

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2016-000966

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RECEIVED  
SEP 06 2016  
SC Court of Appeals

THE STATE,

Respondent,

v.

ROBERT M. WATKINS,

Appellant.

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**MOTION TO DISMISS APPEAL**

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Respondent ("the State"), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

Appellant Robert Watkins was convicted of armed robbery and possession of a weapon after a jury trial held before the Honorable C. Victor Pyle, Jr. on October 23-25, 2002, in Greenville County. Judge Pyle sentenced Appellant to thirty years' imprisonment for the armed robbery and five years' imprisonment for possession of a weapon. Appellant filed a timely notice of Appeal, and following the submission of a no-merits brief pursuant to Anders v. California, 386 U.S. 738 (1967), the Court of Appeals dismissed Appellant's appeal and granted appellate counsel's motion to be relieved. State v. Watkins. Op. No.2004-UP-406 (filed June 22, 2004).

Thereafter, Appellant filed an application for post-conviction relief on October 22, 2004. An evidentiary hearing was held on April 8, 2005, before the Honorable Larry R. Patterson. On January 17, 2006, Judge Patterson issued an order denying and dismissing Appellant's application. Appellant appeal this order, and on appeal from the dismissal, the South Carolina Supreme Court reversed the post-conviction relief court and remanded Appellant's case for a new trial in the court of General Sessions. Watkins v. State. Memorandum Opinion No. 2008-MO-001 (filed January 14, 2008). The Court found trial counsel was ineffective in failing to properly argue that Appellant was entitled to a jury charge on alibi.

Appellant's case was retried before Judge Patterson on September 22-24, 2008. Appellant was represented by Stephen J. Henry during jury selection and pre-trial motions but represented himself, with Henry serving as standby counsel, for the remainder of the trial. The jury convicted Appellant as indicted and Judge Patterson sentenced him to consecutive sentences of twenty-five years' imprisonment for armed robbery and five years' imprisonment for the weapons offense.

Appellant again appealed his conviction. In an unpublished opinion, the Court of Appeals reversed Appellant's convictions, finding Judge Patterson erred in denying Appellant's motion for recusal because Judge Patterson presided over his prior post-conviction relief action. On certiorari, the South Carolina Supreme Court reversed the Court of Appeals and affirmed Appellant's convictions.

Thereafter, Appellant filed an application for post-conviction relief challenging his conviction from the second trial. An evidentiary hearing was held before the Honorable Edward W. Miller on April 22, 2015. On October 2, 2015, Judge Miller entered an Order of Dismissal, denying Appellant's application for post-conviction relief. Appellant filed a timely Notice of Appeal from the Order of Dismissal. A Petition for a Writ of Certiorari pursuant Johnson v.

State. 294 S.C. 310, 364 S.E.2d 201 (1988), was submitted on Appellant's behalf. Certiorari is still pending before the Supreme Court.

On October 7, 2015, Appellant filed a motion for a new trial based on newly discovered evidence. The State filed its response to this motion on January 19, 2016. On April 26, 2016, Judge Miller denied and dismissed Appellant's motion pursuant to a written order.<sup>1</sup>

## II.

On May 4, 2016, Appellant filed a notice of appeal to initiate an appeal challenging Judge Miller's denial of his motion for a new trial. Subsequently, on August 3, 2016, Appellant filed and served his Initial Brief of Appellant. However, Appellant did not file a designation of matter to be included in the record on appeal contemporaneously with the filing of his initial brief. Thereafter, on August 17, 2016, this Court sent Appellant a letter advising him of the deficiency with his appeal and indicating his appeal would be dismissed unless he corrected the deficiency within ten days. In response to this Court's letter, Appellant then apparently provided this Court with a designation of matter but wholly failed to serve that document on the State.

## III.

Pursuant to Rule 209(a), SCACR, an appellant in a criminal appeal is required to "serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal." Significantly, an appellate court in South Carolina is "completely justified in dismissing [an] appeal" when an appellant fails to comply with the requirements of the South Carolina Appellate Court Rules, including the rule regarding the service and filing of designations of matter. Henning v. Kaye, 307 S.C. 436, 437-

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<sup>1</sup> It is unclear whether a hearing was held on this motion. Out of an abundance of caution, the State has requested the court reported assigned to Judge Miller prepare a transcript of such a hearing—if held. The State's request was sent on August 24, 2016. As of the filing of this motion, the State has not yet received a response from the court reporter.

438, 415 S.E.2d 794, 794 (1992).

**IV.**

In this matter, Appellant did **not** file and serve a designation of matter at the time he filed his initial brief as required by our appellate court rules. Thereafter, when notified of that deficiency by this Court and given an opportunity to correct it, Appellant again failed to comply with our appellate court rules and did **not** serve—and still has not served—a designation of matter on the State despite the clear requirements of our appellate court rules. Importantly, as our Supreme Court has stated, “the 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.” Henning, 307 S.C. at 437, 415 S.E.2d at 794. Accordingly, because Appellant has repeatedly failed to comply with the requirements needed for his appeal to go forward, the State respectfully asks this Court to dismiss Appellant’s appeal based on his non-compliance.

**WHEREFORE**, Respondent prays this Court will dismiss Appellant’s appeal for failure to comply with appellate court rules; hold this appeal in abeyance pending a ruling on Respondent’s motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

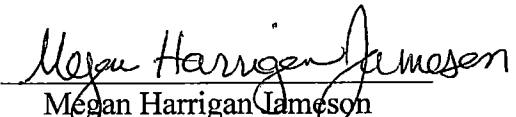
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September 6, 2016

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA  
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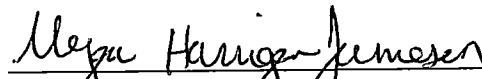
**PROOF OF SERVICE**

I, Megan Harrigan Jameson, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Watkins, SCDC #243803  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, South Carolina 29669

I further certify that all parties required by Rule to be served have been served.

This 6<sup>th</sup> day of Sept., 2016.



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ALAN WILSON  
ATTORNEY GENERAL

September 6, 2016

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HAND DELIVERY

The Honorable Jenny A. Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia SC 29211

RE: State v. Robert M. Watkins – Appellate Case No. 2016-000966

Dear Ms. Kitchings:

I am enclosing the original and six copies of the Respondent's Motion to Dismiss the Appeal in the above-referenced case.

Sincerely,

Megan Harrigan Jameson  
Assistant Attorney General  
S.C. Bar No. 100108

MHJ/

Enclosures

cc: Robert M. Watkins, SCDC #243803  
Victim Services