

THE SOUTH CAROLINA COURT OF APPEALS  
IN THE STATE OF SOUTH CAROLINA

Desmond Aldo McKelvey,

Docket No. 2017-001811

Appellant,

v.

South Carolina Department of Motor  
Vehicles,

Respondent.

NOTICE OF MOTION  
AND MOTION TO DISMISS  
APPEAL

RECEIVED

APR 27 2018

SC Court of Appeals

TO: RESPONDENT DESMOND ALDO MCKELVEY, PLEASE TAKE NOTICE that Respondent South Carolina Department of Motor Vehicles ("SCDMV") will move before this Honorable Court ten (10) days from this notice or as soon thereafter as the matter may be heard or determined, to dismiss the above-referenced appeal. The grounds of this motion are set forth below.

History of Case

The appeal has a somewhat tortured history due to Appellant's repeated violations of the Appellate Court Rules. That tortured history has left SCDMV unsure of the current status of this case. A brief summary of the history is set forth below:

On August 30, 2017, Appellant filed a document titled "Notice of Appeal," with a copy of the Administrative Law Court's final *Order*, a proof of service, and an attachment of SCDMV's letter to Appellant informing him of his new suspension dates based on the Administrative Law Court's final *Order*. On September 5, 2017, the Deputy Clerk of Court sent Appellant a deficiency notice regarding his proof of service for the Notice of Appeal. On September 13, 2017 filed corrected proofs of service for his Notice of Appeal.

On October 5, 2017, the Deputy Clerk of Court sent Appellant a letter notifying him that his time to serve and file his initial brief and designation of matter had passed. This letter

*BA*

informed the Appellant that his appeal would be dismissed if he did not file his initial brief and designation of matter with a motion requesting permission to file appellant's initial brief and designation of matter outside of the filing deadlines set by Rules 208 and 209 within ten days. On October 13, 2017, Appellant filed a document with the Court that Appellant referred to as a "motion of brief." On October 17, 2017, the Clerk of Court Office sent Appellant a letter informing him that his October 13, 2017 filing was "not sufficient to be considered an appellant's initial brief, designation of matter, or motion to file out of time because it is not compliance with Rules 208, 209, and 240, SCACR. This letter informed Appellant that he had to file a corrected initial brief, designation of matter, and motion to file out-of-time within twenty days or his appeal would be dismissed.

On November 6, 2017, Appellant filed an unsigned designation of matter. On November 9, 2017, the Deputy Clerk of Court sent Appellant a deficiency notice informing Appellant that his designation of matter had to be signed and a proof of service for the designation of matter had to be filed. This letter informed Appellant that he had to correct these deficiencies within ten days. Also on November 9, 2017, the Deputy Clerk of Court sent Appellant a second deficiency notice informing Appellant that his "motion to a continuous" had to be signed and a proof of service for the motion had to be filed. This letter informed Appellant that he had to correct these deficiencies within ten days. On November 17, 2017, Appellant filed signed a "Motion to a Continuous" asking for additional time to file his initial brief. On November 17, 2017, Appellant also filed his signed designation of matter. On November 28, 2017, Appellant filed a proof of service for his designation of matter. On November 28, 2017, the Deputy Clerk of Court issued an Order dismissing this case due to the Appellant's failure to file an initial brief and failure to cure the deficiencies related to his motion to file his initial brief out-of-time.

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On December 14, 2017, Appellant filed a document titled "Record on Appeal," which stated, in its' entirety, "I filed a motion to reinstate my dismissal of the Court of Appeals on Dec.7<sup>th</sup> 2017." On December 27, 2017, Appellant filed a document titled "Motion" which stated, in its' entirety, "I filed a motion to reinstate my drivers license until the appeals Process is granted." On January 4, 2018, the Deputy Clerk of Court sent Appellant a deficiency notice informing him that he did not include the required filing fee with his December 27, 2017 motion and that if the filing fee was not submitted within ten days he motion would not be considered. On January 8, 2018, this Court issued an *Order* stating that it construed Appellant's December 27, 2017 motion as a petitioner to reinstate this appeal. This *Order* required Appellant to serve and file his initial brief within thirty days of the Order. This *Order* stated the Court would act on Appellant's petitioner to reinstate upon receipt of Appellant's initial brief of the expiration of thirty days. Appellant paid the filing for his December 27, 2017 motion on January 10, 2018.

On February 12, 2018, Appellant filed a one page document with the Court that SCDMV interpreted to be Appellant's initial brief. This document had a proof of service attached to it that stated Appellant was certifying that he served his "initial brief" to SCDMV on February 5, 2018. On February 12, 2018, Appellant also filed his designation of matter.

On February 23, 2018, the Court issued an Order informing Appellant that the document he filed on February 12, 2018 did not comply with Rule 208(b), SCACR. This Order required Appellant to serve and file an initial brief that is substantially in compliance with Rule 208(b)(1) within twenty days.

On February 26, 2018, prior to the receiving the Court's February 23, 2018 Order, Respondent mailed its' initial brief, designation of matter to be included in the record on appeal, and corresponding certificates of service to the Court.

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No further filings have been received from either party since Respondent's February 26, 2018 initial brief, designation of matter to be included in the record on appeal, and corresponding certificates of service were filed on February 28, 2018.

**Motion to Dismiss Due to Appellant's Failure to File a Brief Substantially in Compliance with Rule 208(b)(1), SCACR as Ordered on February 23, 2018**

Despite the fact that SCDMV treated Appellant's February 12, 2018 filing as an initial brief (with SCDMV's initial brief and this Court's February 23, 2018 Order crossing in the mail), on February 23, 2018 this Court ordered Appellant to file an initial brief substantially in compliance with Rule 208(b)(1), SCACR within twenty days. Despite that *Order*, Appellant has filed nothing further in this case. Twenty days from February 23, 2018 was March 15, 2018. Thus, it has been forty days since the deadline issued by this Court for Appellant to file an initial brief substantially in compliance with Rule 208(b)(1), SCACR. Rule 260, SCACR provides that "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Due to Appellant's failure to file an initial brief substantially in compliance with Rule 208(b)(1), SCACR as ordered by this Court on February 23, 2018, Respondent SCDMV moves to have this appeal dismissed.

**Motion to Dismiss Due to Failure to File Record on Appeal**

Rule 210, SCACR requires the Appellant to file fifteen copies of the Record on Appeal with the Court within thirty days after the Respondent's brief is served. Additionally, Rule 210, SCACR requires Appellant to serve a copy of the Record on Appeal on all parties to the appeal within thirty days after the Respondent's brief is served.

Respondent filed its' brief in this matter on February 28, 2018. Thus, pursuant to Rule 210, SCACR, Appellant was required to file and serve the Record on Appeal by no later than

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March 30, 2018. As of the filing of this motion SCDMV has not received a copy of the Record on Appeal and it appears from C-Track that Appellant has not filed the Record on Appeal with the Court (Exhibit A).

Rule 260, SCACR provides that “Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.” Thus, Respondent SCDMV moves to have this appeal dismissed due to Appellant’s failure to file and serve the Record on Appeal as required by Rule 210, SCACR.

Regarding both of the grounds for dismissal set forth above, SCDMV asks this Court to consider Appellant’s repeated violations of the Appellate Court Rules and South Carolina’s case law regarding *pro se* litigants. *State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013) (an individual who knowingly elects to represent himself “assumes full responsibility for complying with substantive and procedural requirements of the law.”) *Goodson v. American Bankers Ins. Co. of Florida*, 295 S.C. 400, 403, 369 S.E.2d 687, 689 (Ct. App. 1988) (“Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.”).

And we so move.

**[SIGNATURE ON THE FOLLOWING PAGE]**

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Assistant General Counsel

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April 25, 2018

Blythewood, South Carolina

**South Carolina Appellate Case Management System**

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**Case Information: 2017-001811**

<b>Court:</b>	Court of Appeals	<b>Classification:</b>	Appeal - Administrative Law Court - Administrative Law Court
<b>Short Title:</b>	Desmond McKelvey v. SCDMV <a href="#">View Full Title</a>	<b>Case Status:</b>	Final Briefing / Record
<b>Consolidated:</b>			
<b>Filed Date:</b>	08/30/2017	<b>Oral Argument Date:</b>	
<b>Disposition Date:</b>	11/28/2017	<b>Disposition Type:</b>	Order
<b>Remittitur Date:</b>			
<b>Lower Court or Tribunal:</b>	2017ALJ210103AP		

**- Party Information**

Appellate Role	Party Name	Former	Attorney(s)
Appellant	Desmond McKelvey	N	Self Represented
Respondent	South Carolina Department of Motor Vehicles	N	Brandy Anne Duncan Frank L. Valenta, Jr. Philip S. Porter

**Views**

Display:

**Event Information**

Filed Date	Event Information	Doc
02/28/2018	Designation of Matter - Designation of Matter Filed (Respondent)	
02/28/2018	Initial Brief - Respondent	
02/26/2018	Non-Dispositional Decision - Order (Regarding Appellant's Initial Brief and Motion to Reinstate)	
02/12/2018	Designation of Matter - Designation of Matter Filed (Appellant)	
02/12/2018	Correspondence - Incoming (Regarding Initial Brief)	
01/10/2018	Deficiency - Correction (Motion to Reinstate Driver's License)	
01/08/2018	Non-Dispositional Decision - Order (Regarding Motion to Reinstate)	
01/04/2018	Deficiency - Deficiency Letter Sent (Motion to Reinstate Driver's License)	
12/27/2017	Motion - Other Motion (To Reinstate Driver's License)	
12/14/2017	Motion - Reinstate	
11/28/2017	Dispositional Decision - Order	
11/28/2017	Deficiency - Correction (Regarding Designation of Matter)	
11/17/2017	Deficiency - Correction (Partial-Documents signed)	
11/09/2017	Deficiency - Deficiency Letter Sent (Regarding Motion to Allow Late Filing)	
11/09/2017	Deficiency - Deficiency Letter Sent (Regarding Designation of Matter)	
11/06/2017	Designation of Matter - Designation of Matter Filed (Deficient)	
11/06/2017	Motion - Allow Late Filing (Appellant's Initial Brief and Designation of Matter)	
10/17/2017	Correspondence - Outgoing (Returning Correspondence and Requesting Initial Brief-Appellant)	
10/13/2017	Correspondence - Incoming (Attempted Initial Brief)	
10/05/2017	Correspondence - Outgoing (Time for filing appellant's initial brief is expired)	
09/12/2017	Deficiency - Correction	
09/05/2017	Deficiency - Deficiency Letter Sent in regards to the notice of appeal	
09/05/2017	Correspondence - Outgoing (Notice of Appeal-Initial Letter)	
08/30/2017	Notice of Appeal (Civil) - Initial	

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IN THE STATE OF SOUTH CAROLINA

Desmond Aldo McKelvey,

Appellant,

v.

South Carolina Department of Motor Vehicles,

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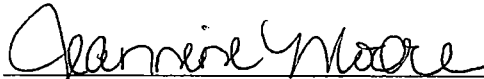
Docket No. 2017-001811

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 25, 2018, I mailed, via USPS first class mail, a true and correct copy of the foregoing **Notice of Motion and Motion to Dismiss Appeal** upon the following:

Desmond Aldo McKelvey  
2213 Bentley Court  
Columbia, South Carolina 29210

As *Pro Se* Appellant.



Jeanine (Nina) Moore, Paralegal  
Office of General Counsel  
SCDMV

Blythewood, South Carolina

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SC Court of Appeals

Henry McMaster  
Governor



Kevin A. Shwedo  
Executive Director

*State of South Carolina*  
*Department of Motor Vehicles*

April 25, 2018

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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APR 27 2018  
SC Court of Appeals

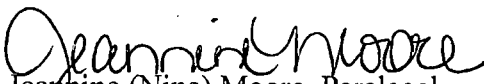
RE: Notice of Motion and Motion to Dismiss Appeal  
Desmond Aldo McKelvey v. South Carolina Department of Motor Vehicles  
Docket No: 2017-001811

Dear Ms. Kitchings:

In regard to the above referenced matter, enclosed for filing please find one original and seven copies of the South Carolina Department of Motor Vehicles' Notice of Motion and Motion to Dismiss Appeal. As evidenced by the attached Certificate of Service, I am serving the parties with a copy of same. Please have your clerk file the original and return a clocked copy to me in the enclosed self-addressed envelope.

If you have any questions, please feel free to contact me at (803) 896-9900.

Sincerely,

  
Jeannine (Nina) Moore, Paralegal  
Office of General Counsel  
SCDMV

Enclosure

cc: Desmond Aldo McKelvey, *Pro Se* Appellant



South Carolina Department of Motor Vehicles

Post Office Box 1498  
Blythewood, South Carolina 29016

MV-17



South Carolina Department of Motor Vehicles

P.O. Box 1498  
Blythewood, S.C. 29016

Form 103

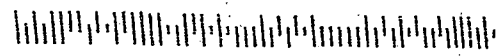
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The Honorable Jenny Abbott Kitchings  
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SC Court of Appeals



04/25/18