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NOV 16 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Appellate Court

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Appellant Case No. 2016-001745

The State,

Respondent.

v.

Michael Patton Holt,

Appellant.

MOTION TO REINSTATE APPEAL AND MOTION TO FILE THE PETITION FOR
EXTENSION OF RULE 207(a) DEADLINE OUT OF TIME

Trial counsel for Appellant, Michael Patton Holt, petitions this Court to permit Appellant to reinstate his appeal and to allow late filing of the petition to extend the Rule 207(a), SCACR, thirty (30) day deadline to order the lower court transcript out of time in the above-referenced case. In support of this motion, trial counsel for Appellant would respectfully show this Court the following circumstances:

1. The initial Rule 207(a), SCACR, deadline for Appellant to order the transcript was September 16, 2016, and Appellant's case was dismissed by the November 1, 2016 Order of this Court. State v. Michael Patton Holt, S.C. App. Ct. Order dated November 1, 2016.

2. On August 16, 2016, trial counsel timely filed and served Appellant's notice of appeal pursuant to Rule 203, SCACR.

3. On August 25, 2016, Appellant's sister ("Sister") contacted the court reporter in Mr. Holt's trial, Tara T. Scott, and made an initial request to order the trial court transcript. (See

Exhibit A, attached hereto). Trial counsel was unaware of Sister's request to order the transcript until after filing of said November 1, 2016 Order dismissing Appellant's appeal.

3. Because Appellant is indigent and retained counsel at the trial level, trial counsel accordingly referred Appellant's appeal to the Division of Appellate Defense ("Appellate Defense") by letter dated August 16, 2016.

4. On August 23, 2016, trial counsel received a letter from Appellate Defense in regards to handling Appellant's appeal and instructing trial counsel to have Appellant complete and return an affidavit of indigency to their office by September 6, 2016. Appellate Defense also notified trial counsel of the obligation to request an extension to order the transcript if said September 6, 2016 deadline could not be met.

5. Trial counsel mailed a letter, along with the affidavit of indigency, to Appellant at Kirkland Correctional Institution ("Kirkland") on August 30, 2016. (See Exhibit B, attached hereto). In this letter, Appellant was informed to promptly complete the affidavit and return to trial counsel's office.

6. On September 6, 2016, trial counsel faxed a letter to Appellate Defense informing that office that Appellant's affidavit had not been received and, as such, trial counsel could not meet that office's deadline. Appellant Defense also was informed that trial counsel would ask for an extension of the Rule 207(a), SCACR, deadline.

7. On September 7, 2016, trial counsel is informed and believes that Appellant mailed trial counsel a letter about his appeal, inquiring whether he needed to retain private counsel to handle the matter. Trial counsel is further informed and believes that Appellant has a "legal mail" receipt evidencing said mailing in his possession. To date, trial counsel is informed and believes said mailing has not been received by his office.

8. On September 8, 2016, trial counsel – acting in good faith but erroneously – sent a letter to the South Carolina Office of Court Administration (“Court Administration”) asking for an extension of this Court’s September 16th deadline to request the transcript. (See Exhibit C, attached hereto). In said letter, trial counsel explained the current situation regarding Appellant and copied all parties to the appeal on that correspondence. That same date, trial counsel also submitted a similar letter to Court Administration asking for an extension of the Rule 207(a), SCACR, deadline to request the transcript in State v. Jacoby Jamar Gregory, No. 2014GS2300409, *appeal docketed*, No. 2016-001533 (S.C. Ct. App. 2016). This Court construed trial counsel’s letter in Gregory as a motion to order the transcript out of time and granted trial counsel’s motion. State v. Gregory, S.C. Ct. App. Order dated Sept. 15, 2016 (order granting late motion to order transcript).

9. On September 13, 2016, trial counsel is informed and believes that Appellant complied with trial counsel’s request and mailed his completed, notarized affidavit of indigency to trial counsel from Kirkland. Trial counsel is further informed and believes that Appellant has a “legal mail” receipt evidencing said mailing in his possession. To date, trial counsel is informed and believes said mailing has not been received by his office.

10. Contemporaneous with the allegations in Paragraph 9 above, and unknown to trial counsel, on September 13, 2016, Appellant’s sister (“Sister”) received confirmation via email from the court reporter in Mr. Holt’s trial, Tara T. Scott, that she received Sister’s money orders and had added Mr. Holt’s transcript to her production list. (See Exhibit A, attached hereto).

11. On September 28, 2016, trial counsel is informed and believes that the Court of Appeals mailed a letter to trial counsel informing him that the time for ordering the transcript had expired, instructing him to file a motion to request the transcript outside the Rule 207, SCACR,

deadline, and notifying him that Appellant's appeal would be dismissed if no motion was made within ten (10) days of that letter. Trial counsel is informed and believes that his office either did not receive said letter, misplaced or overlooked said letter, or failed to bring said letter to trial counsel's attention.

12. Trial counsel was made aware of this Court's dismissal of Appellant's appeal by Appellate Defense on November 2, 2016. That same day, trial counsel mailed Appellant a letter inquiring about his failure to return the affidavit of indigency and notifying Appellant about the dismissal of his appeal. (See Exhibit D, attached hereto). Trial counsel further notified Appellant of his current legal options and informed him to contact trial counsel prior to the Rule 221(b), SCACR, fifteen (15) day deadline in the event Appellant desired that trial counsel act on his behalf.

13. After mailing the November 2nd letter, trial counsel corresponded with Appellant and Sister for the first time since Appellant's conviction on August 11, 2016, regarding the status of the appeal. Sister informed trial counsel's office about Appellant's September 7th and 13th letters and that she had ordered the lower court transcript on August 25, 2016.

14. Trial counsel is aware that the South Carolina Rules of Appellate Court and case law impose an exacting standard that must be satisfied in order to reinstate an appeal. Under Rule 207, "[a] case shall not be reinstated except by leave of court, upon good cause shown" Rule 207(a), SCACR. Our Supreme Court provided further guidance on the standard for reinstatement of an appeal in Wade v. Gore, 154 S.C. 262, 151 S.E. 470 (1930) (denying reinstatement of civil appeal where appellant took no steps to timely perfect). In Wade, the court cautioned that, while the court has discretion to allow for belated perfection of an appeal, litigants and their attorneys should not expect favorable treatment for failing to take prompt and timely actions necessary for perfection of appeals. See Wade, 151 S.E. at 471-2. The Wade court declared that the party

moving for reinstatement must demonstrate either “that he has endeavored to secure extension of time within the proper time . . . or that for some *especially good reason* he could not secure the same.” Id. at 151 S.E. at 472. Here, trial counsel satisfies the Wade burden because trial counsel attempted to extend the Rule 207(a), SCACR, deadline prior to the thirty (30) days elapsing. In trial counsel’s September 13th letter to Court Administration, a request was made, although improperly, on behalf of Appellant for an extension of time prior to the expiration of Appellant’s September 16th deadline. Based on this Court’s gracious acceptance and construal of trial counsel’s Gregory letter, counsel believed in good faith that Appellant’s September 13th letter was sufficient to extend the deadline. While trial counsel cannot account for his or his office’s oversight of this Court’s September 28th letter and acknowledges the letter should have been known about, trial counsel has not been a passive participant in Appellant’s appeal expecting favorable treatment from this Court, as evidenced by the attached exhibits. Sister, furthermore, ordered the lower court transcript within the Rule 207(a), SCACR, deadline; however, trial counsel could not make the fact that Appellant had complied with the thirty (30) day deadline known to this Court because it was not apparent to him or his office until after November 2nd. Most notably, unlike the civil appeal that was refused reinstatement in Wade, Appellant is appealing a criminal conviction resulting in the deprivation of his liberty for twenty-five (25) years. Based on the above, trial counsel asserts that Appellant has satisfied the Wade standard for reinstatement of appeals either by trial counsel’s September 8th letter to Court Administration to extend the deadline or based on Sister’s actual order of the transcript before the deadline which – if known – trial counsel could have alerted this Court to, or both.

WHEREFORE, Appellant’s undersigned trial counsel respectfully requests that this Court exercise discretion and grant Appellant’s request to reinstate his appeal based upon good cause

shown under Rule 260(a), and allow leave in which to file the petition for a Rule 207(a), SCACR, extension out of time. Trial counsel respectfully requests that the remittitur of Appellant's appeal be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Randall L. Chambers, S.C. Bar No. 65302
The Chambers Law Firm
804 Laurens Road
Greenville, South Carolina 29607
(864) 298-0001
Attorney for Appellant

November 16, 2016

Other Counsel of Record:

John Benjamin Aplin, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

Robert Michael Dudek, Esquire
South Carolina Commission on Indigent Defense
Post Office Box 11589
Columbia, South Carolina 29211

Brian John Moroney, Jr., Esquire
Assistant Solicitor
Eighth Circuit Solicitor's Office
Post Office Box 516
Greenwood, South Carolina 29648

Alan McCrory Wilson, Esquire
South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

EXHIBIT A

copy by everyone. I can print and mail also, but there's a \$35 fee if I do BOTH. I'm happy to print it and mail it to you as well as email it if you want both. Just let me know.

Have a good day.
Tara

Sent from my iPhone

On Nov 2, 2016, at 12:13 PM, "amanda brooks" <blufire07@gmail.com<mailto:blufire07@gmail.com><mailto:blufire07@gmail.com<mailto:blufire07@gmail.com>>> wrote:

Ms. Scott,
I was wondering if you think the transcript will be ready by the 13th of November, not trying to rush you I was just trying to get a timeframe in mind. Also will you be mailing the official copy and emailing a pdf?

On Tue, Sep 13, 2016 at 12:22 PM, amanda brooks <blufire07@gmail.com<mailto:blufire07@gmail.com><mailto:blufire07@gmail.com<mailto:blufire07@gmail.com>>> wrote:

Thank you so much.

On Sep 13, 2016 12:21 PM, "Scott, Tara T." <tscott@sccourts.org<mailto:tscott@sccourts.org><mailto:tscott@sccourts.org<mailto:tscott@sccourts.org>>> wrote:

Ms. Brooks,
Just wanted to let you know I have received the two money orders totaling \$812.50 and have added the transcript to my production list. I currently have 3 trials ahead of this one, so I ask that you please be patient. I will have this done as soon as possible. When it is completed I will let you know and email a .pdf copy to you as well as send a reimbursement for any overage or an invoice if it turns out to be more than I estimated. Thank you,
Tara Scott

Sent from my iPhone

On Aug 25, 2016, at 2:53 PM, "amanda brooks" <blufire07@gmail.com<mailto:blufire07@gmail.com><mailto:blufire07@gmail.com<mailto:blufire07@gmail.com>>><mailto:blufire07@gmail.com<mailto:blufire07@gmail.com>>><mailto:blufire07@gmail.com<mailto:blufire07@gmail.com>>>> wrote:

Is this for a copy of the original or the original?

On Aug 25, 2016 2:51 PM, "Scott, Tara T." <tscott@sccourts.org<mailto:tscott@sccourts.org><mailto:tscott@sccourts.org<mailto:tscott@sccourts.org>>><mailto:tscott@sccourts.org<mailto:tscott@sccourts.org>>><mailto:tscott@sccourts.org<mailto:tscott@sccourts.org>>>> wrote:

Good Morning, Ms. Brooks,
I checked my records from Aug 10-11, 2016 and estimate that this transcript will be approximately 250 pages. The cost is estimated be \$812.50 at a cost of \$3.25 per page. Upon receipt of payment to my address below I will place this transcript on my production list. Under our rules I am allowed 60 days to prepare the transcript. If the transcript is more than 250 pages I will send an invoice with the amount owed. If it is less, I will mail a refund check at the time I sent the transcript. Please call me on the number below if you have any questions.
Thank you and have a great day.

Tara Scott, CVR

1849 Stevenson Rd
Abbeville, SC 29620
(864) 992-9544<tel:%28864%29%20992-9544><tel:%28864%29%20992-9544>
[Quoted text hidden]

amanda brooks <blufire07@gmail.com>
To: "Tara T. Scott" <tscott@sccourts.org>

Tue, Nov 8, 2016 at 5:22 PM

Thank you

[Quoted text hidden]

EXHIBIT B



THE CHAMBERS LAW FIRM

804 LAURENS ROAD
GREENVILLE, SOUTH CAROLINA 29607
OFFICE (864) 298-0001 • FACSIMILE (864) 335-2393
WWW.RANDYCHAMBERS.COM

RANDALL L. CHAMBERS
ATTORNEY AT LAW

LICENSED IN
SOUTH CAROLINA
KENTUCKY

August 30, 2016

Via U.S. Mail

Michael Patton Holt (SCDC No. 00369331)
KRE (Dorm No. F10245B)
4344 Broad River Road
Columbia, South Carolina 29210

**RE: The State v. Michael Patton Holt
Indictment No.: 16GS24-0512**

Dear Mr. Holt:

I hope this letter finds you as well as you can be. Please find enclosed the **Affidavit of Indigency** received from the Office of Appellate Defense. I ask that you promptly fill said affidavit out and return it to our office as soon as possible so that it can be included for mailing with the other documents requested by the Office of Appellate Defense.

I contacted Kirkland to inquire about the permissibility of including a self-addressed, metered envelope for you to return the Affidavit of Indigency to our office, but was informed this was strictly prohibited and could result in this letter being returned to sender. As such, you will have to be responsible for the applicable postage.

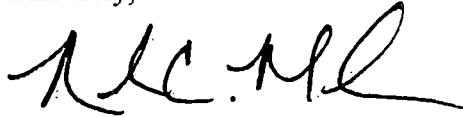
To assist you with completing the first page of the Affidavit, I have included the following information below for your convenience:

- Criminal Case No.: 2016GS240512
- Convicted of: Trafficking in Methamphetamine – 28 g or more, but less than 100 g – 3rd or sub
- Sentence: 25 years
- Presiding Judge: Frank R. Addy, Jr.
- Attorney's Fee: \$7,500
- Owed to Attorney: \$3,000

Should you have any questions, please do not hesitate to contact this office.

With kind regards I remain,

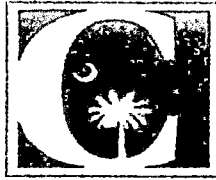
Sincerely,

A handwritten signature in black ink, appearing to read 'N.C. Maddox', written in a cursive style.

N. Christopher Maddox

NCM/
Enclosures (as stated)

EXHIBIT C



THE CHAMBERS LAW FIRM

804 LAURENS ROAD
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OFFICE (864) 298-0001 • FACSIMILE (864) 335-2393
WWW.RANDYCHAMBERS.COM

RANDALL L. CHAMBERS
ATTORNEY AT LAW

LICENSED IN
SOUTH CAROLINA
KENTUCKY

September 8, 2016

Via U.S. Mail

South Carolina Office of Court Administration
1220 Senate Street, Suite 201
Columbia, South Carolina 29201

**RE: The State v. Michael P. Holt
Appellate Case No.: 2016-001745**

Dear Sir or Madam:

I was retained counsel for Michael P. Holt at the trial level. Mr. Holt is indigent and, as such, the handling of his appeal was referred to the Office of Appellate Defense.

Mr. Holt was required to complete and submit an affidavit of indigency to the Office of Appellate Defense by September 6, 2016, in order to determine whether he qualified for their services prior to ordering the transcript. Pursuant to Rule 207(a)(1), SCACR, Mr. Holt is required to order the lower court transcript within thirty (30) days of serving his notice of appeal. Here, the thirty (30) day deadline is September 16, 2016.


This office mailed Mr. Holt the affidavit of indigency at Kirkland Correctional Institute on August 30, 2016. To date, we still have not received the completed affidavit to be forwarded to the Office of Appellate Defense.

Based upon the above, I therefore kindly and respectfully request that you grant Appellant an extension of the thirty (30) day deadline in order for Appellant's affidavit to be reviewed and the court transcript ordered by the Office of Appellate Defense.

Should you need anything further or if we need to take any additional steps to continue the appeal in the above-referenced matter, please do not hesitate to contact this office.

With kind regards I remain,

Sincerely,

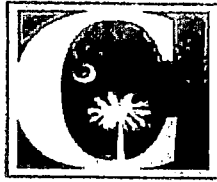


Randall L. Chambers

RLC/nem

cc: Brian John Moroney, Jr., Esquire (via U.S. Mail)
The Honorable Alan McCrory Wilson (via U.S. Mail)
Office of Appellate Defense (via U.S. Mail)
Clerk, South Carolina Court of Appeals (via U.S. Mail)

EXHIBIT D



THE CHAMBERS LAW FIRM

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WWW.RANDYCHAMBERS.COM

RANDALL L. CHAMBERS
ATTORNEY AT LAW

LICENSED IN
SOUTH CAROLINA
KENTUCKY

November 2, 2016

Via U.S. Mail

Michael Patton Holt, 00369331
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

**RE: The State v. Michael Patton Holt
Appellate Case No.: 2016-001745**

Dear Mr. Holt:

This office informed you in our August 30, 2016 letter that we filed your Notice of Appeal and promptly needed you to complete the Affidavit of Indigency. To date, neither this office nor the Office of Appellate Defense has received said Affidavit. As such, that office was unable to consider whether you were eligible for them to handle your appeal.

Because you failed to complete said Affidavit or contact us regarding our August 30, 2016 letter, the necessary steps could not be taken by our office or the Office of Appellate Defense to perfect your appeal. Therefore, I regret to inform you that your appeal has been dismissed. I have enclosed a copy of the Court of Appeals Order.

As you know, this office was only retained to represent you at the trial level, and we fulfilled our responsibility to you by filing the Notice of Appeal. A petition to reinstate can be filed with the Court of Appeals, but this must be done within fifteen (15) days of the November 1, 2016 Order, prior to the remittitur being sent to the lower court. Otherwise, it will be necessary for you to file for a post-conviction relief hearing requesting a belated appeal based on State v. White, 263 S.C. 110 (1974). I have enclosed said case law in the event you desire to pursue that course of action.

In the event your Affidavit of Indigency was lost in the mail or you did not receive our August 30, 2016 letter, we must hear from you prior to the fifteen (15) day deadline to state such as grounds to have your appeal reinstated.

Should you have any questions, please do not hesitate to contact this office.

With kind regards I remain,

Sincerely,

A handwritten signature in black ink, appearing to read "Randall L. Chambers". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Randall L. Chambers

Enclosures (as stated)

cc: Office of Appellate Defense (w/o encl.) (via U.S. Mail)
Clerk, South Carolina Court of Appeals (w/o encl.) (via U.S. Mail)

THE STATE OF SOUTH CAROLINA
In the Appellate Court

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NOV 16 2016

SC Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Appellant Case No. 2016-001745

The State,

Respondent.

v.

Michael Patton Holt,

Appellant.

AFFIDAVIT OF APPELLANT'S ATTORNEY

Pursuant to Rule 240(c)(3), SCACR, I, Randall L. Chambers, appearing first before the Notary Public, hereby certify and state that I have read the Motion to Reinstate Appeal and Motion to File the Petition for Extension of Rule 207(a) Deadline Out of Time regarding the above-captioned matter; that I know or believe the contents and allegations are true to the best of my knowledge, except for those matters stated which are alleged on information and belief; and that said motion is not interposed for delay.

Sworn to before me this

16th day of November, 2016

N.C. Maddox
Notary Public of South Carolina

[Signature]
Attorney for Appellant

My Commission expires: 01/13/2026



**THE STATE OF SOUTH CAROLINA
In the Appellate Court**

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

Frank R. Addy, Jr., Circuit Court Judge

Appellant Case No. 2016-001745

The State,

Michael Patton Holt,

v.

Respondent.

Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Reinstate Appeal and Motion to File the Petition for Extension of Rule 207(a) Deadline Out of Time on the below-listed respondents by depositing a copy of it in the United States Mail, postage prepaid, on November 16, 2016, addressed to:

Brian John Moroney, Jr., Esquire
Assistant Solicitor
Eighth Circuit Solicitor's Office
Post Office Box 516
Greenwood, South Carolina 29648

John Benjamin Aplin, Esquire
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

Alan Wilson, Esquire
South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

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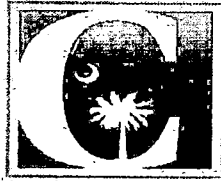
NOV 16 2016

SC Court of Appeals

Date: November 16, 2016



Randall L. Chambers, S.C. Bar No. 65302
The Chambers Law Firm
804 Laurens Road
Greenville, South Carolina 29607
(864) 298-0001
Attorney for Appellant



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SC Court of Appeals

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RANDALL L. CHAMBERS
ATTORNEY AT LAW

LICENSED IN
SOUTH CAROLINA
KENTUCKY

November 16, 2016

Via Personal Delivery

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29201

RE: State v. Michael Patton Holt
Appellate Case No.: 2016-001745

Dear Ms. Kitchings:

Enclosed for filing please find Appellant's original Motion to Reinstate and Motion to File the Petition for Extension of Rule 207(a) Deadline Out of Time, along with six (6) copies of said motion, in the above matter. Also enclosed is the original Proof of Service upon the Respondents, and Appellant's Attorney's Affidavit.

Thank you for your attention to this matter.

Sincerely,

15/ Randall L. Chambers

Randall L. Chambers, Esq.
The Chambers Law Firm
804 Laurens Road
Greenville, South Carolina 29607
(864) 298-0001
Attorney for Appellant

Enclosures (as stated)

cc: Robert Michael Dudek, Esquire (via U.S. Mail)
Brian John Moroney, Jr., Esquire (via U.S. Mail)

John Benjamin Aplin, Esquire (via U.S. Mail)
Alan McCrory Wilson, Esquire (via U.S. Mail)
Michael Patton Holt, 00369331 (via U.S. Mail)