

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2017-001847

The State,

Respondent,

v.

David Antonio Kucinski,

Appellant.

MOTION TO RESTORE

The above-named Defendant, pursuant to South Carolina Criminal Procedure Rule 224, would through his attorney, moves to restore this Appeal.

Defendant appealed him conviction by guilty plea and his sentence imposed by the Honorable Daniel D. Hall on August 22, 2017 by filing Notice of Appeal dated August 30, 2017.

Defendant received the deficiency letter of Court of Appeals dated September 13, 2017 and filed Proof of Service to correct the deficiency with the Court on September 19, 2017, however, the Proof of Service indicated service on opposing counsel on September 19, 2017 instead of August 31, 2017, the actual date when service was made upon opposing counsel.

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OCT 23 2017

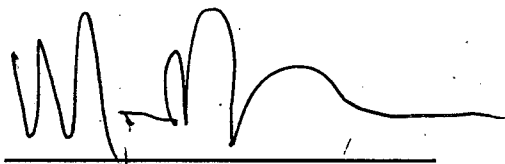
SC Court of Appeals

Thereafter, the Defendant was served with the Order of the Court of Appeals dated October 3, 2017 dismissing the Appeal for untimely service of the Notice of Appeal. The Defendant investigated the matter and determined through the Sixth Circuit Solicitor's office that the Notice of Appeal was served upon opposing counsel in a timely manner on August 31, 2017.

The Defendant has filed a Corrected Proof of Service with this Motion indicating that Notice of Appeal was timely served upon opposing counsel on August 31, 2017 to correct the mistake made in the September 19, 2017 Proof of Service. Defendant has also filed the Affidavit Regarding Receipt of Notice of Appeal (along with the letter from Lisa G. Collins to counsel for the Defendant dated October 16, 2017) to support this Motion

Defendant, based on the foregoing, respectfully requests that the court restore the appeal in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Marion (Mark) Grier', written over a horizontal line.

Marion (Mark) Grier
Deputy Public Defender
for Lancaster County
Post Office Box 1809
Lancaster, SC 29721
Attorney for Appellant
(803) 285-5585

October 18, 2017

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF LANCASTER) SIXTH JUDICIAL CIRCUIT
)
 THE STATE OF SOUTH CAROLINA)
) AFFIDAVIT REGARDING RECEIPT
 VS.) OF NOTICE OF APPEAL
)
)
 DAVID ANTONIO KUCINSKI,) Indictment Nos. 2016GS2901130 and
) 2016GS2901132
)
 DEFENDANT.)

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OCT 23 2017

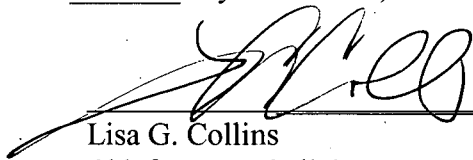
SC Court of Appeals

Lisa G. Collins, Chief Deputy Solicitor for the Sixth Judicial Circuit Solicitor's Office, who first having been duly sworn, does hereby solemnly swear and affirm as follows:

(1) That I am Lisa G. Collins, Chief Deputy Solicitor for the Sixth Judicial Circuit Solicitor's Office located in Lancaster, South Carolina. Solicitor Randy E. Newman, Jr. and I were the prosecutors in the above-captioned case.

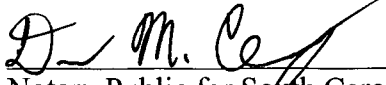
(2) That on August 31, 2017, I was given a Notice of Appeal in this case by attorney Mark Grier, Deputy Public Defender and attorney for David Kucinski. Although I did not receive a Certificate of Service at that time, I was served with the Notice of Appeal on August 31, 2017. I immediately forwarded the Notice of Appeal to my office staff, who then obtained certified copies of the Indictments and Sentence Sheets and ultimately forwarded all of this information to the Attorney General's Office in Columbia, S.C.

I solemnly swear and affirm on this 16th day of October, 2017.



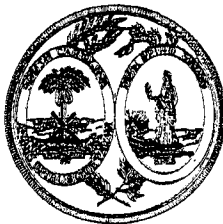
 Lisa G. Collins
 Chief Deputy Solicitor
 Sixth Judicial Circuit Solicitor's Office
 (Lancaster County Office)

SWORN TO BEFORE ME THIS 16 DAY
 OF October, 2017.



 Notary Public for South Carolina
 My Commission Expires: 11/24/2025

State of South Carolina
Solicitor, Sixth Judicial Circuit



CHESTER/FAIRFIELD
LANCASTER
RANDY E. NEWMAN, JR., SOLICITOR

Hand-Delivered

October 16, 2017

Mark Grier, Deputy Public Defender
Office of the Public Defender
104 N. Main Street, 3rd Floor
Lancaster, S.C. 29720

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SC Court of Appeals

Re: State of South Carolina vs. David Kucinski
Indictment Nos. 2016GS2901131 and 2016GS2901132

Dear Mark:

Pursuant to our conversation today, I have prepared and signed an Affidavit reflecting that you served me with the Notice of Appeal in the above-referenced case, which I received on August 31, 2017. Enclosed please find the original Affidavit for your file. Thank you.

If you have any questions please do not hesitate to call me at (803) 416-9478. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "LGC", is written over a faint circular seal.

Lisa G. Collins
Chief Deputy Solicitor
Sixth Judicial Circuit

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
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Daniel D. Hall, Circuit Court Judge

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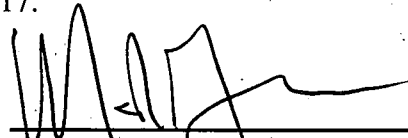
Appellant.

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CORRECTED PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by personally delivering a copy to the State's Counsel of Record Chief Deputy Solicitor Lisa G. Collins, at her office at 104 North Main Street, Lancaster, SC 29721 on August 31, 2017.

October 18, 2017



Marion (Mark) Grier
Deputy Public Defender
for Lancaster County
Post Office Box 1809
Lancaster, SC 29721
Attorney for Appellant
(803) 285-5585

**SIXTH JUDICIAL CIRCUIT
OFFICE OF THE PUBLIC DEFENDER**

Post Office Box 1809 * Lancaster, South Carolina 29721
Telephone No.: (803) 285-5585
Fax No.: (803) 285-6085

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SC Court of Appeals

October, 18, 2017

Hon. Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

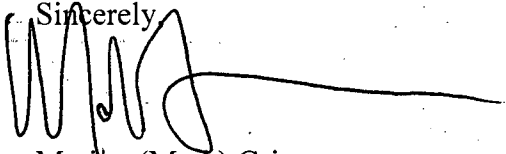
Re: The State v. David Antonio Kucinski
Appellate Case No. 2017-001847

Dear Ms. Kitchings:

Enclosed please find the originals and six (6) copies of each of the following in connection with the above-referenced appeal:

- Motion To Restore; and
- Affidavit Regarding Receipt of Notice of Appeal (with accompanying letter from Lisa G. Collins, Chief Deputy Solicitor); and
- Corrected Proof of Service of Notice of Appeal on opposing Counsel.

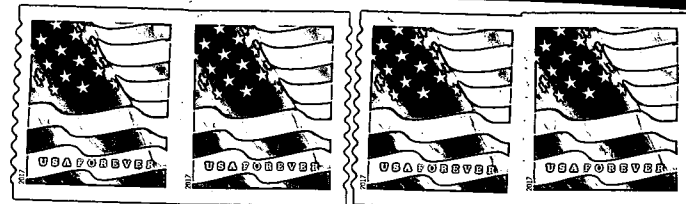
Sincerely



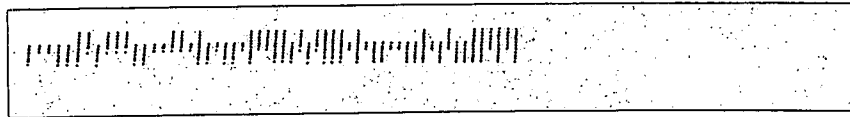
Maribn (Mark) Grier,
SC Bar No. 0015145
Deputy Public Defender for Lancaster County

cc: Robert M. Dudek, Chief Appellate Defender
Lisa G. Collins, Chief Deputy Solicitor, Sixth Judicial Circuit

OFFICE OF PUBLIC DEFENDER
PO BOX 1809
LANCASTER, SC 29721



THE HONORABLE JENNY ABBOTT KITCHING, CLERK
SOUTH CAROLINA COURT OF APPEALS
POST OFFICE BOX 11629
COLUMBIA, SC 29211



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