

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2017-000557

RECEIVED
MAR 23 2018
SC Court of Appeals

The State, Respondent

v.

Willie Young, Appellant

MOTION IN OPPOSITION
TO DISMISS APPEAL

Willie Young
P.O. Box 2039
Ridgeland, SC 29936
Pro Se Litigant

J. Benjamin Aplin
P.O. Box 11549
Cola, SC 29211
(803) 734-3970
Attorney for Respondent

Appellant would respectfully show this court as follows:

I

Appellant was indicted on January 28, 2002, by the Grand Jury of Orangeburg County for armed robbery (Indict# 2001-GS-38-2492). He proceeded to trial by jury and was convicted as charged. He was sentenced by the Honorable James C. Williams, Jr. to thirty (30) years of imprisonment and is currently incarcerated in the South Carolina Department of Corrections.

II

On July 26, 2016, Appellant, acting pro se, submitted a rule 29(b), SCRCrimP, motion for a new trial based on newly discovered evidence in the Orangeburg County Court on General Session arguing that the Orangeburg County Solicitor's Office unlawfully impaneled its grand jury out of term and returned a fraudulent indictment. A hearing on Appellant's motion was convened on October 26, 2016, at the Orangeburg County Courthouse before the Honorable Edgar W. Dickson. The Appellant appeared pro se. Judge Dickson denied Appellant's motion on December 21, 2016. Appellant served and filed a Notice of Appeal with this Court. His original Notice of Appeal was received by this Court on February 23, 2017 and indicated Appellant received written notice of Judge Dickson's order on February 13, 2017.

The Respondent now moves for this Court to dismiss the Appellant's "Appeal" due to its erroneous allegations stated in its "Motion to Dismiss", filed in this court February 8, 2018!

The Respondent alleges that 1) Appellant's "Notice of Appeal" was not served within the 10 (ten) days of receipt of the written notice of entry of the order; 2) that Appellant's "Notice of Appeal" warrants dismissal because of his failure to correct a deficiency and 3) due to a letter sent by this Court dated January 10, 2018 to the Appellant instructing him to, within 10 (ten) days of the letter, file 1) a copy of the letter showing that he had ordered the transcript (from his October 26, 2016 hearing) and 2) request permission to order the transcript outside the filing deadline as grounds for this dismissal, which the Appellant strongly opposes and submits the following. The Respondent alleges that the "Notice of Appeal" indicated the written notice was received on Saturday, February 11, 2017. This is erroneous due to the obvious fact, 1) The South Carolina Department of Corrections does not process or deliver mail to inmates on weekends or holidays! (See attachment 1)

As shown, Appellant's "Notice of Appeal" conveys the receipt of the order as Monday, February 13, 2017, never giving any indication of February 11, 2017 (Saturday) as a date of receipt. Secondly, this court filed the "Notice of Appeal" on February 23, 2017, 10 (ten) days from February 13, 2017 including weekends and holidays, which 1) "are not" included in the S.C.A.R.C. 2) showing the Appellant was within the S.C.A.R.C. requisite which allows this Court jurisdiction to hear this Appeal!

The Respondent has not presented anything notable in this regard that warrants dismissal of the appeal.

On March 7, 2017, the Appellant, as the Respondent pointed out, received a letter from this Court informing him of certain deficiencies that needed to be corrected in his "Notice of Appeal"! The Appellant did respond to the Court's notification. However, the corrected Notice of Appeal did not make it to this Court. It is also necessary to point out to this Court's attention that on the same day (March 7, 2017), this Court forwarded the Appellant's "Notice of Appeal" to the Division of Appellate Defense. (See Attachment 2)

This evidence conveys that the Appellant's Defense was then notified to represent the Appellant on the above referenced matter. However, the South Carolina Court of Appeals erroneously and prejudicially instructed the Appellate Defense that the Notice of Appeal may not have been filed on time. (See Attachment 2)

On April 28, 2017, the Respondent sent another notification about the deficiencies in his Notice of Appeal and, once again, gave Appellant 10 (ten) days to correct them. Appellant received the notification on May 2, 2017. (See attachment 3)

The date of receipt gave the Appellant until May 16, 2017, excluding the weekend and holiday. As it is noted, this Court notified the Division of Appellate Defense on March 7, 2017, as well as the April 28, 2017 letter, that the Appellate Defense was put on notice to/as representation for Appellant and should have, therefore, corrected the deficiencies.

Fortunately, on May 11, 2017 (the 7th day after receipt of the written notice), which is noted by the Respondent, the Appellant, mailed to this court a “corrected” Notice of Appeal, which this Court received and filed on May 16, 2017.

This Court should note that there was no other correspondence from the Court with the Appellant in this regard until January 10, 2018.

III

The Respondent has yet to establish “any” errors of the Appellant which warrants dismissal of his appeal.

The Respondent also alleges that due to the letter of this Court, dated January 10, 2018, instructing the Appellant to “provide a letter showing that he had ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside the filing deadline (S.C.A.C.R. Rule 207), or his actions would be dismissed, giving him 10 (ten) days to do so” as a bases for this dismissal.

Further, the Respondent’s allegation that the Appellant’s “continued failure” to provide a copy of the order challenged on Appeal is erroneous. Let the record show this Court’s record shows the deficiency was corrected and filed on May 16, 2017.

The Appellant received no other correspondence from this Court in regards to his “Notice of Appeal” and, therefore, would not have known a deficiency still

existed, if any! So, in this regard, the Respondent has not provided any evidence to support a dismissal on this bases either.

Lastly, Respondent allegation that the Appellant's "Proof of Service" was not served within 10 (ten) days of receipt is also erroneous. As noted, the Respondent cannot provide for this Court any evidence that Appellant received the written "Order of Judgement" that will deprive this Court of jurisdiction of Appellant's "Notice of Appeal".

This Court's records clearly shows that the Appellant's "Notice of Appeal" was filed February 23, 2017, after its receipt on February 13, 2017. The Respondent cannot provide evidence that the Appellant received this notice of the courts on Saturday, February 11, 2017 due to the provisions of the South Carolina Department of Corrections that "does not" deliver mail to inmates on weekends and holidays!

Let the record also reflect that the filing of the Appellant's "corrected" deficiency of his "Notice of Appeal" was filed by this Court on May 16, 2017 on the 10th (tenth) day of Appellant's receipt of its served letter dated April 28, 2017, that was delivered to the Appellant Tuesday, May 2, 2017. (See attachment #3)

The Appellant has strongly demonstrated for this court his diligence in this matter and has established for this Court from the provided record that Respondent has no bases to support why the Appellant's "Appeal" should be dismissed.

Therefore, the Appellant requests that this Court grant his motions to move forward with this actions as it has jurisdiction!

Respectfully Submitted

By: Willie Young

Willie Young

P.O. Box 2039

Ridgeland, SC 29936

Pro Se Litigant

PROOF OF SERVICE

I, Willie Young, the Appellant certify that I have served the motion in opposition to dismiss appeal on respondent by depositing two copies of the same in the U.S. Mail, addressed:

S.C. Attorney General's Office

P.O. Box 11549

Cola, S.C. 29211

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MAR 23 2010
SC Court of Appeals

Respectfully Submitted
By: Willie Young
P.O. Box 2039
Ridgeland, S.C. 29936

Attachment #1

Attachment 1- Calendar for February 2017

File Home Send/Receive Folders View Help Norton Tell me what you want to do

New Appointment Meeting Items New Meeting Skype Meeting Today Next 7 Days Day Work Week Month Schedule View Open Calendar E-mail Publish Address Book Search People

New Skype Meeting Go To Arrange Manage Calendars Share Find

February 2017 Washington, D.C. Today 35°F/33°F Tomorrow 43°F/32°F Friday 42°F/31°F Search Calendar (this computer only)

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 29	30	31	Feb 1	2	3	4
5	6	7	8	9	10	11
	13	14	15	16	17	18
	20	21	22	23	24	25
26	27	28	Mar 1	2	3	4

Items: 0

Send/Receive error Connected

Fueller, Tonisha

Case Name: Fueller, Tonisha
 Case Number: 2017-090357
 Subject: The State v. Willie Young
 Attachment: Willie Young 1601007

NOTICE TO APPELLATE DEFENSE / ATTORNEY GENERAL

To: Division of Appellate Defense / Attorney General

From: Tonisha Fueller

Date: March 7, 2017

Re: Writ of Habeas of Justice of Appeal

Case Name: The State v. Willie Young

Case Number: 2017-090357

Case Tracking Number: 2017-090357

County: Overpeck

Date of Filing: February 23, 2017

Proof of Service: February 20, 2017

Filed by: Willie Young, II, 285487

Judge: The Honorable Edgar W. Dickson

Hearing Date: Date of Order - December 21, 2016

*I am not sure if this appeal is timely. It is currently being reviewed and I am sending out a deficiency letter to obtain a copy of the order. Mr. Young is challenging on appeal.

ATTACHMENT 3

SCDC Case: New August 1997

SCDC #	Name	REPORT TO
		Bring All Belongings <input type="checkbox"/>
		Bring State Clothing <input type="checkbox"/>
		Bring Money <input type="checkbox"/>
Date	Signed	
Date	Officer's Signature	
Date	Self-Monitor's Signature	

RECEIVED

OHIO

ATTORNEY GENERAL

COMMISSIONER

[Handwritten signature]

ATTACHMENT 3

DEPARTMENT OF CORRECTIONS

Notification
from Sec. of
of Agents

SC#	Name	Area
255487	Young, Willie	F4 B27
REPORT TO	AT	
Mail Room	8:00 AM	5/2/17
Bring All Belongings <input type="checkbox"/>	Bring State Clothing <input type="checkbox"/>	Bring Nothing <input type="checkbox"/>
Date	Signed	RECEIVED MAY 02 2017 MAIL ROOM ACJ
5/1/17	V Jones	
Date	Inmate's Signature	
Date	Staff Member's Signature	

REGISTERED MAIL



8461 7533



1000



29201

U.S. POSTAGE
PAID
WINSTON SALEM, NC
27103
MAR 21 18
AMOUNT

\$6.76

R2304E105105-04

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