

# The Supreme Court of South Carolina

Evelyn Buckle, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001278

Lower Court Case No. 2008CP4008502

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## ORDER

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The circuit court denied the application for post-conviction relief in this case on December 12, 2011. The circuit court subsequently denied a motion under Rule 59 of the South Carolina Rules of Civil Procedure on January 25, 2012. On appeal, the South Carolina Court of Appeals denied the petition for a writ of certiorari on December 3, 2014, and the remittitur was sent on January 5, 2015.<sup>1</sup>

Petitioner has now filed a "motion to appeal and a motion to stay prior order of dismissal."

To the extent this motion is intended as a notice of appeal, this notice of appeal is dismissed for several reasons. First, petitioner has failed to provide a proof of service showing that the notice of appeal has been served on opposing counsel as required by Rules 243(b) and 203(d)(1)(B)(i) of the South Carolina Appellate Court Rules. Second, petitioner has failed to provide this Court with a copy of the order on appeal as required by Rules 243(b) and 203(d)(1)(B)(ii), SCACR.<sup>2</sup> Finally, to the extent petitioner may be trying to take a second appeal from the

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<sup>1</sup> Before the Court of Appeals, the Appellate Case Number was 2012-207817.

<sup>2</sup> The public case index for Richland County fails to show that the circuit court has issued any order in this case since the filing of the order of January 25, 2012. Indeed, it does not indicate that any filing has been made in this case since the sending of the remittitur by the Court of Appeals.

order of January 25, 2012, nothing in the South Carolina Appellate Court Rules allows for the filing of a second appeal from an order or judgment. Accordingly, the notice of appeal and the motion for a stay are denied. The remittitur will be sent as provided by Rule 221, SCACR.

Petitioner also asks this Court to issue a rule to show cause against the State regarding its failure to comply with an order issued by the United States District Court for the District of South Carolina. This request is dismissed for two reasons. First, petitioner has failed to provide this Court with an affidavit or certificate of service showing that a copy of the motion has been served on the State as required by Rule 240(c)(1), SCACR. Second, if the order of the United States District Court is being violated, that is a matter more appropriately raised to the United States District Court rather than to this Court.

Finally, petitioner moves to compel the circuit court to rule on a motion she has filed with the circuit court to "reinstate" the 2008 post-conviction relief case and on a new application for post-conviction relief that she has filed in the circuit court.<sup>3</sup> This motion is dismissed for two reasons. First, petitioner has failed to provide this Court with an affidavit or certificate of service showing that a copy of this motion has been served on the State as required by Rule 240(c)(1), SCACR. Second, there is simply no reason why any alleged delay in resolving these filings cannot be addressed by an appropriate motion to the circuit court. Rule 245, SCACR; *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991).

  
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FOR THE COURT C.J.

Columbia, South Carolina  
June 21, 2017

cc: Daniel Francis Gourley, II, Esquire  
Alan McCrory Wilson, Esquire  
Ms. Evelyn Buckle, 03009884

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<sup>3</sup> This post-conviction relief case is apparently *Buckle v. State*, 2016CP4005378.