

MOTION FOR REHEARING OF THE ORDER DISMISSING APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Appellate Case No. 2017-001330

Kenji Kilgore,

Appellant,

v.

Estate of Samuel Joe Dixon, Samuel Joe Dixon,
and Fredda Dixon

Appellee.

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JUL 20 2017

SC Court of Appeals

**MOTION FOR REHEARING
OF THE ORDER DISMISSING APPEAL**

Counsel for Appellant hereby moves this Court for a rehearing of the Order dated July 11, 2017, dismissing this appeal for failure to order transcript. The grounds for this motion for rehearing is as follows:

1. Appellant received a letter from the Court of Appeals, dated June 26, 2017 informing the Appellant of its failure to order the transcript for the above-mentioned case.
2. In compliance with the Order, Appellant sent a letter, dated July 7, 2017, to Court Reporter Vivian Cross requesting that a transcript be prepared for this appealed case. (Exhibit "1" and "2")

3. Due to the confusion with a pending appellate case involving the same party and miscommunication with the paralegal assisting counsel for Appellant, the latter failed to furnish this Honorable Court with proof that a transcript has been ordered.
4. Appellant believes that he has substantially complied with the Order, dated June 26, 2017 by submitting an order of transcript from the Court Reporter. Appellant should not be punished for an honest mistake.
5. Furthermore, in *Woodson v. DLI Properties*, 406 S.C. 517, 753 S.E.2d 428 (2014), the Supreme Court ruled that failure to include the Transcript is not fatal because trial courts base summary-judgment orders on the evidence presented and not statements made during the hearing, among other reasons. This is all more apropos to this case when there is no transcript to provide.
6. It is apparent that the dismissal of this appeal resulted from an act or omission by the Appellant, which was not intentional nor the result of conscious indifference.
7. This petition is filed, not for delay, but in the interest of justice so that the Court may have all arguments of counsel. No prejudice will occur from allowing the filing of this Petition for Rehearing.

WHEREFORE, for all the reasons set forth above, Appellants respectfully moves for the reinstatement of this Appeal, and upon reinstatement, be allowed to file his Initial Brief.

Appellant further prays that this Honorable Court consolidate the appellate cases into one appellate case number to avoid confusion.

WHEREFORE, for the reason set forth above, Appellant respectfully moves rehearing of this case, and upon rehearing, the appeal be reinstated.

July 17 2017



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Other Counsel of Record:

Robert E. Davis, Esquire
Ward Law Firm, PA,
233 S. Pine St.,
Spartanburg, SC 29301
Attorney for Respondents

**FORM 7
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
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PROOF OF SERVICE

I certify that I have served Motion for Rehearing of the Order Dismissing Appeal, Motion for Leave to File Out of Time To Order Transcript from Court Reporter and Proof of Service for same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, The Honorable Richard A. Shirley, Clerk of Court for Anderson County at Post Office Box 8002, Anderson, South Carolina 29622, the Respondents, by and through their counsel of record, Robert E. Davis, Esquire at Ward Law Firm, PA, 233 S. Pine St., Spartanburg, SC 29301, and the Office of Court Administration 1220 Senate Street, Suite 200, Columbia, SC 29201, by depositing a copy of the same in the United States Mail, postage prepaid, on July 17, 2017.

July 17, 2017



Donald L. Smith, Esquire
Attorney for Appellant
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FORM 8
LETTER TO APPELLATE CLERK OF COURT
FILING MOTION FOR REHEARING AND MOTION FOR LEAVE TO FILE
OUT OF TIME TO ORDER TRANSCRIPT FROM COURT REPORTER

July 17, 2017

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

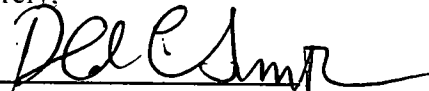
**RE: Kenji Kilgore v. Estate of Samuel Joe Dixon, Samuel E. Dixon and
Fredda Dixon**
Case No.: 2015-CP-04-1605

Dear Honorable Kitchings:

Please find enclosed the following materials for filing:

- 1) Appellant's Motion for Rehearing of the Order Dismissing Appeal;
- 2) Appellant's Motion for Leave to File Out of Time to Order Transcript from Court Reporter;
- 3) Letter Ordering Transcript from Court Reporter;
- 4) A check amounting to Fifty Dollars (\$50.00) as motion fees; and,
- 4) Form 7-Proof of Service for the same.

Sincerely,



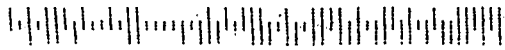
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cc:
Hon. Richard Shirley
Robert E. Davis, Esquire
Office of Court Administration

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SC Court of Appeals



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Anderson, SC 29621

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
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