

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM HORRY COUNTY  
COURT OF GENERAL SESSIONS

Benjamin H. Culbertson, Circuit Court Judge

**RECEIVED**

DEC 27 2017

SC Court of Appeals

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Appellate case No: 2015-002107

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Arnold Lea Ward,

Appellant,

V.

The State of South Carolina,

Respondant,

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**MOTION OF DEFAULT FOR FAILURE TO TIMELY FILE,  
OBJECTION TO EXTENSION OF TIME  
AND  
MOTION FOR JUDGEMENT ON THE PLEADINGS**

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I, Arnold Lea Ward, Acting Pro-Se Attorney, Through the undersigned would invoke this Court in Pursuant to Rule # 55-(a)-(1), SCRCP., on a **MOTION FOR DEFAULT** and/or Pursuant to Rule # 12-(a)-(c), SCRCP., for a **MOTION FOR JUDGEMENT ON THE PLEADINGS**... Appellant would respectfully show Courts Just cause as follows:

**STATEMENT OF ISSUE'S ON APPEAL**

In 2015, Appellant, Acting Pro-Se submitted a Rule #60-(b) and #29-(b) SCRcrim.P. "**Motion for Newly Discovered Evidence**", with the Horry Counties Court of General Sessions... A hearing on Appellant's Motion was convened on September 1, 2015, at the Horry County Courthouse before the Honorable Benjamin H. Culbertson, at the hearings conclusion the judge Culbertson denied such motion filing a Form 4 Order of denial on the same day...

The Appellant filed a Motion for reconsideration and received a Form 4 Order of denial on such motion on September 17, 2015... Appellant subsequently served and filed a timely Notice of Appeal from the two Orders with this Court...

Appellant eventually obtained the trial transcript of the Sept. 1, 2015 hearing before Judge Culbertson and on July 31, 2017, he filed the Initial Brief of Appellant and Designation of Matter with all parties... On August 3, 2017, Appellate Courts contacted Appellant notifying of deficiencies of Attorney General's office failure to receive copies of such briefings and requesting within a ten (10) day allowance to correct such deficiency...

Appellant filed a timely Motion for Extension of Time to comply with Court's request of deficiency... On September 7, 2017 Appellant filed with Attorney General's office the supplemented copies of the original Initial Brief of Appellant and Designation of Matter, along with supportive Proof of Service and a Certificate of Service...

On November 13, 2017, The Due date of Initial Brief of Respondant and Designation of Matter, Attorney General's office filed a Motion to Courts for a Extension of Time, requesting an extended thirty (30) days to move the response date to December 13, 2017... On December 18, 2017, Appellant received notice of Attorney's office request for a second Extension for Time without substantial reasoning for requesting such... The Motions for Default, Objectios and Judgement of pleadings are as follows:

#### SUPPORTIVE ARGUMENTS AND FACTS

Appellant contends respondent is in default and he is entitled Judgment on the pleadings, Due to respondent's failure to file a brief in a timely manner, furthermore the respondent intentionally delay filing the second request for extension of time without substantial just cause of reasoning for such... (see): **Rule # 208-(a)-(4), SCACR.**, South Carolina Courts have recognized the failure of a respondent to file a brief could justify reversal and Appellate Courts "May" take such action as deemed proper... (see): *Turner V. Santee Cement Carriers Inc.* 277 SC 91, 282 SE2d 858 (1981)...

South Carolina Laws have established regulative rules of time limits for filing of briefs by Appellant and/or respondents... Under these set of rules parties are allotted ample time and allowed the opportunity of

extension to meet the limit requirements, So as not to abuse the Courts establish rules... Here, Courts have construed the failure of Appellant to file a timely brief as a abandonment of his Appeal and is substantial grounds for dismissing such... (see): Rule # 208-(a)-(1)-(2)-(4)., SCACR. and Rule #8 and #9., SCRCP...


However, The South Carolina Courts have never construed Rule # 208-(a)-(2)., SCACR, So as to make the failure of the respondents timely filing of a brief, Per-Se a Confession of Error and/or Discretionary abuse to use excessive extension of time unjustly... Although, Courts have pointed out that counsel's for the respondent owes a high duty to his client and the courts to timely file a responsive brief with-out unjust delay's, Whether, he representing the state or a private individual... (see): Tessnear Vs. State 257 SC 290, 185 SE2d 611 (1971)...

In Furtherence, South Carolina Courts have establish the General rule that the intentional delay to respond, where a apposing parties brief is demonstrating extrinsic meritorious conclusions of law is specifically a failure to plead an affirmative defense and deemed a waiver of the right to assert such in further pleadings... (see): Plyer v. Burns 373 SC 637, 647 SE2d 188 (SC 2007), Madren v. Bradford 378 SC 187, 661 SE2d 390 (SC. App. 2008)... Clearly, Under this established rule, When the respondent Does Not file a timely brief, Appellate Courts have found it proper and Just to address the issue's as presented by the apposing parties as they are unrebutted... (see): Duran v. United Cos. Fin. Corp. 326 SC 423, 483 Se2d 786 (1997), Whitehead v. State 352 SC 215, 374 SE2d 200 (SC 2002)..

#### IN CONCLUSION

FOR ALL THE REASONS STATED HEREIN ABOVE, Appellant would respectfully request this Honorable Court to grant the Motion for default, Denying of respondent's second request for Extension of Time and submit a Judgment on the Pleadings, Allowing Appellant the relief requested in the original Initial Brief of Appellant as a matter of Law...

Respectfully Submitted,

  
Arnold Lea Ward, SCDC # 109169  
Acting Pro-Se Attorney:

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Appellant,

v.

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Respondant,

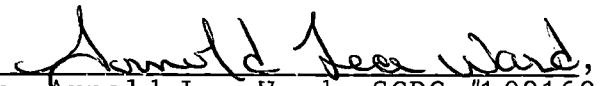
PROOF OF SERVICE  
REC

I, Arnold Lea Ward, Acting Pro-Se Attorney, Due Hereby Certify that I have served a copy of the **Motion for Default, Objections and Judgement on the pleading(s)** by depositing the same in the United State(s) Mail, With Postage prepaid, to the address(es) listed below:

**(Parties of the record):**

South Carolina Court of Appeals  
Post-office Box 11629  
Columbia, South Carolina 29211

South Carolina Attorney General office  
Alan Wilson, Attorney General  
Post-office Box 11549  
Columbia, South Carolina 29211

  
Mr. Arnold Lea Ward, SCDC #109169  
Allendale Correction Institution  
Post-office Box 1151 F-3-B-23  
Fairfax, South Carolina 29827  
Acting Pro-Se Attorney:

Arnold Lea ward, SCDC #109169  
Allendale Correction Institution  
Post-office box 1151 F-3-B-23  
Fairfax, South Carolina 29827

December 18, 2017

South Carolina Court of Appeals  
Honorable Ms. Jenny Kitchings, Clerk  
Post-office Box 11629  
Columbia, South Carolina 29211

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SC Court of Appeals


RE: Ward V. State of South Carolina  
Appellate case No: 2015-002107

Dear Honorable Clerk,

Please find enclosed the original Motion for Default, Objection(s) and Judgement on the pleadings to be filed in your respective court... Please file the original and return a locked stamped copy to the address listed below for personal files...

I would like to take a moment to thank you and your office in advance for any or all assistance that may be provided in the helping to procure the matter stated herein above...

Sincerely Yours,

  
Mr, Arnold Lea Ward, SCDC #109169

CC: South Carolina Courts of Appeals:  
Honorable Ms. Jenny Kitchings, Clerk

South Carolina Attorney General office:  
Mr. Alan Wilson, Attorney General.

Mr. Arnold Lea Ward, SCDC # 109169  
Allendale Correction Institution  
Post-office Box 1151 F-3-B-23  
Fairfax, South Carolina 29827

FOREVER  
USA



Barn Swallow

South Carolina Court of Appeals  
Honorable Ms. Jenny Kitchings, Clerk  
Post-office Box 11629  
Columbia, South Carolina 29211

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SC Court of Appeals

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