SCRCrim.P.

RULE 59(b), SCRCP.

STATEMENT OF CASE

APELLANT ALFONSO STATON, 241380, IS CURRENTLY INCARCERATED IN THE LEE C.I. OF THE SC DEPT. OF CORRECTIONS BY COMMITMENT OF THE HONORABLE CLERK OF COURT OF MARLBORO COUNTY, APPELLANT STATON IS SERVING A LIFE SENTENCE FOR MURDER, HE WAS FOUND GUILTY BY A JURY OF PEERS, APPELLANT APPEALED HIS CONVICTIONS AND THE APPELLATE COURT AFFIRMED HIS CONVICTION. AFTERWARDS THE APPELLANT FILED POST CONVICTION RELIEF APPLICATION AND IT WAS DENIED, APPELLANT SINCE PROCURED SOME AFTER TRIAL DISCOVERED EVIDENCE AND FILED HIS PRO SE MOTION TO THE GENERAL SESSIONS COURT, ON OCTOBER 19, 2011 JUDGE HOWARD P. KING ISSUED AN ORDER DENYING APPELLANT'S MOTION FOR NEW TRIAL PURSUANT TO RULE 29(b), SCRCrim.P., APPELLANT FILED A RULE 59(b), SCRC.P., MOTION TO SECURE ALL ISSUE TO BE PRESERVED FOR APPELLATE REVIEW AS WAS ENTITLED TO AS A RIGHT BY LAW, THIS MOTION WAS DENIED ALSO AS THE JUDGE COMMENCED THIS ORDER ON JANUARY 15, 2012. APPELLANT STATON RECEIVED THIS ORDER ON; JANUARY 24, 2012, THE APPELLANT MADE HIS TIMELY FILED NOTICE TO APPEAL ON FEBRUARY 13, 2012. THE S.C. COURT OF APPEALS HAS ISSUED AND ORDER OF DISMISSAL TO THIS APPEAL AND RULED THAT THE APPELLANT FAILED TO TIMELY SERVE THAT OPPOSING COUNSEL WITH THE NOTICE OF APPEAL AS PROVIDED PER SE RULE 203(B), SCACR., AND THIS RULING IS IN ERRORS BASED UPON THE PROBATIVE EVIDENCE THAT THE APPELLANT IS NOW PROFFERING TO THE HONORABLE COURT IN HIS PETITION TO HAVE THE APPEAL REINSTATED BASED UPON GOOD CAUSE THAT IS SHOWN THROUGH THE ORIGINAL PROOF OF SERVICES AND THROUGH THE CONTENTIONS TIMELY MADE PURSUANT TO RULE 249(a)(2), SCACR.

APPELLANT STATON NOW TIMELY FILES HIS PETITION TO HAVE APPEAL REINSTATED BY THE HONORABLE COURT AS FOLLOWS:

**ARGUMENTS & FACTS SUPPORTING PETITION FOR:
REINSTATEMENT OF APPEAL**

APPELLANT ALFONSO STATON PETITION TO THE HONORABLE COURT OF APPEALS TO REINSTATE HIS APPEAL THIS COURT DISMISSED BECAUSE IT RULED THE HE DID NOT TIMELY SERVED THE OPPOSING COUNSEL PURSUANT TO RULE 203, SCACR., APPELLANT FIRST ADVISES THE HONORABLE COURT THAT HE HAS PROVIDED TO THIS HONORABLE COURT THE ORIGINALS PROOF OF SERVICE AND NOTICE OF APPEALS COPIES THAT HE DID SERVED TO THE OPPOSING COUNSELS ONE TO THE HONORABLE SOLICITOR WILLIAM B. ROGERS, Jr. Esq. AND TO THE HONORABLE ALLEN WILSON, Esq., ATTORNEY GENERAL, ALL OF WHICH IS DATED ON FEBRUARY 08, 2012, NOW AS PROVIDING THESE DOCUMENTS TO THE HONORABLE COURT, THE APPELLANT EXPLICITLY STATES FOR THE RECORDS THAT IN ANY SCENARIO AND SITUATIONS THIS COURT MUST SEE THAT HE FILED HIS NOTICE OF APPEAL AND PROOF OF SERVICES BY PRO SE STATUS, THIS IS A CRIMINAL CASE APPEAL FROM THE JURISDICTION OF THE GENERAL SESSIONS COURT, IT IS ALSO A FACT SUSTAINED BY THE RECORDS THAT THE APPELLANT DID HAVE A COUNSEL OF RECORD AND THE COUNSEL FAILED TO FILED AN APPEAL TO THE ORDER OF DISMISSAL BY JUDGE HOWARD P. KING, AND DUE TO THE FACTS THAT THIS ATTORNEY (WILL GROVE, Esq.) OF THE PUBLIC DEFENDERS OFFICE, 207 W. MAIN STREET, BENNETTSVILLE, S.C. 29512 FAILED TO FILED THIS APPEAL THE MUST CONSTRUE IN THE FAVORS OF THE APPELLANT BECAUSE THE ATTORNEY LEFT THE APPELLANT TO DEFEND FOR HIMSELF WHEREAS HE HAD TO FILE HIS OWN APPEAL TO THE SC COURT OF APPEAL, NOW BY ALL MEANS THE APPELLANT DOES NOT USE THE EXCUSE TO NOT FOLLOW THE RULES OF THE COURT, BUT INDEED HE MAINTAINS THE POSITIONS THAT HE IS NO LAWYER AND TAKES NO POSITIONS AS ONE, BECAUSE HE HAS A RIGHT TO EFFECTIVE ASSISTANCE FROM COUNSEL ACCORDINGLY TO THE U.S. CONST. SIXTH AMEND. [1791] (HOLDING AND TO HAVE ASSISTANCE OF COUNSEL FOR HIS DEFENCE). THE APPELLANT WILL FURTHER TAKE POSITIONS BY THE WELL SETTLED LAWS OF THIS STATE OF SOUTH CAROLINA SUPREME COURT AND BAR, THE APPELLANT WILL STATE BY THE POSITIONS HE ARE IN FROM THE SHOWINGS OF THE COURT'S

OWN RECORD THAT IT CAN NOT HOLD HIM RESPONSIBLE FOR THE SCREW UPS THAT THE COUNSEL OF RECORD IN HIS CASE MAKES AND HE ALSO EXPLICITLY STATES THAT AS THE COUNSEL DID TAKE AN ADVERSE POSITIONS AGAINST HIM WHEN HE FAILED TO FILED THE APPEAL FOR THE APPELLANT THIS COURT SHOULD HAVE TAKEN THE MEASURES THAT THE HONORABLE SC SUPREME COURT WOULD NORMALLY TAKE, AND THAT IS PLACE THE ATTORNEY OF RECORDS ON NOTICE AS TO WHY THE APPEAL WAS NOT FILED CORRECTLY AS SHOULD HAVE PURSUANT TO THE RESPECTFUL RULES OF THE APPELLATE COURT, THERE IS NO WHERE IN THE RECORDS THAT SHOWS THAT COURT IS PUNISHING THE APPELLANT FOR SECURING HIS RIGHTS TO AN APPEAL WHEN THE COUNSEL OF RECORD DOES NOT PERFORMS HIS DUTIES AS COUNSEL, IT IS BY FACTS THAT THE COUNSEL OF RECORD DID NOT FOLLOW RULE 602, SCARC, AND THIS IN ITSELF WILL COMPEL THE COURT TO SEE THAT THE ATTORNEY MUST DO WHAT IS PRACTICAL IN SECURING THE APPELLANT RIGHTS TO AN APPEAL TO ANY ADVERSE RULING AGAINST HIM BY THE COURT. THE APPELLANT SHOWS THE COURT THAT HE IS INDIGENT AND HE DOES NOT HAVE THE ACCESS TO COMPUTERIZED MACHINES THAT PROVIDE ELECTRONICALLY PROCESSES TO HIS FILING PLEADINGS AND MOTIONS TO THE COURTS AND CLERKS TO PROTECT HIMSELF FROM BOGUS CLAIMS THAT RESPONDENT'S COUNSELS WOULD MAKE AGAINST HIM AS IN THIS SUCH TYPES OF APPEALS, APPELLANT FURTHER SHOWS THAT HE IS INCARCERATED AND THE DEPT OF CORRECTIONS ARE MAKING CLAIMS THAT THEY ARE UNABLE TO MAINTAIN PRISONS, MORELESS TO KEEP UPDATE COMPUTERS TO ELECTRONICALLY FILE PAPERS BY FOR INMATES, NOW ACCORDINGLY TO EFFECTIVE LAWS THAT GIVE APPELLANT A RIGHT TO APPEAL AND OR CORRECT THE FILING PROCESSES OF THE APPEAL, IT IS HERE SHOWN AT THE FOLLOWING LAWS AND MANDATES, SEE AT: ACCUSED'S RIGHT TO EQUAL PROTECTION AS A INDIGENT APPELLANT BY ACCORD: RIGHT OF INDIGENT DEFENDANT IN CRIMINAL CASE TO AID OF STATE AS REGARDS DUE OR APPEAL; 55 ALR2d 1072, & RIGHT UNDER THE FEDERAL CONSTITUTION OF INDIGENT DEFENDANT IN CRIMINAL CASE TO AID OF STATE AS REGARDS APPEAL OR POST CONVICTION REMEDY; 6 L ed 2d 1295. SEE FOR SPECIFIC IN ALR QUICK INDEX, ASSISTNACE OF COUNSEL AND L ed INDEX TO ANNO, CRIMINAL LAW., APPELLANT WILL TAKE THE

STANCES ALSO BY WELL SETTLED LAWS WHEREAS, APPELLANT IS NOT SEEKING A REVIEW BY CERTIORARI (DISCRETIONARY APPEAL) BECAUSE HIS APPEAL IS AN ONE ALLOWED BY DIRECT REVIEW, THEREFORE, IT IS THE HONORABLE COURT MINISTERIAL DUTIES TO EXAMINE THE ORIGINAL NOTICES OF APPEAL AND PROOF OF SERVICES ENCLOSED AND SEE THAT THE RESPONDENT FAILED TO YIELD AND GIVE APPELLANT BENEFIT OF THE FACTUAL SERVICING TO THE NOTICE OF APPEAL AND PROOF OF SERVICES TO THE RESPONDENT (OPPOSING COUNSEL) THAT OF WHICH IT WAS ON FEBRUARY 13, 2012, THE DATE OF MAILING IS WHAT THE APPELLANT CAN ONLY RELY ON DUE TO THE PRISON PROCESSING OF MAIL TURN OVER TO THE POSTAL DIRECTORS IN THE MAILROOM OF LEE C.I., BUT REGARDLESS OF THIS PROOF THE APPELLANT TAKES THE STANCES THAT THE FEDERAL LAW PROTECT HIM BY, SEE AT HOUSTON V. LACK, SUPRA. (FOURTH CIRCUIT i.e.) THE APPELLANT'S MAIL IS DEEM FILED ONCE HE TURNS IT OVER TO THE PRISON OFFICIALS, AND HERE IN THE APPELLANT'S CASE MATTERS HE IS DEEM TO HAVE SERVED THE OPPOSING COUNSEL ONCE HE TURN THIS MAIL OVER TO THE PRISON OFFICIALS AS A MATTER OF LAW IN HIS CASE MATTER, THE APPELLANT WOULD RESPECTFULLY COMPEL THE COURT TO ACCEPT THE DOCUMENTS THAT THE OPPOSING COUNSEL HAS RECEIVED AND SEE THAT HE HAS PROVIDED GOOD CAUSES TO THE COURT TO REINSTATE HIS APPEAL AND APPOINT APPELLATE DEFENCE COUNSEL OF INDIGENT COMMISSION TO HIS CASE ON APPEAL, THE COURT MUST ALSO SEE THE APPELLANT IS PRO SE AND HAS NOT TAKEN THE DUTIES OF HIS COUNSEL AWAY FROM HIM, AND DUE TO THE FACTS THAT COUNSEL GROVE REPRESENTED APPELLANT ON RECORD HE MUST BE THE PARTY HELD RESPONSIBLE FOR NOT CORRECTLY ASSISTING THE APPELLANT IN FILING HIS APPEAL IN THE SC COURT OF APPEALS ADEQUATELY AND SUFFICIENTLY ACCORDINGLY TO THE APPELLATE COURT'S RULES AS REQUIRED PER SE TO S.C. LAWS. THIS IS A VIOLATION THAT SHOULD NEVER OCCUR WHEN THERE IS A COUNSEL OF RECORD APPOINTED AND ASSIGNED TO THE APPELLANTS IN ANY GIVEN SCENARIOS, AND THIS WHAT THE HONORABLE COURT CAN'T OVERLOOK IN THIS PARTICULAR CASE MATTER ON APPEAL. THE APPELLANT RESPECTFULLY SUBMITS AND PRAYS THAT THIS HONORABLE COURT REINSTATE HIS APPEAL TO BE PERFECTED BY THE APPELLATE DEFENCE COUNSEL AS A MATTER OF S.C. LAWS AS APPLICABLE.

CONCLUSION

APPELLANT STATON, RESPECTFULLY REQUEST THAT THE HONORABLE COURT STRIKES ITS ORDER OF DISMISSAL ISSUED ON MARCH 27, 2012 BY THE CLERK OF COURT AND REINSTATE HIS APPEAL BASED UPON THE EVIDENCE HE PROFFERED TO THE HONORABLE COURT THAT FACTUALLY SHOWS THAT HE DID SERVED THE OPPOSING COUNSEL TIMELY WITH THE NOTICE OF APPEAL AND THE PROOF OF SERVICE AS WAS REQUIRED PER SE THE APPELLATE COURT RULES, RESPECTFULLY.

APRIL 3 , 2012

ENCLOSURES:

RESPECTFULLY SUBMITTED,

S Alfonso Staton

ALFONSO STATON, 241380
LEE C.I.
990 WISACKY HWY.
BISHOPVILLE, S.C 29010
PRO SE APPELLANT

ALFONSO STATON, 241380
LEE C.I.
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

RECEIVED

APR 05 2012

SC Court of Appeals

APRIL 03, 2012

HON: J.A. KITCHINGS
CLERK OF COURT OF APPEALS
PO BOX 11629
COLUMBIA, S.C. 29211

RE: STATON V. STATE OF SOUTH CAROLINA, CASE # 1996-GS-34-0984, etc.,
SEE ENCLOSED PETITION FOR REINSTATEMENT OF APPEAL, i.e.

DEAR MS. KITCHINGS:

ENCLOSED FOR FILING IS A PETITION FOR REINSTATEMENT OF DIRECT APPEAL IN THE
ABOVE CASE. ALSO ENCLOSED ARE THE FOLLOWING:

1. THE PETITION PROOF OF SERVICE ON RESPONDENT.
2. THE ORIGINAL NOTICE OF APPEALS AND PROOF OF SERVICES SERVED PRIOR ON
OPPOSING COUNSELS.
3. ORDER OF DISMISSAL BY THE SC Ct. OF App.
4. NO FILING FEES ARE REQUIRED DUE TO THIS APPEAL BEING FROM CRIMINAL CASE
MATTRES. (MOTION FOR A NEW TRIAL BASED ON AFTER TRIAL DISCOVERY.

APRIL 03, 2012

ENCLOSURES:

AS/el

CC: SALLEY W. ELLIOTT, Esq.
MARLBORO CO. CLERK OF Ct.
HON. WILLIAM B. ROGERS, Jr.
FILES/AS

RESPECTFULLY SUBMITTED,

S/ Alfonso Staton

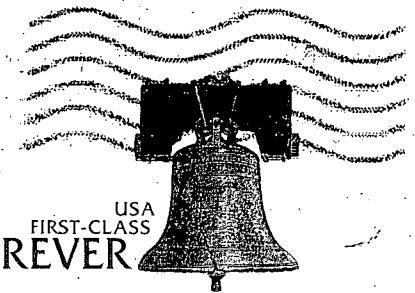
ALFONSO STATON
990 WISACKY HWY.
BISHOPVILLE, S.C 29010
PRO SE APPELLANT

Alfonso Staton #241380
L.C.1. R.C. 124
990 Wisacky Hwy
Bishopville, SC. 29010

COLUMBIA SC 290

17 APR 2012 PM 11

USA
FIRST-CLASS
FOREVER



S.C. - Court of Appeals
Hon. Jenny Abbott Kitchings, Clerk
P.O. Box 116929
Columbia, S.C. 29211

29211969955



State of South Carolina)
)
)
 Alfonso Staton 241380)
 Appellant)
)
 v.)
)
 State of South Carolina)
)

In the Court of General Sessions
Fourth Judicial Circuit

Case No. 1996-GS-34-0984

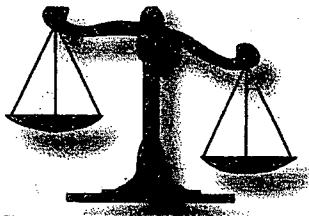
Certificate of Service

RECEIVED
APR 18 2012
SC Court of Appeals

I, Alfonso Staton, certify that I served all parties with a copy of the Notice of Appeal from the order of the Honorable Howard P. King, through the United States Mail, in a Postage prepaid envelope and delivered to the SCDC mail room on the 13th day of February, 2012.

s/ Alfonso Staton
Alfonso Staton 241380
Lee C. I., Richland C-124
Bishopville, SC 29010

FILED
2012 FEB 17 AM 9 03
WILLIAM R. FINDERBURN
CLERK OF COURT
HARLEBROO COUNTY, S.C.



Fourth Circuit Public Defender

A.C. Stephens
Chief Circuit Defender

January 24, 2012

Alfonso Staton
SCDC ID# 00241380
c/o Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

RECEIVED
APR 18 2012
SC Court of Appeals

RE: *The State v. Alfonso Staton*

Alfonso:

I hope this letter finds you well. I did not file an appeal of the judge's ruling on your motion to reopen the case because of a conflict. However, the judge did not rule on your issue of new evidence, which was included towards the back of the motion. This is the issue I'd like to present in front of a judge for consideration.

Once I have it scheduled, I will let you know. If that motion fails, then an appeal of that motion can be filed.

Sincerely,

A handwritten signature in black ink, appearing to read "Will E. Grove".

Will E. Grove
Assistant Public Defender
Fourth Judicial Circuit
Bennettsville, SC

Dillon: Post Office Box 29 • Dillon, SC 29536 • 877-225-2922 • Fax 800-670-6375
Darlington: Post Office Box 648 • Darlington, SC 29540 • 877-225-2922 • Fax 800-670-6375
Bennettsville: Post Office Box 37 • Bennettsville SC 29512 • 877-225-2922 • Fax 800-670-6375
Chesterfield: Post Office Box 307 • Chesterfield, SC 29709 • 877-225-2922 • Fax 800-670-6375

The South Carolina Court of Appeals

The State,

Respondent

v.

Alfonso Staton,

Appellant.

The Honorable Howard P. King
Marlboro County
Trial Court Case No. 1996-GS-34-00984

RECEIVED
APR 18 2012
SC Court of Appeals

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of Appellant to timely serve opposing counsel with the Notice of Appeal, as provided for in Rule 203 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Marlboro County after fifteen (15) days, exclusive of the date of filing this Order.

JOHN CANNON FEW, CHIEF JUDGE

BY Jenny A. Kitchings
Clerk

Columbia, South Carolina

cc: Alfonso Staton 241380

Senior Assistant Deputy Attorney General Salley W. Elliott

The Honorable William B. Funderburk

FILED
2012 APR 18



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

April 4, 2012

Alfonso Staton #241380
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

RECEIVED
APR 18 2012
SC Court of Appeals

Dear Mr. Staton:

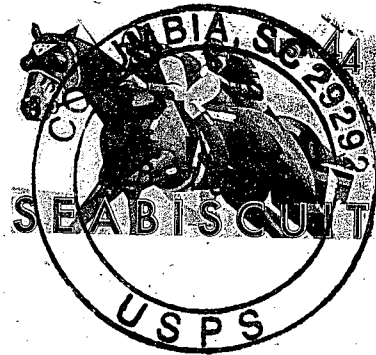
We are in receipt of your recent correspondence. We never received a copy of your notice of appeal. We checked with the Court of Appeals and have been advised that they dismissed your case on March 27, 2012 for failure to timely serve opposing counsel with the notice of appeal. Opposing counsel should have been served within ten days. Appellate Defense does not become involved in an appeal until after it has been properly served and filed.

Sincerely,

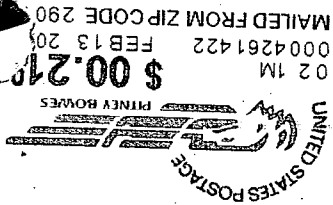
Sharon A. Graham
Administrative Coordinator

Mr. Alfonso Staten
Lc. 1. Ric 124
990 Wisacky Hwy
Bishopville, S.C. 29010

21



Clerk of Court of Appeals
Honorable Janyia Gee
P.O. Box 11029
Columbia, S.C. 29211



LEGAL MAIL

The South Carolina Court of Appeals EXHIBIT 1

The State,

Respondent

v.

Alfonso Staton,

Appellant.

The Honorable Howard P. King
Marlboro County
Trial Court Case No. 1996-GS-34-00984

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of Appellant to timely serve opposing counsel with the Notice of Appeal, as provided for in Rule 203 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Marlboro County after fifteen (15) days, exclusive of the date of filing this Order.

JOHN CANNON FEW, CHIEF JUDGE

BY Jenny A. Kitchings
Clerk

Columbia, South Carolina

cc: Alfonso Staton 241380

Senior Assistant Deputy Attorney General Salley W. Elliott

The Honorable William B. Funderburk

FILED
3/27/12

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM MARLBORO COUNTY
COURT OF GENERAL SESSIONS
HON: HOWARD P. KING, Cir. Ct. Judge

CASE NO. 1996-GS-34-0984

ALFONSO STANTON, 241380,....., APPELLANT,

v.

STATE OF S.C.,....., RESPONDENT.

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED A TRUE COPY OF THE PETITION TO REINSTATE APPEAL ON SALLEY W. ELLIOTT, Esq. BY DEPOSITING IT IN THE UNITED STATES MAIL, POSTAGE PREPAID, ON APRIL , 2012, ADDRESSED TO HER OFFICE AT: PO BOX 11549, COLUMBIA, S.C. 29211-1549, BY PERSONALLY DELIVERING IT TO THE PRISON MAILROOM POSTAL DIRECTORS, ON THIS 3 DAY OF APRIL 2012.

APRIL 3 , 2012

s/ Alfonso Stanton
ALFONSO STATON
LEE C.I.
990 WISACKY HWY.
BISHOPVILLE, S.C 29010
PRO SE APPELLANT

ALFONSO STATON, #241380
LEE C.I./RICH UNIT
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

APRIL 15, 2012

HON: JENNEY A. KITCHINGS
CLERK OF Ct. OF APPEALS
PO BOX 11629
COLUMBIA, S.C. 29211

RECEIVED
APR 18 2012
SC Court of Appeals

RE: STATE V. STATON, 1996-GS-34-00984, etc. PER REPLY.
ENCLOSURES, APPELLATE DEFENSE CORRESPONDENCE SUBJECT.

DEAR MS. KITCHINGS:

PLEASE ALLOW MY CORRESPONDENCE TO THE COURT TO SERVE AS MY FORMAL REQUEST FOR THE COURT TO GIVE ITS CLARITY TO THE COMMENCED ACTIONS TO MY FILINGS TO HAVE APPEAL REINSTATED BY THE COURT AS I DID FILED TO THE HONORABLE COURT EARLY APRIL 2012, THIS PETITION WAS FILED PURSUANT TO RULE 221(a), SCACR.

I WAS INFORMED BY THE APPELLATE DEFENSE LEGAL SECRETARY S.A.GRAHAM, ADMIN. COORD. ON APRIL 07, 2012, AS SHE STATED THAT THE OID DOES NOT BECOME INVOLVED WITH APPEALS UNTIL AFTER THEY ARE PROPERLY SERVED, I AM ADVISING THE COURT THAT THE OID MISCONSTRUED ITS LETTER/CORRESPONDENCE PROVIDED TO THEM FROM THE COURT, AND I'M REQUEST THAT THE COURT COMPEL THE OID TO PERFECT THE APPEAL AS REQUIRED DUE TO THE FACT THAT I AM AN INDIGENT APPELLANTP per se RULE OF LAW, SEE RULES: RULE 264, 602, SCACR, THESE RULES ARE THE ONES THAT ARE BASED UPON WHAT IS ESTABLISHED BY THE APPELLATE COURTS AS IS REQUIRED FOR THE COURT TO ENFORCE. I HAVE NOT RECEIVED THE ORDER OF REINSTATEMENT FROM THE COURT AS IT IS DUE, I ALSO HAVE NOT RECEIVED MY COPY OF PETITION THAT I PROVIDED TO THE COURT WHEN I FILED MY PETITION TO THE COURT FOR REINSTATEMENT OF APPEAL, AS I DID PROVIDED TO YOUR OFFICE THE ORIGINAL COPY OF THE PROOF OF SERVICE AS I DID SERVED THE OPPOSING COUNSEL TIMELY AS WAS REQUIRED BY THE RULES, THE CLAIM THAT IS BY PROOF AS THE OPPOSING COUNSEL WAS SERVED, HE WAS SERVED DURING THE COURSES WHEN I FILED TO THE CLERK OF COURT OFFICE AS WELL.

I APPRECIATE YOUR TIME AND ASSISTANCE GIVEN TO ME SOON AS DID AND I LOOK FORWARD IN HEARING FROM YOU IN THIS VERY NEAR FUTURE. PLEASE ADVISE ME ONCE YOU HAVE CONTACTED THE OID OFFICIAL.

APRIL 15, 2012

ENCLOSURES:

cc: SALLEY W. ELLIOTT, ESQ.
ROBERT M. DUDEK, CAD
FILES/AS

RESPECTFULLY SUBMITTED,
S/ *Alfonso Staton*

ALFONSO STATON
LEE C.I./RICH. UNIT
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
APPELLANT

June 19, 2012

Clerk of Court of Appeals
Honorable J.A. Kitchens
P.O. Box 11629
Columbia, S.C. 29211

RE: my Appeal

Dear Ms. Kitchens,

This correspondence is in reference to my letter dated April 15, 2012 about the filing of my appeal that was filed February 13, 2012. It's been two (2) month since my last correspondence showing proof that I filed the notice of Appeal in a timely fashion, and that I served all parties accordingly. I filed everything appropriately and my correspondences dated April 3, 2012 and April 15, 2012 respectively will show all filings was in perspective to the rules and regulations. I'd greatly appreciate it if you could respond to inform me of the status of my case.

Sincerely,

Alfonso Staton

RECEIVED

JUN 21 2012

SC Court of Appeals



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 07, 2012

Mr. Alfonso Staton #241380
Lee Corr. Inst.
990 Wisacky Hwy.
Bishopville SC 29010

Re: The State v. Staton, Alfonso
Appellate Case No. 2012-210026

Dear Mr. Staton:

Enclosed please find the Court's decision regarding the above matter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Salley W. Elliott

The South Carolina Court of Appeals

The State, Respondent

v.

Alfonso Staton, Appellant.

Appellate Case No. 2012-210026

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Lee

J.

Paul W. Thomas

J.

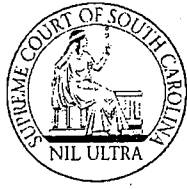
John D. Beathan

J.

Columbia, South Carolina

cc:
Salley W. Elliott

FILED
SJS 9/7/12



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

October 30, 2012

Alfonso Staton, #241380
Lee Correctional Institution/ D-N 2110
990 Wisacky Hwy.
Bishopville SC 29010

Re: The State v. Alfonso Staton
Appellate Case No. 2012-212985

Dear Mr. Staton:

This Court has received your Petition for Writ of Certiorari and Appendix filed on September 21, 2012, and the case has been assigned the appellate case number that appears above. **Please use this number on all future correspondence relating to this matter.**

All parties to this matter are advised that all filings must comply with the requirements of Rule 242 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. **This office**

will *not* review filings for redaction or to determine if materials should be sealed.

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

cc:

Donald J. Zelenka

The Honorable Jenny Kitchings



ALAN WILSON
ATTORNEY GENERAL

October 30, 2012

Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P. O. Box 11330
Columbia, SC 29211

Re: The State v. Alfonso Staton
Appellate Case No. 2012-210026

RECEIVED


NOV 1 2012

SC Court of Appeals

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the *Return to Petition for Writ of Certiorari to the Court of Appeals* in the above-referenced case for filing. Also, enclosed for filing is a *Motion to Allow Late Filing of Return to Petition for Writ of Certiorari to the Court of Appeals*. By copy of this letter, I am serving Petitioner with same.

Sincerely,



Donald J. Zelenka
Senior Assistant Deputy Attorney General

DJZ/lbb
Enclosure

cc: Alfonso Staton, #241380
S.C. Court of Appeals
Sandi Wofford, Victims Assistance

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**Certiorari Petition from Marlboro County
Howard P. King, Circuit Ct. Judge
On Denial of Motion for New Trial**

Appellate Case # 2012-210026

ALFONSO STATON, #241380,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

RESPONDENT

RECEIVED

NOV 1 2012

SC Court of Appeals

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
S.C. Bar # 5758

P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

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QUESTIONS PRESENTED ON CERTIORARI

WHETHER THE NOTICE OF APPEAL WAS TIMELY SERVED FROM THE
DENIAL OF A MOTION FOR NEW TRIAL TO GIVE APPELLATE JURISDICTION.

STATEMENT OF THE CASE

The Petitioner, Alfonso A. Staton, a.k.a. Ofonsa A. Staton, a.k.a. Alfonzo A. Staton, has made a *pro se* Petition for Writ of Certiorari before this Court asserting the Court of Appeals erred as a matter of law in dismissing his appeal pursuant to SCACR Rule 203 for failing to timely serve opposing counsel with a notice of appeal from the January 15, 2011 Order of the Honorable Howard King denying a motion to reconsider the October 19, 2011 denial of a motion for new trial. Respondent submit as the Court of Appeals concluded that no appeal from the denials of the motion for new trial in General Sessions Court was served within 10 days after receipt of the order as required by SCACR Rule 203(2).

The Petitioner, in his pleadings before this Court concedes that he received the January 15, 2012 order on **January 24, 2012**. See Petition to Restate Appeal, Statement of the Case p. 1 (attached to Pro Se Petition for Writ of Certiorari); Notice of Appeal, dated **February 13, 2012**. The Petitioner's notice of appeal and certificate of service are both dated February 13, 2012. The notice is untimely and this Court lacks jurisdiction to address the merits. [Respondent have searched the records of the Office of the Attorney General, the Solicitors Office of the Fourth Circuit and the Solicitors Office the Fifteenth Circuit and cannot locate any notice of appeal having ever been received by any of the governmental entities. Further, the Petitioner's affidavit of service only states "all parties." Assuming it was actually sent, the notice of appeal dated **February 13, 2012** was untimely because it had to be served within ten (10) days of January 24, 2012 which is **February 3, 2012**. The Petitioner's attempted service was 10 days out of time. The Court of Appeals properly dismissed the appeal pursuant to SCACR Rule 201.

A. Lower court proceedings.

The record reveals that the Petitioner, *pro se*, made a motion for new trial based upon after discovered trial evidence in the Court of General Session for Marlboro County, dated April 28, 2009, filed May 6, 2009. A hearing was held on or about October 6, 2011 the matter before the Honorable Howard King. The Petitioner was present and represented by Will Groves. The state was represented by Senior Assistant Solicitor Donna Elder of the Fifteenth Circuit Solicitors Office (due to the earlier conflict of the Fourth Circuit Solicitors Office). On October 19, 2011, the Honorable Howard King entered an Order Denying Motion for New Trial, filed October 20, 2012.¹

The Petitioner made a styled Rule 59(e) motion "to alter or amend the judgment" October 19, 2011 order denying the new trial motion. On January 15, 2012, Judge King entered a written order denying the motion, filed January 19, 2012. In this order, Judge King stated:

The Applicant, Alfonso Staton, has made a motion "to alter or amend judgment" pursuant to Rule 59(e), SCRP. This is a criminal proceeding and the Rules of Civil Procedure do not apply.

The Court will treat this as a motion for reconsideration of its Order dated October 19, 2011 and served January 4, 2012 pursuant to Rule 29, SCRCrimP. After careful consideration of all matters set forth in the motion the Court has concluded that its initial Order was correct and therefore denies the motion for reconsideration.

Staton v. State, 96-GS-34-0984, Order (King, January 15, 2012, filed January 19, 2012). The Petitioner asserts that he received Notice of entry on January 24, 2012.

The Actions of the Court of Appeals.

On February 13, 2012, the Petitioner made a notice of appeal according to a certificate of service filed February 17, 2012 in the Court of General Sessions for Marlboro County. Without

¹Earlier order on the matter were filed October 18, 2011 dated October 17, 2011

specifying the names or addresses, he asserted that he served "all parties." *As noted earlier, the Office of Attorney General and the Office of the Solicitor of the Fifteenth Circuit have no record of receiving the notice of appeal from the Petitioner.*

On March 27, 2012, the South Carolina Court of Appeals, through the Clerk of Court, entered an "Order of Dismissal" "due to the failure of Appellant to timely serve opposing counsel with Notice of Appeal, as provided for in Rule 203 of the South Carolina Appellate Court Rules." *State v. Alfonso Staton, Order of Dismissal (S.C. Ct.App. March 27, 2012).*

The Petitioner, pro se, on April 3, 2012, made a "Petition for Re-state Appeal" requesting reinstatement of the appeal. In the pleading, he asserted that he had served Solicitor William Rogers (not counsel in the case) and "Allan Wilson, Esq. Attorney General" claiming it was dated February 8, 2012. [As noted, there is no record of the Attorney General's Office receiving this mailing including a notice of appeal]. However, in the certificate of service the Petitioner attaches to the Notice of Appeal Staton references the date of February 13, 2012, not February 8, 2012. [Under either the February 13, 2012 or February 8, 2012 date, the Petitioner is still untimely because the due date was February 3, 2012 - 10 days from January 24, 2012].

On September 7, 2012, the South Carolina Court of Appeals entered its order denying the Petition for rehearing. *State v. Alfonso Staton, Appellate Case No. 2012-21-006 (S.C. Ct. App. September 7, 2012)*(order denying rehearing).

On September 21, 2012, Petitioner made a pro se petition for writ of certiorari in the South Carolina Supreme Court. *Staton v. State of S.C. "Petition for Writ of Certiorari to the South Carolina Supreme Court." Appellate Case No. 2012-210026, dated September 19, 2012.*

Although the cover page reflects as counsel of record Salley W. Elliott, the petition does not

include a certificate of service. A review of the records of the Office of the Attorney General reveal that this document was not received by Senior Assistant Attorney General Elliott.

On or about October 25, 2012, the Office of the Attorney General received a call from the Clerk's Office of the South Carolina Supreme Court concerning whether a Return would be filed in the matter. On the same date, the Clerk's Office of the Supreme Court provided this Office with a copy of the Petition for Writ of Certiorari that it had received.

This Return follows.

B. Prior State Court Procedural History.

Petitioner is currently confined in the Lee Correctional Institution of the S.C. Department of Corrections pursuant to orders of commitment of the Clerk of Court for Marlboro County. Petitioner was indicted at the term of the County grand jury for murder, CSC, kidnapping, and criminal conspiracy. (1996-Gs-34-0984). Will B. Rogers, Esquire initially represented Petitioner on the charges. The case was prosecuted by Solicitor Ralph Wilson. Petitioner proceeded to trial before the Honorable Edward B. Cottingham, Circuit Court Judge ("the trial/sentencing court"), and a jury, after which Petitioner was found guilty of murder, kidnapping, and conspiracy on March 18, 1997 and sentenced to life imprisonment for murder, no sentence on the kidnapping charge, and five (5) years for criminal conspiracy by Judge Cottingham. Petitioner appealed his convictions or sentences.

The Direct Appeal

Petitioner appealed his convictions and sentences to the South Carolina Court of Appeals by way of a Brief of Appellant. Petitioner was represented in the appeal by Joseph Savitz, Esquire, of the S.C. Office of Appellate Defense. On November 8, 2001, the Court of Appeals affirmed

Petitioner's convictions and sentences in an unpublished Opinion. State v. Alfonzo Staton, Unpublished Opinion No. 2001-UP-477 (Ct. App. filed November 8, 2001).

Petitioner filed a Petition for Writ of Certiorari to the S.C. Supreme Court. The South Carolina Supreme Court denied the petition on November 21, 2002. The Remittitur was issued on November 25, 2002.

The 2003 PCR Action

Petitioner filed an application for post-conviction relief (PCR) on January 10, 2003. (2003-CP-34-0244). A hearing was convened before Judge Milling on January 11, 2005. The Petitioner was present and represented by Candace Lively. On September 16, 2005, the Honorable John Milling issued an Order of Dismissal.

The 2005-2009 Appeal from the Denial of PCR.

Petitioner appealed from the denial of PCR by way of a Johnson Petition/Petition for Writ of Certiorari to the S.C. Supreme Court (merits brief). Petitioner was represented in this appeal by the S.C. Office of Appellate Defense. Certiorari was initially granted and further briefing was held. The South Carolina Court of Appeals entered an Order on February 23, 2009 which dismissed the appeal as certiorari was improvidently granted. *Staton v. State of South Carolina*, 2009-MO-611 (S.C.Ct. App. February 23, 2009).

ARGUMENT

I. Certiorari must be denied where the Supreme Court and Court of Appeals Have No Jurisdiction Where The Petitioner Failed To Serve A Timely Notice of Appeal Within 10 days from Receipt of the Order Denying Reconsideration of the Denial of the Motion for New Trial.

The Petitioner has failed to timely serve a notice of appeal on opposing counsel.

Certiorari must be denied where the Court of Appeals properly concluded as a matter of law to dismiss his untimely notice of appeal pursuant to SCACR Rule 203 for failing to timely serve opposing counsel with a notice of appeal from the January 15, 2011 Order of the Honorable Howard King denying a motion to reconsider the October 19, 2011 denial of a motion for new trial. No notice of appeal from the denial was served within 10 days as required by SCACR Rule 203(2).

Notice of Appeal of an order must be timely served. Rule 203(b), SCACR. There are no exceptions to this requirement. Rule 234(b), SCACR. If the Notice of Appeal is not timely served, the Court does not have jurisdiction and the appeal will be dismissed. State v. Hinson, 303 S.C. 92, 399 S.E.2d 422 (1990); Southbridge Properties, Inc. v. Jones, 292 S.C. 198, 355 S.E.2d 535 (1987); Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Rule 203 of the South Carolina Appellate Court Rules set out the time frame for service on opposing parties of a notice of appeal from a motion for new trial:

- (2) Appeals From the Court of General Sessions. After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. **When a timely post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order**

granting or denying such motion. In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

Rule 203, SCACR . (emphasis added).

The notice of appeal had to be served upon the Solicitors Office of the Fifteenth Circuit - particularly Senior Assistant Solicitor Donna Elder - under the time frame set by Petitioner by February 3, 2012. The Petitioner, in his pleadings before this Court concedes that he received the January 15, 2012 order on January 24, 2012. See *Petition to Restate Appeal*, Statement of the Case p. 1 (attached to Pro Se Petition for Writ of Certiorari); Notice of Appeal, dated February 13, 2012. The Petitioner's notice of appeal and certificate of service are both dated February 13, 2012. The notice is untimely and this Court lacks jurisdiction to address the merits. [Respondent State have searched the records both the Office of the Attorney General and the Solicitors Office of the Fifteenth Circuit cannot locate receipt of any notice of appeal by any of the governmental entities. Further, the Petitioner's affidavit of service on his notice filed in the Court of Appeals only states "all parties."

Assuming it was actually sent, the notice of appeal dated **February 13, 2012** was untimely because it had to be served within ten (10) days of January 24, 2012 which is **February 3, 2012**. The Petitioner's attempted service was 10 days out of time. The Court of Appeals properly dismissed the appeal pursuant to SCACR Rule 201.

CONCLUSION.

For all the foregoing reasons, the Petition for Writ of Certiorari must be denied and the appeal dismissed for lack of subject matter jurisdiction.

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
S.C. Bar Number 5758

P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

By:

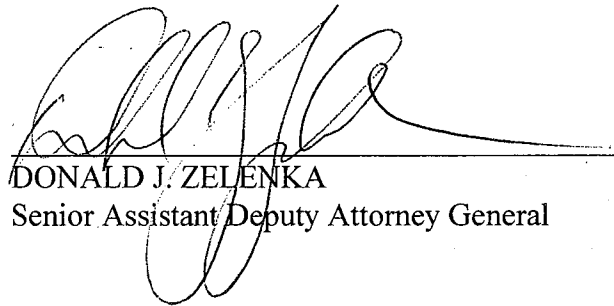


DONALD J. ZELENKA
ATTORNEYS FOR RESPONDENT

October 30, 2012

CERTIFICATE OF SERVICE

I, **Donald J. Zelenka**, hereby certify that I have served the **Return to Petition for Writ of Certiorari to the Court of Appeals** in the foregoing action by depositing two (2) copies in the United States mail, postage prepaid, to the Petitioner, Alfonso Staton, #241380, Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010 this 30th day of October, 2012.



DONALD J. ZELEŃKA
Senior Assistant Deputy Attorney General

The South Carolina Court of Appeals

The State, Respondent

v.

Alfonso Staton, Appellant.

Appellate Case No. 2012-210026

Trial Court Case No. 1996-GS-34-0984

ORDER

The remittitur in the above entitled matter on November 6, 2012 is recalled. It was sent in error. The Clerk of Court of Marlboro County is hereby requested to return the original remittitur within fifteen (15) days of the date of this order.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Salley W. Elliott

Alfonso Staton

The Honorable William B. Funderburk

FILED

JA 11/30/12

The South Carolina Court of Appeals

The State, Respondent
v.
Alfonso Staton, Appellant.

The Honorable Howard P. King
Marlboro County
Trial Court Case No. 1996-GS-34-00984

ORDER of DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of Appellant to timely serve opposing counsel with the Notice of Appeal, as provided for in Rule 203 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Marlboro County after fifteen (15) days, exclusive of the date of filing this Order.

JOHN CANNON FEW, CHIEF JUDGE

BY Jenny A. Kitching
Clerk

2012 NOV 15 PM 2 25
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

FILED

Columbia, South Carolina
cc: Alfonso Staton 241380
Senior Assistant Deputy Attorney General Salley W. Elliott
The Honorable William B. Funderburk

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DEC 14 2012

SC Court of Appeals

FILED

2012 11/27/12

The South Carolina Court of Appeals

The State, Respondent

v.

Alfonso Staton, Appellant.

Appellate Case No. 2012-210026

2012 NOV 15
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.
2012 NOV 15
FILED
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Hill

J.

Paul W. Brown

J.

John Beathan

J.

Columbia, South Carolina

cc:

Salley W. Elliott

FILED
875 9/7/12

The Supreme Court of South Carolina

The State, Respondent,

v.

Alfonso Staton, Petitioner.

Appellate Case No. 2012-212985

Lower Court Case No. 1996-GS-34-00984

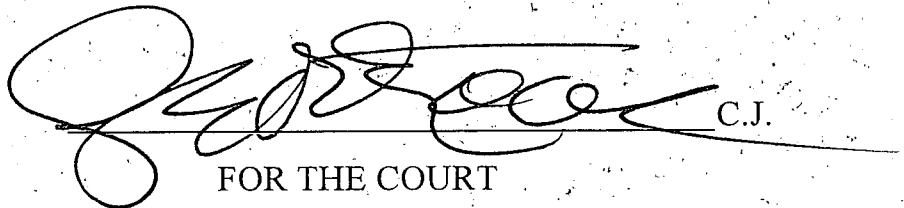
RECEIVED

APR 04 2014

SC Court of Appeals

ORDER

This matter is before the Court by way of a petition for a writ of certiorari seeking review of the Court of Appeals' dismissal of petitioner's appeal. The petition is denied.


C.J.
FOR THE COURT

Columbia, South Carolina

April 3, 2014

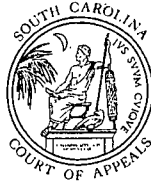
cc:

The Honorable Jenny Abbott Kitchings

Donald J. Zelenka, Esquire

Alfonso Staton

The Honorable William B. Funderburk



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 08, 2014

The Honorable William B. Funderburk
PO Drawer 996
Bennettsville SC 29512-0996

REMITTITUR

Re: The State v. Alfonso Staton
Lower Court Case No. 1996GS3400984
Appellate Case No. 2012-210026

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

Enclosure

cc: Alfonso Staton
Salley W. Elliott, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
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TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
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November 06, 2012

The Honorable William B. Funderburk
PO BOX 996
Bennettsville SC 29512

REMITTITUR

Re: The State v. Staton, Alfonso
Lower Court Case No. 1996-GS-34-0984
Appellate Case No. 2012-210026

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Jenny A. Kitchip".

CLERK

Enclosure

cc: Salley W. Elliott
Alfonso Staton

2012 NOV 15 PM 2 25
WILLIAM B. FUNDERBURK
CLERK OF COURT
MARLBORO COUNTY, S.C.

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SC Court of Appeals