

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Commissioner Gene McCaskill

RECEIVED
FEB 24 2017
SC Court of Appeals

WCC File No. 1410083
Appellate Case No. 2016-001709

Terry McCall #233236, Appellant.

v.

Hire Quest, LLC d/b/a Trojan Labor, Respondent.

**RETURN TO APPELLANT'S MOTION
TO RECALL REMITTITUR**

To: The Honorable Judges of the South Carolina Court of Appeals:

On January 20, 2017, Appellant filed a letter with this Court, which is being construed as a Motion to Recall the Remittitur. Appellant did not serve¹ a copy of this letter to Respondent Hire Quest LLC d/b/a Trojan Labor, and Respondent only recently learned of its filing. Respondent files this return opposing the Motion to Recall the Remittitur.

FACTS

Appellant filed four appeals with the Court of Appeals. (See Appellate Case Nos. 2016-001457, 2016-001709, 2016-001750, and 2016-002417). All four appeals arise from the same proceeding before the South Carolina Workers' Compensation Commission. Appellate Case No.

¹ The certificate of service with Appellant's letter only identifies the Court of Appeals as a party who was served.

2016-001457 is currently being briefed on the sole issue of whether the Commission erred in denying Appellant's request to waive filing fees with his appeal to the appellate panel. In Appellate Case No. 2016-002417, Respondent filed a motion to dismiss. In that case, Appellant appealed the Commission's order denying his fee waiver to the Circuit Court, which dismissed for lack of jurisdiction.

In this instant case and Appellate Case No. 2016-001750, Appellant filed a "Notice of Intent to Appeal" without attaching the order on appeal. However, in both this case and Appellate Case No. 2016-001750, McCall indicated in his Notice that he was again intending to appeal the Commission's decision denying his request to waive filing fees.² On November 16, 2016, this Court issued orders dismissing both this instant case, Appellate Case No. 2016-001709, and Appellate Case No. 2016-001750, for failing to perfect the appeals.

With regard to this case, Appellant failed to pay the notice of appeal filing fee, provide a proof of service, submit the order challenged on appeal, or order the transcript as required by Rules 203 and 207, of the South Carolina Appellate Court Rules, and the August and September 2016 letters from the Court. On December 7, 2016, this Court issued the remittitur. Appellant claims he did not receive the remittitur because the Court sent it to an incorrect address, even though Appellant claims he provided the Court with his new address when he was moved among facilities with the South Carolina Department of Corrections. Upon counsel's review of all four appeals, the earliest notice that Appellant provided this Court of his new address was on November 30, 2016, in his Notice of Appeal in Appellate Case No. 2016-002417.

² All four appeals involve the same issue—whether the Commission erred in denying Appellant's motion to waive his filing fees.

Appellant requests this Court to “re-instate his appeal and issue another remittitur order.” However, Appellant also requests this Court allow him to “file an out of time appeal” because he did not receive the remittitur until January 18, 2017.

LAW

“When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter,” except upon a strong showing that the remittitur was sent down by mistake, error, or inadvertence of the Court. Wise v. S.C. Dept. of Corr., 372 S.C. 173, 642 S.E.2d 551 (2007); see also State v. Keels, 39 S.C. 553, 17 S.E. 802 (1893). In Wise, the Court found the remittitur was properly sent after fifteen days had elapsed from the date of the order dismissing the appeal without the *proper* filing of a petition for reinstatement. 372 S.C. at 174, 642 S.E.2d at 551.

In Keels, the Court refused to recall the remittitur when the appellant argued he failed to perfect his appeal due to some excusable neglect. 39 S.C. at 553, 17 S.E. at 803. First, the proper time for the appellant to argue any error with failing to perfect his appeal was when the Court dismissed the appeal. Id. Further, the record showed there was no reason to reinstate the appeal. Id.

ARGUMENT

The Respondents respectfully request this Court dismiss the Motion to Recall the Remittitur. As an initial matter, the “Motion” should not be accepted by this Court because Appellant never served it upon Respondents as required by Rule 240, of the South Carolina Appellate Court Rules. See Wise, 372 S.C. at 174, 642 S.E.2d at 551 (refusing to reinstate an appeal because the appellant never properly filed a petition for reinstatement).

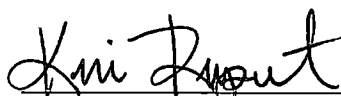
Appellant does not show there was any mistake, error, or inadvertence of the Court when it sent the remittitur. Wise, 372 S.C. at 174, 642 S.E.2d at 551. Pursuant to Rule 221(b), of the South Carolina Appellate Court Rules, Appellant had fifteen days to file a petition for rehearing prior to the Court issuing the remittitur. This Court dismissed the appeal on November 16; thus, the Court was required to send the remittitur on December 1, 2016. The Court sent the remittitur on December 7, 2016.

There is no reason to reinstate this appeal. Keels, 39 S.C. at 553, 17 S.E. at 803. The proper time for Appellant to argue the Court erred in dismissing his appeal was after the Court issued the November 16, 2016 order, but he never filed a petition for rehearing of the Court's order. Appellant makes no argument that he did not receive the November 16, 2016 order. The record before this Court shows Appellant received the November 16, 2016 order. Appellant never gave notice to this Court of any change of address with regard to this specific appellate case; however, the earliest that Appellant gave any type of notice to this Court of an address change was on November 30, 2016, in a related case. The November 16, 2016 order dismissing this appeal was not returned as undeliverable to this Court. There is also no reason to reinstate this appeal when Appellant never complied with the August and September 2016 letters requesting him to correct the deficiencies in his appeal.³ Accordingly, Respondents respectfully request this Court deny the Motion to Recall the Remittitur.

[SIGNATURE PAGE TO FOLLOW]

³ In October 10, 2016 correspondence to this Court, Appellant lists his address as the address that the Court used with sending the August and September 2016 letters and the November 16, 2016 order. (October 10, 2016 letter from Appellant, attached as **Exhibit A**).

COLLINS & LACY, P.C.

Handwritten signature of Kerri A. Rupert in cursive script, positioned above a horizontal line.

Kerri A. Rupert

krupert@collinsandlacy.com

Kelsey J. Brudvig

kbrudvig@collinsandlacy.com

Post Office Box 12487

Columbia, South Carolina 29211

(803) 256-2660 (voice)

ATTORNEYS FOR RESPONDENT

Exhibit A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
Commissioner Gene McCaskill

RECEIVED
OCT 10 2018
SC Court of Appeals

WCC File No: 1410083
Appellate Case No 2016-001457

Terry McCall, Employee ----- Appellant

Trojan Labor/Hire Oust, Employer ----- Respondent

Opposition Motion To Dismiss Appeal

The appellant moves this Court to issue and Order denying the Respondents request to dismiss his appeal based on the following. Appellant has not directly appealed the Order from the single commissioner, without requesting review by the full commission. Upon request for review by full commission "requesting to be heard by waiving the filing fee, due to the Appellants indigency status while now incarcerated after his on the job injuries. The Appellants form 32 was rejected, and ordered to pay a filing fee he did not have.

The Appellant Attempted several times to be allowed to file for review with the full commission without paying filing fee at the present time. And requested the filing fee's be removed from his Prison financial account "under the Prison Litigation Act" when he received monies, until payments for filing fees were received in full. As other state and Federal Courts allow inmates to proceed without payments in full for filing fees. However the Commission Chair Person declined any responses, rejecting him.
The Appellant argues the S.C. Regulation standard for filing fees in Workers Compensation Claims / Appeals is fundamentally unfair, unconstitutional and prejudicial, where only you allowed to file without payments if the Chair Person approves you. But no criteria is mentioned to what it takes to be granted the right to Appeal/waive filing fees/ or what you may be turned down for or rejected. How can you know why you are turned down in order to correct the problem.

This type Regulation does nothing more than provides the South Carolina Workers Compensation Chairperson the right/ability to deny, reject Appeal/Indigency filings just to block Appeals or filings. This is a Procedural Due Process Violation And a Constitutional Right, And to do so deprives the indigent injured employee/Appellant his right to Appeal because of his poverty status. This is fundamentally unfair and is nothing more than a vehicle for blocking Appeals or other filings.

Facts of the Case

Appellant alleges he suffered injuries to his neck, back, right shoulder, right hand/wrist, and which Respondent failed to mention (Elbow), And Hernia. When he tripped over a wire and fell while employed with Respondents, Trojan Labor/Hire Quest June 30th, 2014 and July 4th, 2014. In which June 30th, 2014 claim number was closed out and consolidated this claim# with July 4th, 2014 claim#, without ever informing Appellant/claimant that this had occurred. Appellant filed a form 50 requesting a hearing, Respondent filed a form 51 denying the July 4, 2014 claimed injuries. Respondents Allege in prior correspondences they filed a form 51 denying the claim for July 2014 injuries but this form 51 was never served on the Claimant/Appellant by Respondents, with any denial. And to this day has never provided the Commissioner or Appellant with any Proof of service.

A hearing was scheduled before Commissioner Will Kerson in Greenville, South Carolina on April 1st, 2015. The Commissioner issued an order on April 8, 2015 returning the file to General files to allow Appellant/claimant additional time to retain counsel, And allowing the carrier to file a form 19 seeking closure of the claim. In the event Claimant/Appellant failed to pursue benefits within (60) days.

On April 22, 2015 Appellant advised the Commissary he was requesting another hearing. Following Appellants transfer from Greenville South Carolina, County Detention Center, to Kirkland Correctional R&E Center "And not Broad River As record reflects. A hearing was set for August 28, 2015 before Commissioner McCaskill, On February 24th, 2016, the Single Commissioner issued an order denying Claimants request for benefits. At which time immediately After, Appellant filed a motion for Re-hearing/Reconsideration" And a form 32 to waive filing fees. And the Waiver was granted. The Appellant argues his indigency status has not changed And why the Chair Person would reject his Appeal filings for review by full commissary makes no sense.

Appellant argues he has had several items of legal material misplaced by S.C.D.C. due to his transferring. Which deprived him from being able to provide the Court with the Order/transcript as requested. But on July 20, 2016 Appellant filed with the Court Commissioner McCaskill's Order denying benefits. And has now 'Attached to his opposition motion to Dismiss Appeal, The Transcript which he was provided with.

Appellant Prays and request the Court consider his transferring "lost legal item conditions," As well as his lack of experience as a pro se litigant in this matter And provide to some extend some lead way exceptions for his un-prevented delays in providing transcript. The Appellant has made All good faith efforts to provide the items to the Court, but through no fault of his own he was delayed.

The Appellant argues his Appeal is not Improper As Respondent states. Because he did not directly Appeal to the Court of Appeals without requesting review by the full Commission, but was rejected to be allowed review without first paying the filing fee. Therefore the Court of Appeals is the only Court next procedurally available to argue the rejection of his indigency status filings Appeal requesting review by the full Commission.

If the Court of Appeals does find the Appeal is improper the Appellant request the Court of Appeals issues And Order sending the Case back to the full Commission for review, requesting the Appeal be heard allowing the funds be removed, from inmates financial account monthly when ever he receives movies,

under the Prison Litigation Act, Or As it was before when
the Motion to Reconsider was filed And fee was waived by
Char Person, that it be waived again Once financial
status is proven indigent by Appellant, Or that the
Court of Appeals hear the Appeal, And deny the
Motion to dismiss the Appeal by the respondents.
Because the Respondents have misled the Court by
stating the Appellant directly Appealed without first
requesting review by the full commission, that is so untrue.
And the record speaks for its self.

Conclusion

Based on the foregoing argument, Appellant respectfully request
the Court deny Respondents Motion to Dismiss Appeal, Allow
Appellants Appeal to be heard by Court of Appeals, Or issue and
order returning the Appeal to be heard by the full commission
without payment; debiting the Appellants "Criminate Financial
account for the \$150⁰⁰ payment until made in full, Or as the
Court deems just And proper.

Columbia, S.C.

Dated 10-3-2016

see: Attachments Exhibits

Respectfully Submitted

Terry McCall

Terry McCall 233236 S.C.D.C.#

W.C.I. WS-39B

4340 Broad River Rd

Columbia, S.C. 29210

Attorney for Appellant, Pro se
Appellants Opposition Motion to Dismiss Appeal

Certificate of Service

I, Terry McCall certify that I have served the Appellants
Opposition Motion To Dismiss Appeal upon All parties, by placing
a copy in the United States Mail, Postage Prepaid, to All
parties on 10-3-2016 addressed to the following:

Dated 10-3-2016

Parties Served

RECEIVED

OCT 10 2016

SC Court of Appeals

South Carolina Court of Appeals

Jenny Abbott Mitchings clerk

P.O. Box 11629

Columbia, S.C. 29211

Terry McCall

Terry McCall 233236

W.C.I. WS-398

4340 Broad River Rd

Columbia, S.C. 29210

Collins & Lacy, P.C.

Kelsey J. Brudvig

P.O. Box 12487

Columbia, S.C. 29211

Terry McCall 233236
W.C.I- W5-39B
4340 Broad River Rd
Columbia, S.C. 29210

10-3-2016

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OCT 10 2016

SC Court of Appeals

In Re: Filing Opposition Motion To Dismiss Appeal
Appellate Case No: 2016-001457

Dear Clerk of Court,

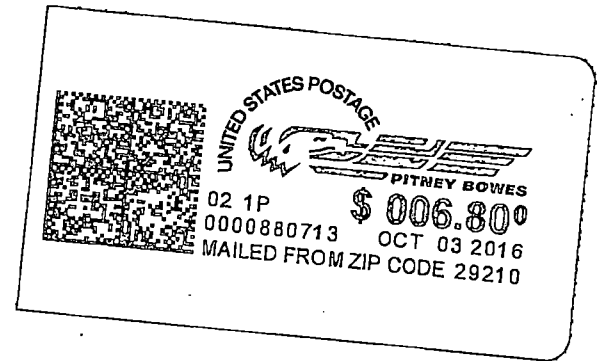
Find enclosed the opposition
motion to Dismiss Appeal by Appellant. Which needs
filed, copy clock stamped filed and returned to
Appellant for his records

s. Terry McCall

Enclosed is the Transcript of Record, copy of Order,
Perfecting Appeal.

Terry McCall #233236
W.C.T. - W5-39B
4348 Broad River Rd
Columbia, S.C.
29210

Legal Mail



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OCT 10 2016

SC Court of Appeals

South Carolina Court of Appeals
Jenny Abbott Ritchings, Clerk

P.O. Box 11629
Columbia, S.C.

29211

MAIL ROOM

OCT 03 2016

SCDC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Commissioner Gene McCaskill

WCC File No. 1410083
Appellate Case No. 2016-001709

Terry McCall #233236,.....Appellant.

v.

Hire Quest, LLC d/b/a Trojan Labor,Respondent.

PROOF OF SERVICE

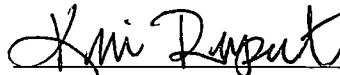
I hereby certify that I served **RESPONDENT'S RETURN TO APPELLANT'S MOTION TO RECALL REMITTITUR** upon all parties, by placing a copy in the United States mail, postage prepaid, to all parties on February 24, 2017, addressed to the following:

PARTY SERVED:

Terry McCall, #233236
Goodman Correctional Institution
G.C.I. Dorm 3-B-25-BB
4556 Broad River Road
Columbia, SC 29210

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FEB 24 2017
SC Court of Appeals

COLLINS & LACY, P.C.



Kerri A. Rupert
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(803) 256-2660 (voice)

ATTORNEY FOR RESPONDENT



Kerri A. Rupert | D: 803.255.0421 | E: krupert@collinsandlacy.com

February 24, 2017

Via Hand Delivery

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

RECEIVED
FEB 24 2017
SC Court of Appeals

Re: McCall v. Hire Quest, LLC
Appellate Case Number: 2016-001709
C&L File No. 001840-00804

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of the Motion to File Return Out of Time and the original and seven (7) copies of Respondent's Return to Appellant's Motion to Recall the Remittitur in the above-referenced appellate case. I am also enclosing a check in the amount of \$25.00 for the required filing fee for the Motion to File Return Out of Time. Please return a clocked copy of each filing with our courier.

By copy of this letter, I am serving a copy of the enclosed upon Mr. McCall.

Thank you for your time and attention. Should you have any questions, please do not hesitate to contact me.

With warmest regards, I am,

Very truly yours,

A handwritten signature in cursive script that reads "Kerri Rupert".

Kerri A. Rupert

cc: Terry Edward McCall, #233236



1330 Lady Street, Sixth Floor (29201) Post Office Box 12487 | Columbia, SC 29211

Via Hand Delivery

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
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Columbia, SC 29211

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