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OCT 18 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Magistrate Court Uniform Traffic Ticket No. 4102P0310884
Intermediate Appellate Case No. 2016-CP-18-0490
Appellate Case No. 2016-001116

THE STATE,

RESPONDENT,

v.

FLOYD RILEY,

APPELLANT.

**MOTION TO DISMISS APPEAL FOR FAILURE
TO CORRECT DEFICIENCY OR, ALTERNATIVELY,
TO RESET TIME LIMITS FROM PROPER SERVICE
OF APPELLANT'S DESIGNATION OF MATTER**

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

I.

On December 12, 2015, Appellant was arrested for speeding in Dorchester County for going 80 miles per hour (mph) in a 55 mph zone. (Uniform Traffic Ticket No. 4102P0310884). The arresting officer requested a bail amount of four hundred and forty-five dollars (\$445). On March 4, 2016, Appellant's case was called for trial before the Honorable Jackie G. Jenkins, Dorchester County Magistrate Judge, and a jury. Appellant was present and proceeded to trial

which ended with the six person jury returning a unanimous guilty verdict. Appellant was sentenced to pay a fine of four hundred and forty-five dollars (\$445). On March 11, 2016, Appellant timely appealed his conviction to the Dorchester County Court of Common Pleas, alleging errors by the trial court. On March 24, 2016, pursuant to Section 18-3-40 of the South Carolina Code, Judge Jenkins filed a “Transmittal of Traffic Appeal” wherein she made findings of fact and conclusions of law. (Transmittal of Traffic Appeal filed March 24, 2016, with the Dorchester County Clerk of Court).

On April 19, 2016, an appellate hearing was convened at the Dorchester County Courthouse before the Honorable Maite Murphy. Appellant appeared *pro se* and the State was represented by former Assistant Solicitor Kyle Leo Ward of the First Judicial Circuit Solicitor’s Office.¹ At the present time is it unclear what arguments were made at the hearing because the State has not yet obtained a copy of the transcript and, not having been served with a designation of matter by Appellant, was not aware whether Appellant intended to include a transcript in the Record on Appeal.² In a Form 4 Order dated May 3, 2016, and filed May 13, 2016, the circuit court affirmed Appellant’s magistrate court conviction. (Order of Judge Murphy dated May 3, 2016).

II.

Appellant submitted a notice of intent to appeal the circuit court order affirming his conviction and sentence, which he served by mail on Mr. Ward by mail on May 24, 2016. Appellant subsequently made a motion to order transcripts outside of deadline, which was served on Mr. Ward by mail on June 13, 2016. In an order filed June 21, 2016, this Court granted

¹ According to a receptionist at the First Circuit Solicitor’s Office, Mr. Ward is no longer employed as an assistant solicitor and is now working in private practice.

² By letter dated October 11, 2016, the State has requested a copy of the April 19, 2016, Transcript from Court Reporter Maria Dempsey.

Appellant's motion and directed that he inform the Court and the respondent when the transcript had been delivered. On August 16, 2016, Appellant filed an Initial Brief and on the same date served Mr. Ward with that Brief by mail.

In a letter dated August 17, 2016, this Court wrote to Appellant notifying him of a deficiency because his brief was not accompanied by a designation of matter to be included in the record on appeal. The Court advised that the deficiency must be corrected within ten days of the date of the letter. On August 22, 2016, the Office of the Attorney General wrote the Court to advise that it had not been served with Appellant's Initial Brief. The same day, Appellant apparently filed a designation of matter as directed by the Court; however, his attached "Certificate of Service" indicates it was served on the Honorable Diane S. Goodstein and Magalie Arcure Creech, Esquire, of the Finkel Law Firm, but not on either the Attorney General's Office or Mr. Ward.³

In a letter to this office dated August 26, 2016, the Court noted the August 22, 2016, letter was the first appearance by anyone from the Attorney General's Office in this appeal. The Court notified Appellant of the appearance and asked that Appellant serve the State at the Attorney General's Office on all future filings in the case.

By letter dated September 30, 2016, the Court wrote this office to advise the initial brief and designation of matter were due to be served and filed no later than September 15, 2016, and had not been submitted. By letter dated October 4, 2016, this Office responded requesting that the appeal be held in abeyance for thirty (30) days while it attempted to obtain a copy of Appellant's designation of matter and the transcript of the proceedings before Judge Murphy. By letter dated October 12, 2016, the Court advised this Office that any request for relief must be made by motion pursuant to Rule 240, SCACR. This "Motion to Dismiss Appeal for Failure to Correct Deficiency

³ These documents appear in the Court's public access portal on the Judicial Department website.

or, Alternatively, to Reset Time Limits from Proper Service of Appellant's Designation of Matter" now follows.

III.

Pursuant to Rule 209(a), SCACR, an appellant, at the same time he serves his initial brief, "shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal" As noted above, Appellant initially failed to properly serve or file a designation of matter at the time he served his initial brief. This deficiency was identified by the Court and although it appears Appellant has since attempted to correct the deficiency by filing a designation of matter with the Court, he has still failed to serve that designation of matter on the State, either by serving the Solicitor's Office, or by serving the Attorney General's Office.

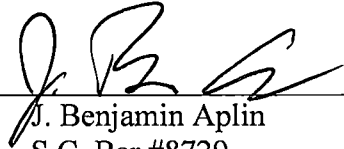
Based on Appellant's failure to correct the deficiency within the time set forth by the Court, the State now moves to dismiss this appeal. To the extent this Court denies the motion to dismiss and allows Appellant to correct his continued deficiency by now properly serving respondent, the State respectfully asks that the time limits for filing an initial brief of respondent and designation of matter be reset from service of Appellant's designation of matter.

WHEREFORE, the State respectfully requests that this Court dismiss Appellant's appeal for failure to correct deficiency. Alternatively, the State respectfully requests that this Court reset the time limits for filing the initial brief of respondent and designation of matter from the date Appellant properly serves his designation of matter.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

BY: 

J. Benjamin Aplin
S.C. Bar #8729

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ATTORNEYS FOR RESPONDENT

October 18, 2016

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PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within "Motion to Dismiss Appeal for Failure to Correct Deficiency or, Alternatively, to Reset Time Limits from Proper Service of Appellant's Designation of Matter on Appellant" by depositing two copies of the same in the United States mail, postage prepaid, addressed to Floyd Riley, 341 Hudson Road, Saint George, SC 29477.

I further certify that all parties required by Rule to be served have been served. This 18th day of October, 2016.



ANGELA S. BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

October 18, 2016

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SC Court of Appeals

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

RE: State v. Floyd Riley– Appellate Case No. 2016-001116

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the “Motion to Dismiss Appeal for Failure to Correct Deficiency or, Alternatively, to Reset Time Limits from Proper Service of Appellant’s Designation of Matter on Appellant,” along with proof of service, for filing in the above-referenced appeal.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

cc: Floyd Riley
Kyle Leo Ward, Esquire
Victim Services