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S.C. SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Phillip Lenski; ADMINISTRATIVE LAW JUDGE

Case No: 2017-002336

South Carolina Department of Corrections..... Respondent,
v.
William Leon Burnett..... Appellant,

PETITION FOR A WRIT OF CERTIORARI

William Leon Burnett, SID# 352645
Allendale Correctional Institution
Bamberg A41
1057 Revolutionary Trail
Post Office Box 1151
Fairfax, South Carolina 29827-7127

Other Counsel of Record:
Ms. Christina Cates Bigelow
Staff Attorney
South Carolina Department of Corrections
4444 Broad River Road
Columbia, South Carolina 29221

Ms. Jennifer Abbott-Kitchens
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, South Carolina 29211-1629

South Carolina Administrative Law Court
Clerk of Court
ATT: Phillip Lenski - A.L.J.
Edgar A. Brown Building
1205 Pendleton Street
Suite 224
Columbia, South Carolina 29201-3739

I N D E X

Questions Presented	(2)
Statement of the Case	(3)
Argument	
1: Court of Appeals dismissed Petitioner's appeal with prejudice and without any consideration that Petitioner is a prisoner under the jurisdiction of the D.O.C. Administration in which filing timely can be a burden when notices aren't returned to Petitioner in a timely manner.....	(3)
Conclusions	(4)

Questions Presented:
I. Did Court of Appeals fail and err in accepting Petitioner's Motion for a Rehearing under EQUITABLE TOLLING??

Statement of the Case:

On December 7, 2017, Ms. Jennifer Abbott-Kitchens; Clerk of Court mailed an epistle to inform Petitioner that the "Proceed In Forma Pauperis" without Cost and Payment was received and that the other errors needed be corrected. The deadline was December 20, 2017. Petitioner didn't receive this notice until December 19, 2017 at which time every effort was made to be in compliance with the Court's instructions. It was corrected and sent back on December 27, 2017.

He alleges:

that on January 11, 2018 the case was dismissed for failing to correct the errors in accordance with the South Carolina Appellate Court Rules. Then on December 12, 2017, Petitioner filed a Motion for Reinstatement under Rule 231. (SCACR). The Clerk of Court informed Petitioner that the correct avenue was a Motion for a Rehearing and was due on December 20, 2017. Under equitable tolling; "Exceptional and Extraordinary circumstances must be shown to merit equitable tolling" Luangella v. Bush, 306 F. Supp. 2d 459, 467 (S.D. N.Y. 2004) (Plaintiff met requirement of "exceptional circumstances" and diligence where he was ProSe and he missed the deadline by 3 days). In instance case. Petitioner missed deadline by 7 days beyond his control. The Petition bears the burden of proof in demonstrating that he or she is entitled to equitable tolling. Rasberry v. Garcia, 448 F. 3d 1150, 1153 (9th Cir. 2006). Here Petitioner has met his burden of proof by showing of the formal epistle dated December 7, 2017. and the outside of envelope blocked and dated December 19, 2017.

ARGUMENT

1: Court of Appeals dismissed Petitioner's appeal with prejudice and without any consideration that Petitioner is a prisoner under the jurisdiction of D.O.C. Administration in which filing timely can be a burden when notices aren't returned to Petitioner in a timely manner.

CONCLUSION

For the above reasons stated, ask the Court to grant the petition for a Writ of certiorari on REMAND.

February 16, 2018

Respectfully Submitted.

William Leon Burnett, SID# 352645
Allendale Correctional Institution
Bamberg A41
1057 Revolutionary Trail
Post Office Box 1151
Fairfax, South Carolina 29827-1127



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 23, 2018

William Leon Burnett, #352645
Allendale Correctional Institution
P. O. Box 1151, Hwy 47
Fairfax SC 29827

Re: William Burnett #352645 v. SCDC
Appellate Case No. 2017-002336

Dear Mr. Burnett:

We are in receipt of your correspondence filed on January 17, 2018. The Court denied the motion to reinstate on January 11, 2018, without consideration of these documents. Accordingly, we are returning your filings to you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenny Abbott Kitchings".

CLERK

cc: Christina Catoe Bigelow, Esquire



The South Carolina Court of Appeals

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CLERK

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South Carolina Court of Appeals

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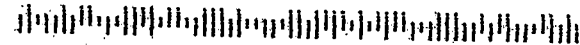
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South Carolina Court of Appeals

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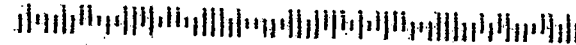
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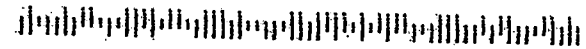
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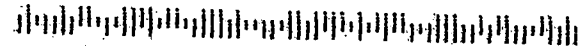
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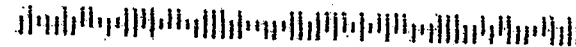
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December 07, 2017

William Leon Burnett, #352645
Allendale Correctional Institution
P. O. Box 1151, Hwy 47
Fairfax SC 29827

Re: William Burnett #352645 v. SCDC
Appellate Case No. 2017-002336

Dear Mr. Burnett:

We are in receipt of your correspondence filed on December 5, 2017, which the Court will consider as a motion to proceed in forma pauperis. However, all deficiencies have not been cured and the remittitur will be issued if no petition for rehearing is received by December 20, 2017 as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Christina Catoe Bigelow, Esquire



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v.

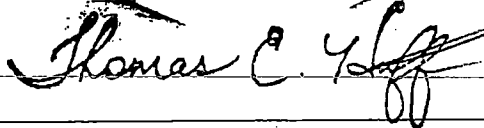
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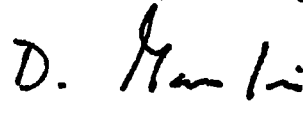
Appellate Case No. 2017-002336

ORDER

This appeal was dismissed due to Appellant's failure to provide the notice of appeal filing fee, the order on appeal, and proof of timely service of the notice of appeal on Respondent and the Administrative Law Court. Appellant has now filed a petition to reinstate. Appellant's proof of service of the notice of appeal indicates Appellant did not timely serve the Administrative Law Court with the notice of appeal. *See* Rule 203(b)(6), SCACR ("[T]he notice of appeal shall be served on . . . the administrative law court . . . and all parties of record within thirty (30) days after receipt of the decision."). Accordingly, the petition to reinstate is denied.


_____ C.J.


_____ J.


_____ J.

Columbia, South Carolina

cc:
William Leon Burnett, #352645
Christina Catoe Bigelow, Esquire

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January 11, 2018

The South Carolina Court of Appeals

William Burnett #352645, Appellant,


v.

South Carolina Department of Corrections, Respondent.

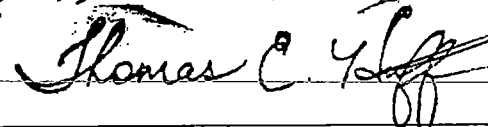
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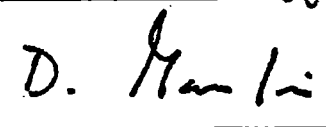
This appeal was dismissed due to Appellant's failure to provide the notice of appeal filing fee, the order on appeal, and proof of timely service of the notice of appeal on Respondent and the Administrative Law Court. Appellant has now filed a petition to reinstate. Appellant's proof of service of the notice of appeal indicates Appellant did not timely serve the Administrative Law Court with the notice of appeal. See Rule 203(b)(6), SCACR ("[T]he notice of appeal shall be served on . . . the administrative law court . . . and all parties of record within thirty (30) days after receipt of the decision."). Accordingly, the petition to reinstate is denied.



James E. Smith C.J.



Thomas C. Lytle J.



D. Hanlin J.

Columbia, South Carolina

cc:
William Leon Burnett, #352645
Christina Catoe Bigelow, Esquire

FILED

January 11, 2018

The South Carolina Court of Appeals

William Burnett #352645, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2017-002336

ORDER

This appeal was dismissed due to Appellant's failure to provide the notice of appeal filing fee, the order on appeal, and proof of timely service of the notice of appeal on Respondent and the Administrative Law Court. Appellant has now filed a petition to reinstate. Appellant's proof of service of the notice of appeal indicates Appellant did not timely serve the Administrative Law Court with the notice of appeal. *See* Rule 203(b)(6), SCACR ("[T]he notice of appeal shall be served on . . . the administrative law court . . . and all parties of record within thirty (30) days after receipt of the decision."). Accordingly, the petition to reinstate is denied.

C.J.
Thomas C. ... J.

D. Han Li J.

Columbia, South Carolina

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Christina Catoe Bigelow, Esquire

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The South Carolina Court of Appeals

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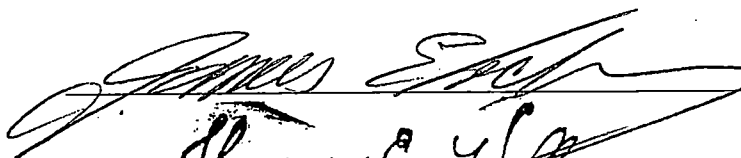
v.

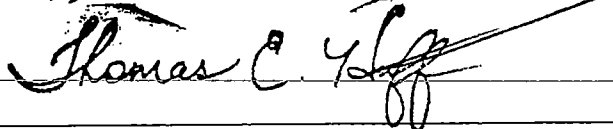
South Carolina Department of Corrections, Respondent.

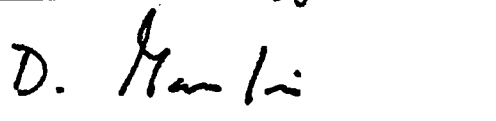
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This appeal was dismissed due to Appellant's failure to provide the notice of appeal filing fee, the order on appeal, and proof of timely service of the notice of appeal on Respondent and the Administrative Law Court. Appellant has now filed a petition to reinstate. Appellant's proof of service of the notice of appeal indicates Appellant did not timely serve the Administrative Law Court with the notice of appeal. *See* Rule 203(b)(6), SCACR ("[T]he notice of appeal shall be served on . . . the administrative law court . . . and all parties of record within thirty (30) days after receipt of the decision."). Accordingly, the petition to reinstate is denied.

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Columbia, South Carolina

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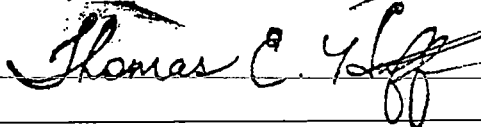
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C.J.



J.



J.

Columbia, South Carolina

cc:
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Christina Catoe Bigelow, Esquire

FILED

January 11, 2018

The South Carolina Court of Appeals

William Burnett #352645, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2017-002336

ORDER

This appeal was dismissed due to Appellant's failure to provide the notice of appeal filing fee, the order on appeal, and proof of timely service of the notice of appeal on Respondent and the Administrative Law Court. Appellant has now filed a petition to reinstate. Appellant's proof of service of the notice of appeal indicates Appellant did not timely serve the Administrative Law Court with the notice of appeal. See Rule 203(b)(6), SCACR ("[T]he notice of appeal shall be served on . . . the administrative law court . . . and all parties of record within thirty (30) days after receipt of the decision."). Accordingly, the petition to reinstate is denied.

C.J.

J.

J.

Columbia, South Carolina

cc:
William Leon Burnett, #352645
Christina Catoe Bigelow, Esquire

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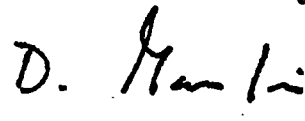
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South Carolina Court of Appeals

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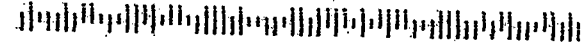
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WILLIAM LEON BURNETT, #352645
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P. O. BOX 1151, HWY 47
FAIRFAX SC 29827

29827-115151



PROOF OF SERVICE OF NOTICE OF APPEAL

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S.C. SUPREME COURT

The STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT
Phillip Lienski; ADMINISTRATIVE LAW JUDGE

Case No: ~~2017~~ 002336

South Carolina Department of Corrections Respondent,
v.
William Leon Burnett Appellant,

PROOF OF SERVICE

I, William Leon Burnett, certify that I have served on Mr. Daniel E. Shearouse, Clerk of Court; Ms. Christina Catos Bigelow, Staff Attorney; Ms. Jennifer Abbott-Kitchens, Clerk of Court; and Honorable Phillip Lienski, A.L.J.; the PETITION FOR A WRIT OF HABEAS CORPUS TO THE COURT OF APPEALS, by depositing a copy of each in the United States Mail, postage prepaid, addressed to: South Carolina Supreme Court, 1231 Gervais Street, Post Office Box 41330, Columbia, South Carolina 29211-1330; South Carolina Department of Corrections, 4444 Broad River Road, Columbia, South Carolina 29221; South Carolina Court of Appeals: 1220 Senate Street, Post Office Box 11629, Columbia, South Carolina 29211-1629; South Carolina Administrative Law Court, Clerk of Court, Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201-3739 on February 16, 2018.

February 16, 2018

William Leon Burnett
William Leon Burnett, SDC# 352645
Allendale Correctional Institution
Bambera A41
1057 Revolutionary Trail
Post Office Box 1151
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