

**PETITION FOR REHEARING OF JULY 28, 2017 ORDER
OF DISMISSAL**

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

AUG 04 2017

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

S.C. SUPREME COURT

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2017-001419

LOWER COURT CASE NO. 2014-CP-37-00718

GEORGE CLEVELAND, III..... PETITIONER,

v.

STATE OF SOUTH CAROLINA..... RESPONDENT.

PETITION FOR REHEARING

LINDSEY ANN McCALLISTER,
OFFICE OF THE ATTORNEY GENERAL
P.C.R. DIVISION
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
ATTORNEY FOR THE RESPONDENT

RECEIVED

AUG 07 2017

S.C. SUPREME COURT

GEORGE CLEVELAND, III
400 HUNTER STREET
SENECA, S.C. 29678
CELL no.864-784-7223

EMAIL: gcleland7475@gmail.com

Prose Petitioner

1

PETITION FOR REHEARING

MAY IT PLEASE THE COURT: George Cleveland, III, the Petitioner proceeding Prose respectfully submits this Petition for Rehearing on the Order of Dismissal dated **July 28, 2017 (R.pp.4-5)** on the following grounds:

Chief Justice Beatty overlooked the actual received date on my Notice of Appeals in this P.C.R. case.

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ARGUMENT**RULE 203 (b) (1) S.C.A.C.R. CONTROLS THE****JURISDICTION OF THIS COURT****FOR THE ORDER DATED APRIL 28, 2017, AND MAY 30, 2017**

The Chief Justice failed to provide the specific dates of my Rule 59 (e) S.C.R.C.P. Motions. R.pp.2-3.

Rule 203 (b) (1) S.C.A.C.R. controls the Jurisdiction of this Court. Rule 203 (b) (1), *id*, requires that my Notice of Appeal be filed within "30" days of "receipt" of judgment "granting or denying such motion." R.p.1. I submit my Notice of Appeal for the April 28, 2017, and for the May 30, 2017 Judgment are timely because I received the April 28, 2017 Judgment on May 26, 2017. R.p.2. And the May 30, 2017 Judgment on June 22, 2017. R.p.3. And I filed my Notice of Appeal in this Court on

1

June 23, 2017. R.pp.2-3 ; accordingly, the Chief Justice overlooked “until receipt” controlling language under Rule 203 (b) (1) S.C.A.C.R. R.pp.4-5.

3

JURISIDCTION CANNONT BE WAIVED OR LOST

UNDER UNITED STATES v. COTTON

The United States Supreme Court reasoned under *United States v. Cotton* 535 U.S. 625, 122 S.Ct., 1781, 152 L.Ed. 2d 860 (2002) (hearinafter *Cotton*) that Jurisdiction cannot be waived. More specifically, the Chief Justice was barred by *Cotton* from dismissing my P.C.R. Appeal (s) because both Appeals were filed timely, i.e. **JUNE 23, 2017**, see. R.pp.2-3 under Rule 203 (b) (1) “A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written order or judgement. When a timely motion for judgment... motion to alter or amend the judgment... the time for appeal for all parties shall be stayed...”; consequently, the *Cotton* court barred dismissal of my Appeal (s) under Rule 203 (b) (1) S.C.A.C.R. because this Court never lost Jurisdiction over my P.C.R. appeal (s).R.p.1.

4

CONCLUSION

4-1 WHEREFORE; GRANT my Petition for Rehearing on the **July 28, 2017** order of Dismissal.

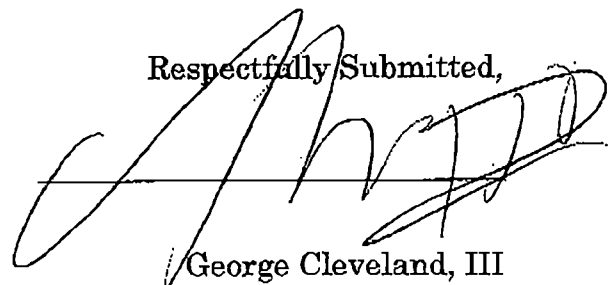
4-2 ORDER additional Briefing if it pleases the Court.

2

4-3 **ORDER** the Clerk of this Court to put this Case back on the active Docket Roster.

4-4. Any other relief this Court deems just, proper, and/or impartial.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'George Cleveland, III', written over a horizontal line.

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated: August 03, 2017

PETITIONER'S APPENDIX IN SUPPORT OF PETITION FOR REHEARING OF THE JULY 28, 2017 JUDGMENT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2017-001419
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APPELLATE PRACTICE

Rule 203

The appeal shall proceed to conclusion under the Supreme Court Rules. Where the time to serve a notice of intent to appeal under Supreme Court Rules 1, § 1A, or 50 has expired before these Rules take effect, these Rules shall not revive the right to appeal or to petition for a writ of certiorari in a post-conviction relief case.

(b) **Repealer.** The Supreme Court Rules and the Miscellaneous Rules shall be repealed when these Rules become effective.

[Adopted effective September 1, 1990.]

II. RULES OF APPELLATE PRACTICE

A. Appeals

RULE 201. RIGHT TO APPEAL

(a) **Judgments, Orders and Decisions Subject to Appeal.** Appeal may be taken, as provided by law, from any final judgment, appealable order or decision. The procedure for petitioning for a writ of certiorari to review final judgments in post-conviction relief cases is provided by Rule 227. Further, the review of decisions of the State Board of Canvassers in election cases shall be by petition for a writ of certiorari under S.C. Code Ann. §§ 7-17-250 and 7-17-270.

(b) **Who May Appeal.** Only a party aggrieved by an order, judgment, sentence or decision may appeal. [Adopted effective September 1, 1990. Emergency amendment by Order dated August 15, 2006, to conform to 2006 Act No. 387 providing for appeals from the decisions of the administrative law court and certain agencies to the Supreme Court or the Court of Appeals. Amended effective May 3, 2007.]

RULE 202. DESIGNATION OF PARTIES AND DEFINITIONS

(a) **Designation of Parties.** The party appealing shall be known as the appellant and the adverse party as the respondent.

(b) **Definitions.** For the purpose of Part II of the South Carolina Appellate Court Rules, the following definitions shall apply:

(1) **Lower Court:** the circuit court (including masters-in-equity), family court or probate court from which the appeal is taken.

(2) **Administrative Tribunal:** the administrative law court or agency from which the appeal is taken. [Adopted effective September 1, 1990. Emergency amendment by Order dated August 15, 2006, to conform to 2006 Act No. 387 providing for appeals from the decisions of the administrative law court and certain agencies to the Supreme Court or the Court of Appeals. Amended effective May 3, 2007.]

RULE 203. NOTICE OF APPEAL

(a) **Notice.** A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 233.

(b) **Time for Service.**

(1) **Appeals From the Court of Common Pleas.** A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

(2) **Appeals From the Court of General Sessions.** After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. When a timely post-trial motion is made under Rule 29(a), SCRCP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion. In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

(3) **Appeals From the Family Court.** A notice of appeal in a domestic relations action shall be served in the same manner provided by Rule 203(b)(1). A notice of appeal in a juvenile action shall be served in the same manner as provided by Rule 203(b)(2).

(4) **Appeals From Masters and Special Referees.** The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1).

(5) **Appeals From Probate Court.** When a direct appeal is authorized by S. C. Code Ann. § 62-1-308 (g), the notice of appeal shall be served in the same manner as provided by Rule 203(b)(1).

(6) **Appeals From Administrative Tribunals.** When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of

R.P. 2

NOTICE OF APPEAL IN A CIVIL CASE

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

RECEIVED

JUN 27 2017

**APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS**

S.C. SUPREME COURT

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

LOWER COURT CASE No. 2014-CP-37-00718

GEORGE CLEVELAND, III, APPELLATE,

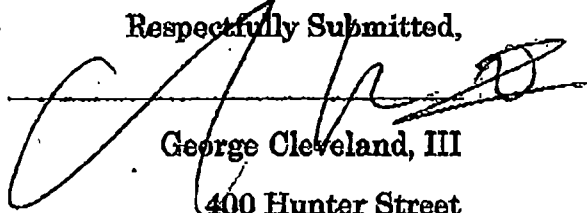
v.

STATE OF SOUTH CAROLINA, RESPONDENT.

NOTICE OF APPEAL

George Cleveland, III, proceeding prose, appeals the Judgment of the Honorable R. Scott Sprouse filed on April 28, 2017, see attached copy hereto. I received a copy of the Judgment by United Stated Mail on May 26, 2017.

Respectfully Submitted,



George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com

Dated: June 28, 2017

LP, 3

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUN 27 2017

APPEAL FROM OCONEE COUNTY

COURT OF COMMON PLEAS

S.C. SUPREME COURT

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

LOWER COURT CASE No. 2014-CP-37-00718

GEORGE CLEVELAND, III, APPELLATE,

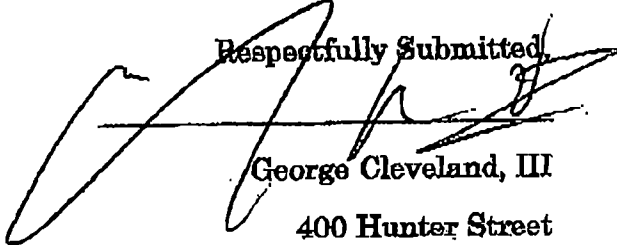
v.

STATE OF SOUTH CAROLINA,RESPONDENT.

NOTICE OF APPEAL

George Cleveland, III, proceeding pro se, appeals the Judgment of the Honorable R. Scott Sprouse filed on May 30, 2017, see attached copy hereto. I received a copy of the Judgment by printing the order off the South Carolina Courts Website's E-filing system on June 22, 2017

Respectfully Submitted,



George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com

Dated: June 23, 2017

R.P. 4

The Supreme Court of South Carolina

George Cleveland, III, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001419

Lower Court Case No.

ORDER

By order dated April 5, 2017, the circuit court denied the application for post-conviction relief. Subsequently, by a form order dated April 28, 2017, the circuit court denied a motion filed under Rule 59 of the South Carolina Rules of Civil Procedure (SCRCP). This order did not make any alternation to the order of April 5, 2017.

Petitioner then filed a second motion under Rule 59, SCRCP. By order filed on May 30, 2017, the circuit court denied this motion finding the second motion was an improper successive Rule 59 motion.

Petitioner has now filed notices of appeal from the orders denying the Rule 59 motions. These notices of appeal were served on June 23, 2017.

In *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004), this Court held "[a]n appeal may be barred due to untimely service of the notice of appeal when a party - instead of serving a notice of appeal - files a successive Rule 59(e) motion, where the trial judge's ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment."

In this case, the order denying the first Rule 59 motion did not alter the order of April 5, 2017. Therefore, the second Rule 59 motion did not stay the time to serve the notice of appeal from the order denying the first Rule 59 motion.

R.p. 5

Based on the failure of petitioner to timely serve a notice of appeal from the order denying first Rule 59 motion, the notices of appeal filed in this case are dismissed, and the remittitur will be sent as provided by Rule 221, SCACR.



FOR THE COURT C.J.

Columbia, South Carolina
July 28, 2017

cc: Lindsey Ann McCallister, Esquire
Mr. George Cleveland, III

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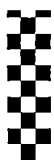
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AUG 03 2017

FAX

S.C. SUPREME COURT

To: Daniel E. Shearouse, Clerk for the S.C. Supreme Court

Fax no. 803-784-1499

From: George Cleveland, III, *prose*

Date: August 03, 2017

Re: Petition for Rehearing for George Cleveland, III v. State, Appellate Case No. 2017-001419

Dear Mr. Shearouse, attached to this fax is my 3-page Petition for Rehearing, 6- page Appendix, and 2- page Proof of Service. The originals have been mailed by United States Certified Mail, see attached Certified Mail receipt. Can you file these documents in the above captioned case for consideration by the Justices?

RECEIVED

AUG 07 2017

AT

S.C. SUPREME COURT

Respectfully Submitted,

George Cleveland, III, *prose*

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223