

CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA

**In The Supreme Court of South Carolina
From the Court of Appeals**

RECEIVED

AUG 14 2018

S.C. SUPREME COURT

APPEAL FROM CHARELSTON COUNTY

Court of Common Pleas

**Kristi Harrington, Circuit Court Judge
Dennis Markley, Circuit Court Judge**

Case No. 2015CP1002824

David Scot Lynd

VS

Isle of Palms

**Dawn Caldwell,
Individually and in her capacity as an Officer of the Isle of Palms Police
Department**

South Carolina Law Enforcement Division

Appellate case # 2016-002024

CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

NOW COMES DAVID Lynd who hereby files this Writ of cert to appeal the order filed and entered, and filed on 3-22-18. This order entered is a partial order, a motion to reconsider and en-banc was filed, on 4-10-18 and fees paid. The clerk of the court of appeals has refused to deposit the fee paid by postal money order, and therefore as of 4-11-18 the motion has been left un acted upon... The rehearing was finally heard after order from the Supreme Court and denied on 7-10-18

David Lynd hereby files this notice of writ of cert to the south Carolina Supreme Court, on the grounds that Lynd has meet every time deadline and filing deadline through the trial process, to be meet with flat out lies and false statements, to include fraud by court officers, whom have actual made up and sent letters with their own made up rules.

The writ needs to be heard by the Supreme Court to clarify some inaccuracies and law novelties outlined in the brief to follow

(1) Where there are novel questions of law.

State statute says failure to give proper notice on titled property before destruction, is an act of conversion, Conversion is theft and no statute of limitations exists in S.C. for that.
But the civil courts hear such complaints and try to imply a civil S.O.L. time table.

The time table applied is incorrect as well, as the 3yr SOL would apply due to I.O.P. filing the claim with its insurance company, and hiring counsel to represent it in that insurance claim. That clearly makes it a verified claim.. I.O.P. ACTED ON THE CLAIM FILED by acts and admission verified the claim.

(2) Where there is a dissent in the decision of the Court of Appeals.

In this instance there are several dissents and misapplications of the precedents. This court in Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court 2004 tried to reconcile those in its ruling but the courts fail to adhere to that opinion, and the COA refuse to adhere to it concerning the filing of post judgment motions.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

Same as above the Court of Appeals has seen and been provided that ruling but have ruled against it in its order despite numerous case law, this is done in a case against the City Police and SLED's failure to act. Trying to claim notice of appeals should have been filed when the clerks refused to accept it till the case had ended.

This goes on to be proven by a new order 19 months later that the clerks again refused to accept notice of appeal on.

(4) Where substantial constitutional issues are directly involved.

The failure to act and follow the statutes governing destruction of titled property is a direct and unequivocal equal protection and due process violation.

The case is lengthy spans years of conduct involves numerous state and city agencies, multiple parties, multiple counsels, and multiple filings and conflicting orders. The length of the petition mirrors that, due to cause and effect of the lengthy proceeding.

Now comes David Lynd whom hereby files this writ of certification to the South Carolina Supreme Court on the dismissal in-part order dated 3-22-18 of the above named appeal. The Writ should be heard due to the nature of the case, and the ongoing Federal Civil rights cases involving the respondents and their actions.

This involves S.C. statutes that were not followed, that were ignored, and even lied about their requirements and wording, and the resulting required by law and legal remedy directly outlined in the statute was ignored. This is a theft/conversion by S.C. city and state, government agencies as outlined in the statutes.

The court seems to be applying some hidden standard as if appellant Lynd is a criminal which had his property impounded and destroyed due to arrest. **Appellant Lynd is not that!** **Lynd was a Crime victim that had his property stolen in Texas, and subsequently recovered in S.C. but was never notified it was in South Carolina to retrieve it.** Appellant Lynd is a victim! And has victim rights under federal law under both due process that's been denied here, and equal protection that has been denied here.

So this appeal is a cross complaint under both civil and criminal law. Writ of cert is needed to determine what is the correct path, that the lower courts must follow, when a statutory remedy was not followed or applied. Does the conversion fall under a civil statute if a mandamus type request for enforcement of the statute be needed in a civil court? or does it fall under the criminal statute which has no statute of limitations? **S.C. has long held no S.O.L. under the criminal code and can seek prosecution and restitution years later.** In this instance the respondents have been trying to apply civil time limit statutes to what was a criminal act under the S.C. statute as conversion.

This in-part dismissal of this appeal based on a parties motions is in contradiction to the standing and most current precedents set by the South Carolina Supreme Court, **Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court**, and the case will be moving on to the S.C. Supreme Court and Federal Court, both in the future and some current ongoing. For these reasons it is in all parties' best interest to have a decision on the applications of the precedents in question, and the conflict of those being presented.

In this instance Lynd while represented by a licensed S.C. Law firm answered the motion, lost and filed (by counsel) what was ruled as a post judgement remedies rule 59/60 motion. This was done by counsel not pro-se Lynd, any errors in procedure fall on the licensed S.C. lawyer, pro-se Lynd could not have been at fault. Nor could an appeal be untimely after Lynd instructed counsel to file the appeal under ever existing SC precedent.

Both counsel and The C.O.A. clerk Jenny Kitchens Stated that a interlocutory or piecemeal appeal was not allowed, that the appeal could only be filed after the case was over. Subsequently when Lynd did try and appeal pro-se the clerk of the C.O.A. would not accept the appeal due to Lynd (again) being represented by licensed counsel. The COA clerks even sent counsel numerous letters demanding he respond, then allowed counsel to withdraw from the case without notice to pro-se Lynd or him being allowed to file an answer.

This matter involves the time limit for a post judgment remedy, and new trial, and the exact precedents of this court : see below

RULE 54, (b) Judgment Upon Multiple Claims or Involving Multiple Parties.

*In the absence of such determination and direction, any order or other form of decision, however designated, **which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties***

Hagood v. Sommerville, 607 SE 2d 707 - SC: Supreme Court 2005

*An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually **is considered an interlocutory order from which no immediate appeal is allowed.** Tatnall v. Gardner, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct.App.2002)*

The issue in this matter involves 3 parties all filing the same summary judgement motion, but getting 3 separate hearings and 3 separate rulings. Lynd asked counsel and the chief clerk at the COA if each had to be appealed separately and was emphatically told NO!

Herein lies the 1st part of the Writ, the either correct or misapplication of the precedents, when it was CRYSTAL CLEAR pro-se Lynd was making a good faith effort to file a timely appeal, and was denied that by an error by a licensed S.C. Attorney. Which is clearly covered in the case law below.

Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court 2004

(Quoted below)

These conflicts also are in contradiction of C.O.A opinions, and are not consistent. And are in direct contradiction to the clerk's office procedure of acceptance and filings of appeals, on motions and multiple orders. The chief Justice signed an order dismissing in part all the relevant parts of the appeal in a guise to protect the Government entities named in the cause. This dismissal is not based on fact, nor on precedent. Matter of fact the order actual states one of the cases that stands in appellants favor, as a ground for non-dismissal. The order itself contradicts the orders own result. The order clearly states under

SC code 14-3-330(1) and Lancaster v fields 305sc if there is a final judgement and the party timely files his notice of intent to appeal from that judgment under sec 14-3-330(1) this court can review an intermediate order or decree necessarily affecting the judgment not before appealed from.

It is evident Lynd appealed the case, the motion to dismiss was filed by Isle of Palms stating that the order of 2015 was not appealed, and thereby should be dismissed, as the justice stated in this order, that can be appealed after the final judgment.

It boils down to a loop hole the court can use to dismiss what it chooses, and hear what it chooses. This appeal was dismissed in part stating it was not timely filed with a notice of appeal, even though the appellant's attorneys involved, and the clerks of both the trial court and Mrs Kitchens of the C.O.A stated it was not an interlocutory appeal and appellant must wait till the

case was final before appealing any part of it. This was also verified by the Coordinator Mrs. Frierson herself. All of this is covered in Rule 54. And the precedents covering it.

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Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.

Now as well as those attempts to appeal it; and being told to wait, appellant also was informed of the Supreme Court precedents that clearly state the appeal must wait till all matters are decided on all parties, and all post-trial motions have been heard and ruled on,

Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court 2004

After studied review, we reject the rationale and result reached by the Court of Appeals in the present case and in *Matthews*. We conclude a party usually is free to file an initial Rule 59(e) motion, regardless of whether the previous JNOV/new trial motions were made orally or in writing, without unnecessary concern the repetition of an issue or argument made in a previous motion will result in a subsequent appeal being dismissed as untimely. In essence, we view the use of oral or written JNOV/new trial motions, followed by an initial Rule 59(e) motion, **as part and parcel of a party's "single bite at the apple" in presenting his case to the trial court.**

Fourth, South Carolina appellate courts do not recognize the "plain error rule," under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party. *Dykema v. Carolina Emergency Physicians, P.C.*, 348 S.C. 549, 554, 560 S.E.2d 894, 896 (2002); *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 25*25 564 S.E.2d 322 (2001). **Our mandatory preservation requirements make it doubly important that litigants generally be freely allowed to file a first, written Rule 59(e) motion without concern a later appeal will be deemed untimely.**

Fifth, civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party, but a careful consideration of this issue has led us to conclude that is precisely the effect of an unwarranted expansion of *Quality Trailer*. Cf. *Gamble v. State*, 298 S.C. 176, 379 S.E.2d 118 (1989)

If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling. **We strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place.**^[5]

We reaffirm the principles set forth in *Coward Hund*, 336 S.C. 1, 518 S.E.2d 56; *Quality Trailer*, 349 S.C. 216, 562 S.E.2d 615; and *Collins Music*, 353 S.C. 559, 579 S.E.2d 524. We reverse the Court of Appeals' order in the present case and overrule the Court of Appeals' opinion in *Matthews*, 357 S.C. 594, 594 S.E.2d 177. We conclude SCDOT timely served its notice of appeal after receipt of written notice of entry of the order denying its Rule 59(e) motion.

it appropriate for a party to make a "motion for reconsideration" under Rule 59(e) even though the rule mentions only a "motion to alter or amend a judgment." **This view holds true even when a party mislabels a post-trial motion. See *Blair v. Equifax Check Services, Inc.*, 181 F.3d 832, 837 (7th Cir.1999) (Rule 4(a)(4), FRAP, restates long-accepted practice of considering motions for reconsideration, a practice independent of any appellate rule);**

So the order in question seems to state the appellant Lynd should have filed a notice of appeal on each individual order, even though a post-trial motion was filed. **The SC Supreme Court is clear that is not the case.**

*doubly important that litigants generally be freely allowed to file a first, written motion without concern a later appeal will be deemed untimely. And, civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party, but a careful consideration of this issue has led us to conclude that is precisely the effect of an unwarranted expansion of *Quality Trailer*,*

this also holds for the Motion appellants attorney filed and mislabeled, that error is not grounds to dismiss an appeal, nor applicable as an error on pro-se appellant Lynd.

Appellant Lynd is clearly and indisputably in the “trap” the Supreme Court speaks of in its numerous precedents. **All the while CLEARLY AND UNECOVICALLY MAKING A GOOD FAITH EFFORT TO PURSUE JUSTICE AND PERFECT AN APPEAL.** And the final order closing the case was not entered till 3-22-18. That final order is entered after IOP had already filed the motion to dismiss.

How can a motion to dismiss be filed before the final order is even issued, MUCH LESS BE GRANTED on the grounds the appeal was filed late!!!!!!

Be advised under their interpretation and the order dismissing the appeal, then the final order, an entirely new appeal would have to be started on the final order date of 3-22-2018. Lynd in protection mode filed a notice of appeal on that order, the COA refused to accept it. Therefore creating another round of appeals to the Supreme Court.

This is clearly what is happening here. The court must also remember appellant Lynd is pro-se now, BUT!! at the times being discussed (the 2015 and 2016 orders) Lynd was represented by counsel. NOT ONLY REPRESENTED BY COUNSEL, but refused by the COA clerk’s office to file any documents **because he was represented by counsel.**

This is a matter of record in this appeal, where the clerk sent pro-se Lynd letters claiming he COULD NOT FILE DOCUMENTS OR NOTICES because he has a counsel of record. (see appendix) At the same time the clerk was sending demand letters to the counsel of record demanding they respond. Unknowingly the Law firm had gone under and was disbanded!

THIS IS A MATTER OF THIS APPEAL COURT RECORD. EASILY VERIFIED!!!
You cannot have your cake and eat it too scenario, the clerk of the COA cannot tell Lynd not to file, and then the court dismiss due to not filing, that is just ridiculous on its face.

This exact contradiction in one opinion to another, *so the ruling 'desired'* can be entered **is why the public is protesting in the streets**. This case it is clear, Lynd is correct, and Isle of Palms and SLED are at fault and liable for damages, and massive civil rights violations of both due process and equal protection. **It is also clear this is not the desired outcome the courts want** and are deeply seeking any form of technicality that it can apply to make it go away.

This is so simple! The conversion committed by Isle of Palms and SLED is a criminal matter, THERE IS NO STATUTE OF LIMITATIONS IN SOUTH CAROLINA ON THAT CRIME. No amount of digging and word play can make some defunct civil precedent apply to dismiss the case **and the criminal theft/conversion**. REMEMBER THIS IS NOT APPELLANTS OPINION THAT IT HAPPENED BUT FACT, ADMITTED TO FACT, IN BOTH ORAL AND WRITTEN DEPOSITIONS!

The act complained of and remedy sought is conversion/theft according to S.C. statute, and this act is admitted to by the officer in question in 3 separate statements 2 under oath. Those acts have NO STATUTE OF LIMITATIONS NOR A FILING DEADLINE.

Appellant Lynd as stated earlier was represented by counsel thru both the 2015 order, the 2016 order, and the post trial motion and order. Even up too and thru the initial notice of appeal to the COA clerk's office. THIS APPEALS COURT granted the motion to allow counsel withdraw itself.

Under no precedent can the C.O.A. after its own clerks numerous times made request to the attorney of record without a response, can the hold a pro-se appellant making a good faith appeal, to alleged errors and time limits errors that Counsel of Record (*an officer of the courts*) might have made. Even if the court disregards every single argument on the post-trial motions, or interlocutory appeal filings, these failings were done by counsel, **NOT! pro-se appellant Lynd**. Every precedent that exists in South Carolina, clearly state that an attorney that fails to file a timely notice of appeal is not the fault of the client or now pro-se applicant.

There is no justification of this dismissal if the error was made by counsel, when pro-se Lynd was clearly wanting and seeking to appeal. Appellant Lynd even when represented by counsel called clerks and administrators to verify what his counsel was stating that the appeal had to wait for a final judgment. Now the court wants to counter the precedents and state Lynd fails in his attempt to appeal, on counsel of record's alleged error, even though the clerks would not file, and even refused Lynd's first filing attempts.

Butler v. State, 334 SE 2d 813 - SC: Supreme Court 1985

The United States Supreme Court's decision in Strickland, supra, is clearly the preeminent authority for all other courts, state and federal, in determination of appeals arising out of allegations of lawyer incompetence.

*Writing for the majority of the court, Justice O'Connor defines the standard for judging ineffectiveness, **then cautions against hindsight and second-guessing review by appellate tribunals:***

The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.

In this instance it is clear, counsel failed to file a notice of appeal on the 2015 order, and thereby defendants claim, forfeited appellants Lynd's right to appeal, and was specifically instructed too, not only did counsel not file it but gave a lengthy explanation as to why it was not due to be filed. **Appellant Lynd relied on that, and believed a licensed office of the court.** So at no time did appellant Lynd fail to timely file a notice of appeal. Appellant Lynd even did his own inquiries with the clerks to verify those statements. To all parties it was not due till the case was closed. **Here failure to properly file a notice to preserve a parties right to appeal fails the standard in Strickland, doubly so when specifically asked or inquired by client.**

The effect of counsel's failure to appeal was that Becton lost his ability to protect his "vital interests at stake."

This doubled the injustice when you count in the court claiming the post-conviction motion also filed by counsel is claimed to be untimely as well. Again an error by counsel that

swore to his client it was not time to file it. These are not errors by appellant Lynd but counsel a SC bar licensed attorney and attorney of record on the case.

The C.O.A. is confusing the motions and filings at the trial level done by counsel with Pro-se Lynd's filings to appeal.

US v. Peak, 992 F. 2d 39 - Court of Appeals, 4th Circuit 1993

However effective or ineffective Peak's counsel was before the judgment of conviction, his failure to file the requested appeal deprived Peak of the assistance of counsel on direct appeal altogether

We touched on this issue in Becton v. Barnett, 920 F.2d 1190 (4th Cir.1990). In remanding a dismissed ineffectiveness claim based, in part, on a failure to file a notice of appeal, we said (920 F.2d at 1195):

The effect of counsel's failure to appeal was that Becton lost his ability to protect his "vital interests at stake."

Becton v. Barnett, 920 F. 2d 1190 - Court of Appeals, 4th Circuit 1990

. He alleged further that counsel assured him that there was still time to appeal as the ten day period for appeal had not yet run. However, no appeal was ever filed.

In order for the appeal as of right to be adjudicated in accord with due process of law, the appellant must have the effective assistance of counsel. Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821 (1985)

US v. Poindexter, 492 F. 3d 263 - Court of Appeals, 4th Circuit 2007

In preparation for the appellate phase of the case, an attorney in an appeal waiver case still owes important duties to the defendant. First and foremost, the attorney, as recognized in Flores-Ortega, has the duty to respect the appellate wishes of his client by filing a timely notice of appeal if he is unequivocally instructed to do so.

Skinner v. Westinghouse Elec. Corp., 668 SE 2d 795 - SC: Supreme Court 2008

The issue and complaints of respondent all and always make this false claims that appellant Lynd is somehow at fault and failed to do this or that, when in reality they all 3 know it was Lynd's attorney not appellant Lynd that might have failed in what they are using for grounds in their motions. Even though clerks and others all claim it was filed the correct

and proper way to have filed the appeal. They rehash this lame claim of technical issues, instead of stating the facts and admitting to the original errors and conversion.

NEVER IN THIS MOUNTAIN OF FILINGS has I.O.P. stated why they are not liable for the conversion of the property in question, why they didn't send the required certified letters, nor the truthful disposition of the property.

Never once have they offered the statutory restitution or compensation. Never once have they even so much as apologized for their error and loss it caused.

Yet everyone in the justice system wants to claim the public outcry and riots in the streets, over the police and courts misconduct, and failures to act on such misconducts, is hogwash, exaggerated, and non-existent. But right here is the proof.

Sled administratively closed the investigation of IOP's actions, for what was to be a brief time period, to secretly watch and investigate Det. Caldwell.; **This ENTIRE MATTER falls in SLED's lap!!! All they had to have done** was reopen the Investigation enter a finding of conversion based on Det. Caldwell's admission under oath, and order the restitution and Interest. **That was the law, the statute, S.C. procedure, and the right and just thing to do.** Everyone could have gone their separate ways and no case would have ensued.

This entire case, appeal, and years of filings is due to SLED's single employee, that closed and refused to reopen the investigation!! It is that simple and cut and dried! Even at this stage of the case **SLED still has that duty to fulfill**, and could end the entire matter, they know it, their counsel knows it, the courts know it, but everyone's refuses to admit it. The preverbal elephant in the room. This court has a mandamus duty, and the jurisdiction to order that action, a mandamus action ordering the statutory remedy be applied and followed.

This is one of the main reasons this should be heard every justice on the court will be summarily held or tied to this ruling, that once again lets a corrupt police officer and a corrupt Police dept off the hook, without justice to the public, and therefore should hear the facts and enter a consent or dissent on the outcome.

The individual notices of Appeal on each and every order is not the procedure the C.O.A. clerks follow, this case is an example thru this process every party has complained that a separate appeal on the 2015 order was required. As example the 2-26-18 order, issued after this appeal has already started and proceeded would also require its own separate notice of appeal.

Appellant Lynd did file that separate notice of appeal on the 2-26-18 order mailed 3-6-18, the clerk's office refused to file or accept it an issue a separate appeal case number and just list it as a generic filing in the current case, shown on the docket as filed 3-8-18 "notice of appeal". But according to the chief Justices order in question here, every order by the trial court requires its own separate appeal.

Appellant Even going so far as to have Mrs Kitchens, call, The head clerk of the COA in a phone call; 4-4-18 at 4:57 p.m. EST from ph# 803-734-1891 stated I did not get a separate appeal on the filing or every order filed, nor an appellate case number on that filing to even proceed on, and don't show it as a notice of appeal.

The Appeals Court's order and implication of how it should have been done, is in conflict to how the clerk's office operates, a hypothetical is this;

if appellants Lynd's counsel at the time of the 2015 order, had actually filed a notice of appeal, then subsequently the following two parties each receiving separate orders over a year later would have been required to have a separate notice of appeal filed. All based on the exact

same fact, *(with motions actually copied from each other)* So while the appeal on the 2015 is progressing, new appeals of the 2016 would have to have been started.

So under either scenario,

one the 2016 would be added to the ongoing 2015 appeal,

or the 2015 would be added to the new and current 2016 appeals.

None are outlined in the rules but truthfully **Neither exists it would be based on 'how' the clerk of the court accepted and filed them.** So the entire argument of filing dates and separate appeals is moot when the clerk's office will not and does not file them that way. Clearly evident by the 2nd notice of appeal, not being accepted and filed separately from the current case.

That is exactly what Appellant Lynd encountered when discussing it with counsel at the time of the 2015 order, and with the clerk and administrator the following day. Mrs. Frierson can corroborate this entire matter as she was c.c. on most of it. All stated you do not file individual appeals on each order, only on the final order, which was never entered.

That final order was entered only after Lynd's initial brief outlined that it was never entered by the court. A sever breach of ethics.

So the dismissal of the trial case parts against I.O.P. , S.L.E.D. and Dawna Caldwell leaving only the post judgment motion to appeal is incorrect and not the normal procedure, and flies in the face of court precedent, it is a clear due process violation, and clearly even if deemed correct not the fault of Lynd but ineffective assistance of counsel. **lost his ability to protect his "vital interests at stake."**

These repeated filing deadlines that are alleged missed are the fault of counsel, if the court uses them, saying as appellant they were missed file dates, that falls on counsel, and Lynd now Pro-se is not subject to suffer that counsels errors, it is the courts own created catch 22. If

the court claims they are filing errors they are the fault of counsel of record, and are acts committed by counsel that denied the client his right to appeal. That without question meets the ineffective assistance of counsel standard in strickland, and does so allegedly on several different occasions of missed dates. **It cannot be both;** it cannot be errors on filing but not be an error by paid counsel, an error of the most basic, timely filing of documents.

It is also quiet insulting to appellant, and the public that everyone up to the Chief justice is dictating statutes and laws, and this so called strict adherence to it, **but somehow there is no adherence strict or otherwise to the statutes violated that caused this case in the first place.** Statue that still have jurisdiction even as this appeal proceeds!!

That is why an Supreme Court decision is needed to determine who, whom, and what entity failed in enforcing the conversion after it was confessed too: this falls upon all the justices of the court, and all should have a say and an opinion on the record.

SECTION 56-5-5940. Seizure, sale or disposal of vehicle in violation of article constitutes conversion.

(a) Seizure, sale, or disposal of an abandoned or derelict motor vehicle in a manner inconsistent with the provisions of this article shall constitute conversion for which the owner shall have redress in any court of competent jurisdiction.

There is no time limit under this statute and the ones that follow; that issue being what the original trial order being claimed was not timely appealed was based on. It makes the filing time statute the respondents argued a moot point. **They filed a summary judgment motion on a time limit that didn't exist** and had a sympathetic judge grant it based on civil statute of Limitations standard not the conversion statute. that does not exist on this act.

Thereby putting appellant Lynd in a system loop of appeals, filings, and technicalities, claiming time limit failures, on a matter that had **no time limit to begin with.**

ODD!! Out of all the these rulings, and determining all these technical issues; nobody seems to see the most relevant one!!

A technical point that makes all the others a moot point.

SECTION 56-5-5660. Repealed by 2012 Act No. 242, Section 7, eff December 15, 2012.

Former Section 56-5-5660 was entitled "Application for and issuance of disposal authority certificates" and was derived from 1962 Code Section 46-490.16; 1972 (57) 2459; 2004 Act No. 269, Section 6.

South Carolina Code 56-5-5660. Application for and issuance of disposal authority certificates

(A) Any person or unit of government upon whose property or in whose possession is found an abandoned vehicle, or any person who is the owner of a vehicle whose title certificate is faulty, lost, or destroyed, may apply to the sheriff or chief of police of the jurisdiction in which the vehicle is located for authority to sell or give the vehicle to a demolisher.

(B) The application must give the name and address of the applicant, the year, make, model, and identification number of the vehicle, if ascertainable, along with any other identifying features, and must contain a concise statement of the facts surrounding the abandonment, or that the title of the vehicle is lost or destroyed, or the reasons for the defect of title in the owner. The applicant must execute an affidavit stating that the facts alleged are true and that no material fact has been withheld.

(C) If the sheriff or chief of police determines that the application is executed in proper form, and demonstrates that the vehicle has been abandoned upon the property of the applicant, the notification procedures set forth in Section 56-5-5630 must be followed. If the vehicle is not reclaimed in accordance with Section 56-5-5630, the sheriff or chief of police must follow the procedure set forth in Section 56-5-5660(D) for issuance of disposal authority certificates.

(D) If the application demonstrates that the vehicle is not abandoned but that the applicant appears to be the rightful owner, the sheriff or chief of police must give the applicant a certificate of authority to sell or give the vehicle to any demolisher for demolition, wrecking, or dismantling. A disposal authority certificate may contain multiple listings. The demolisher must accept such certificate in lieu of the certificate of title to the vehicle.

Conversion

n. a civil wrong (tort) in which one converts another's property to his/her own use, which is a fancy way of saying "steals." Conversion includes treating another's goods as one's own, holding onto such property which accidentally comes into the convertor's (taker's)

hands, or purposely giving the impression the assets belong to him/her. This gives the true owner the right to sue for his/her own property or the value and loss of use of it, as well as going to law enforcement authorities since conversion usually includes the crime of theft.

Conversion is a wrongful act and has been defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to **another to the exclusion of the owner's rights.** *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 220 S.E. (2d) 116 (1975). *Powell v. A.K. Brown Motor Co.*, 200 S. C. 75, 20 S.E.2d 636 (1942). Conversion may arise by some illegal use or misuse, **or by illegal detention of another's chattel.** Id. Money may be the subject of conversion when it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified. *Id.*; 89 C.J.S. *Trover and Conversion* § 23 (1955). To establish the tort of conversion, it is essential that the plaintiff establish either title to or right to the possession of the personal property. *Oxford Fin. Cos. v. Burgess*, 303 S.C. 534, 402 S.E.2d 480 (1991). A claim for conversion can be based on an unauthorized detention of property, after demand. *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 135 S.E. (2d) 311 (1964). Punitive damages are recoverable in conversion cases in the event it is determined the defendant's acts have been willful, reckless, and/or committed with conscious indifference to the rights of others. *Hunt v. Jordan*, 286 S.C. 340, 333 S.E. (2d) 569 (Ct. App. 1985).

Conversion has been defined in our case law as an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights. *Ray v. Pilgrim Health & Life Ins. Co.*, 206 S.C. 344, 34 S.E. (2d) 218, 34 S.E. (2d) 218 (1945). Conversion may arise by some illegal use or misuse, or by illegal detention of another's chattel. *Castell v. Stephenson Finance Co.*, 244 S.C. 45, 135 S.E. (2d) 311 (1964).

Conversion § 84 (1985); *McPherson v. Neuffer & Hendrix*, 45 S.C.L. (11 Rich.) 267, 281 (1858) (if a party wrongfully assumes property belonging to another or wrongfully uses it, it amounts to a direct conversion and a demand and refusal are not necessary before bringing an action).

"An action for conversion may be maintained by persons having the immediate right to possession of the article converted. Indeed, ordinarily, **an immediate right to possession at the time of conversion is all that is required in**

the way of title or possession to enable the plaintiff to maintain his action."

The words maintain his action somehow seems to escape everyone involved in this. As of this filing Lynd still has the right to possession of his property, at no time does that expire, or run some imaginary SOL. It is Lynd's property and must be returned or compensated for.

SECTION 56-5-5635. Law enforcement towing and storage procedures; notification of registered owner; disposition of vehicle and personal property.

(B) Within ten days following a law enforcement's towing request, the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop must provide to the sheriff or chief of police a list describing the vehicles remaining in the possession of the proprietor, owner, or operator of any towing company, storage facility, garage, or repair shop. A person who fails to provide the law enforcement agency with this list forfeits recovery of any storage fees that have accrued from the date of towing until the day after the mailing of the notification to the owner and all lienholders by certified or registered mail, return receipt requested, pursuant to Section 29-15-10. Within ten days of receipt of this list, the sheriff or chief of police must provide to the towing company or storage facility, the current owner's name, address, and a record of all lienholders along with the make, model, and identification number or a description of the vehicle at no cost to the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop. The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop having towed or received the vehicle must notify by registered or certified mail, return receipt requested, the last known registered owner and all lienholders of record that the vehicle has been taken into custody.

(C) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must provide notice by one publication in one newspaper of general circulation in the area from which the vehicle was abandoned which is sufficient to meet all requirements of notice pursuant to this article. The notice by publication may contain multiple listings of abandoned vehicles.

(D) Before a vehicle is sold, the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must apply to the appropriate titling facility including, but not limited to, the Department of Motor Vehicles or the Department of Natural Resources for the name and address of any owner or lienholder. For nontitled vehicles, where the owner's name is known, a search must be conducted through the Secretary of State's Office to determine any lienholders. The application must be on prescribed forms as required by the appropriate titling facility or the Secretary of State. If the vehicle has an out-of-state registration, an application

must be made to that state's appropriate titling facility. When the vehicle is not titled in this State and does not have a registration from another state, the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop may apply to the sheriff or chief of police in the jurisdiction where the vehicle is stored to determine the state where the vehicle is registered. The sheriff or chief of police shall conduct a records search. This search must include, but is not limited to, a search on the National Crime Information Center and any other appropriate search that may be conducted with the vehicle's identification number. The sheriff or chief of police must supply, at no cost to the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop, the name of the state in which the vehicle is titled.

(E) The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop that has towed and stored a vehicle has a lien against the vehicle and may have the vehicle sold at public auction pursuant to Section 29-15-10. The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop may hold the license tag of any vehicle until all towing and storage costs have been paid, or if the vehicle is not reclaimed, until it is declared abandoned and sold. Storage costs may be charged that have accrued before the notification of the owner and lienholder, by certified or registered mail, of the location of the vehicle. Notification to the owner and lienholder by the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must occur within five days, after receiving the owner's and lienholders' identities from the appropriate law enforcement agency. If the notice is not mailed within this period, storage costs after the five-day period must not be charged until the notice is mailed. If the vehicle is not reclaimed within thirty days after the day the notice is mailed, return receipt requested, the vehicle is considered abandoned and may be sold by the magistrate pursuant to the procedures set forth in Section 29-15-10.

(F) After the vehicle is in the possession of the proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop, the owner of the vehicle as demonstrated by providing a certificate of registration has one opportunity to remove from the vehicle any personal property not attached to the vehicle. The proprietor, owner, or operator of the towing company, storage facility, garage, or repair shop must release any personal property that does not belong to the owner of the vehicle to the owner of the personal property.

(G) When a law enforcement agency stores a vehicle at a law enforcement facility, the agency must follow the notification procedures contained in this section and submit vehicle information to a magistrate in the county where the vehicle is stored to provide for the sale of the vehicle at public auction. A law enforcement agency is exempt from paying filing fees in any matter related to the towing and storing of a vehicle.

The order goes on to list a footnote (1) claiming “ although appellant was unable to inform this court” again clearly showing the court is aware that now the appellant Lynd, **was at the time represented by counsel, and counsel would have received the notice not Lynd.**

And that counsel refused to forward Lynd his case file, notes or the original documents supplied to counsel.

This after the court ILLEGALLY, gave the respondents time to go back to the trial court and get a new order signed over a year after the appeal was started, **and after**

Lynd's brief was already filed !!! And they had been served a copy of Lynd's brief and were able to carefully word the new order to counter that brief. **Oh! so fair and just!** Inexcusable! No cloud over that act.

But the Court can do that, but can't call in the counsel of record to find out why he didn't file the notice of appeal to preserve Lynd's rights, why he allegedly filed the post relief motion late, **or when he received the notice in question.**

The clerks and court can create, out of air, a new order stating facts not presented in the SJ motions nor in the transcripts of the hearing for the appeal. If the facts in the new order were never presented to the court to determine, **HOW??? Did they end up in the signed order???**

The order goes on to state the only order left before the court is the post judgment motion order. And that being so a new brief is required, the court clearly failed to view those motions, **in them is every argument listed in the initial brief on file, there is no need to do a new brief,** those arguments are what is in the post judgment motion, even the respondent's response make that claim. So the initial brief covering the basis for the summary judgment is correct because that is the arguments in the post judgment brief, and is need to preserve appeal to the Supreme Court, and is evidence in the federal Civil rights violation.

It appears to be the court, thru that part of the order, is trying to make an excuse or alleviate the parties from having to answer on

- 1.the conversion,
- 2.the closing of the SLED investigation, and the

3.certified letter never sent.

If those parts are removed from the brief, they cannot be argued on further appeal. But being that is the gist of the case, and if removed from the brief will not be allowed to be argued before the U.S. Supreme Court as a ground, and the upcoming Federal Court, they cannot be removed from the brief. So the need for a new initial brief is moot, the brief on file is needed as is to preserve the grounds argued in that brief, and are directly correlated to the post judgment motion on file and the grounds in it that this court order is referring too.

Most attorneys familiar with appeals and writs in South Carolina state this should have been removed to the Supreme Court long ago. It is dealing with theft and collusion of two different state sponsored police agencies. Maybe this court should consider doing so, in the name of equity and speediness. To pursue this matter thru a court of appeals that is being frivolous with the law and precedents and wasting valuable time, conspiring and having numerous ex-parte meetings with the chief justice is a travesty and what most protest are about.

Prayer

It is clear fact that the conversion happened.

It is clear fact Lynd was represented by counsel up till the appeal

It is clear fact all errors claimed to base the dismissals on was by counsel, not Lynd.

It is clear fact all state and federal precedents declare Lynd not liable for those errors.

It is clear fact even with the errors Lynd made dozens of attempts to file an appeal, and made a good faith effort to do so.

It is clear fact that the interlocutory appeal was not supposed to be filed by this court prior precedent, and dismissal on that point is error.

It is clear fact the statues outlining conversion do not have a SOL to file a civil suit.

It is Clear fact the statue provide any court or justice can enter a declaratory judgment on the conversion, ordering IOP to pay the damages and the case ends.

APPENDIX

a brief appendix is attached, the COA refuses to send the copies to me and prior counsel is whereabouts unknown and refuses to return my file.

4th Notice of appeal filed on final order of 2018

Clerk letter deny filing of a separate appeal on separate order PROVE MY point, case been routinely dismissed due to not filing separate appeals, CLERKS DO NOT ALLOW THAT

COA clerk letter refusing to accept filings

COA letter instructing Atty of record to responnd

COA clerk letter assigning case number off notice of appeal, sending it to atty of record

Order of withdraw of counsel 1-20-2017

Form 4 order dated **7-28-2016**

Court orders allowing new order 2-7-2018

New order dated **3-22-2018 20 months after the fact!!!!!!!!!!!!!!**

COA clerk letter refusing to accept motion to rehear.

IOP motions

Lynd's pro-se response

Parties

Appellant

David S. Lynd
Plaintiff
2605 Rustown Dr.
Mesquite TX 75150

A handwritten signature in black ink, appearing to read 'D. Lynd', with a large, stylized initial 'D'.

Counsel for respondents

Timothy Domin
126 Seven Farms Dr.,
Ste. 200
Charleston SC 29492

Dorsel, Christopher Thomas
3 Wesley Drive
Charleston SC 29407

Morrison, David Leon
7453 Irmo Dr.,
Ste. B
Columbia SC 29212

CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA

RECEIVED

**In The Supreme Court of South Carolina
From the Court of Appeals**

AUG 14 2018

S.C. SUPREME COURT

**APPEAL FROM CHARELSTON COUNTY
Court of Common Pleas**

**Kristi Harrington, Circuit Court Judge
Dennis Markley, Circuit Court Judge**

Case No. 2015CP1002824

David Scot Lynd

VS

Isle of Palms

**Dawn Caldwell,
Individually and in her capacity as an Officer of the Isle of Palms Police
Department**

South Carolina Law Enforcement Division

PROOF OF SERVICE

I hereby certify that the above named parties were served this reply by U.S.P.S. mail on 8-8-2018 to the address on file with the court shown below.

A handwritten signature in black ink, appearing to read 'D Lynd', is written over a horizontal line.

David Lynd

Timothy Domin
126 Seven Farms Dr.,
Ste. 200
Charleston SC 29492

Dorsel, Christopher Thomas
3 Wesley Drive
Charleston SC 29407

Morrison, David Leon
7453 Irmo Dr.,
Ste. B
Columbia SC 29212



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

April 06, 2018

David Scot Lynd
2605 Rustown Dr.
Mesquite TX 75150

Re: David Scot Lynd v. Dawn Caldwell
Appellate Case No. 2016-002024

Dear Mr. Lynd:

Pursuant to your phone conversations with Clerk's office staff, we clarify that the notice of appeal filed March 8, 2018, has been filed as a second subsequent notice of appeal under appellate case number 2016-002024. Any future filings regarding this appeal should include this appellate case number.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. A. Kitchings".

CLERK

cc: James Jordan Johnson, Esquire
Timothy Alan Domin, Esquire
Christopher Thomas Dorsel, Esquire
David Leon Morrison, Esquire
Sandra J. Senn, Esquire

*Clerk letter
Showing Refusal
to file multi-
separate Appeals
Rolled it into
Same Case*

RECEIVED

AUG 14 2018

S.C. SUPREME COURT

*Police Appeal
Filed on Final
Order. Separate
from other
Interlocutory Appo
Clerk Robert White*

APPEAL IN A CIVIL CASE

STATE OF SOUTH CAROLINA

In The Court of Appeals

AL FROM CHARELSTON COUNTY

Court of Common Pleas

Kristi Harrington, Circuit Court Judge
Dennis Markley, Circuit Court Judge

Case No. 2015CP1002824

David Scot Lynd

VS

Isle of Palms

Dawn Caldwell,
Individually and in her capacity as an Officer of the Isle of Palms Police
Department

South Carolina Law Enforcement Division

RECEIVED

MAR 08 2018

SC Court of Appeals

NOTICE OF APPEAL

NOW COMES DAVID Lynd who hereby appeals the order dated 2-26-2018, and filed
on 3-2-18. This ordered entered; states it ends the case as of the date filed.

Parties

Appellant

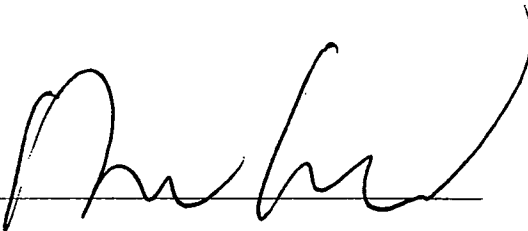
David S. Lynd
Plaintiff
2605 Rustown Dr.
Mesquite TX 75150

Counsel for respondents

Timothy Domin
126 Seven Farms Dr.,
Ste. 200
Charleston SC 29492

Dorsel, Christopher Thomas
3 Wesley Drive
Charleston SC 29407

Morrison, David Leon
7453 Irmo Dr.,
Ste. B
Columbia SC 29212

A handwritten signature in black ink, appearing to read "D. Lynd", is written over a horizontal line.

David scot Lynd
2605 Rustown
Mesquite TX 75150
469-323-1751
dscotly@yahoo.com

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Case#: 2016-002024

APPEAL FROM CHARELSTON COUNTY

Court of Common Pleas

**Kristi Harrington, Circuit Court Judge
Dennis Markley, Circuit Court Judge**

Case No. 2015CP1002824

David Scot Lynd

VS

Isle of Palms

**Dawn Caldwell,
Individually and in her capacity as an Officer of the Isle of Palms Police
Department**

South Carolina Law Enforcement Division

PROOF OF SERVICE

I hereby certify that the above named parties were served this reply by U.S.P.S. mail on 3-6-2018 to the address on file with the court shown below.

RECEIVED
MAR 08 2018
SC Court of Appeals

A handwritten signature in dark ink, appearing to read 'D Lynd', is written over a horizontal line.

David Lynd

Timothy Domin
126 Seven Farms Dr.,
Ste. 200
Charleston SC 29492

Dorsel, Christopher Thomas
3 Wesley Drive
Charleston SC 29407

Morrison, David Leon
7453 Irmo Dr.,
Ste. B
Columbia SC 29212

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The South Carolina Court

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

October 26, 2016

David Scot Lynd
2605 Rustown Dr.
Mesquite TX 75150

Re: David Scot Lynd v. Dawn Caldwell
Appellate Case No. 2016-002024

Dear Mr. Lynd:

Regarding your letters dated October 18, 2016, pursuant to Rule 264 of the South Carolina Appellate Court Rules, you are represented by counsel until such time as your counsel files a motion to be relieved as counsel of record and is relieved as counsel of record by an order of this court. We will not accept filings from a party who is currently represented by counsel.

We received two copies of this correspondence - one addressed to the Chief Judge of the South Carolina Court of Appeals. All correspondence regarding your case must instead be addressed to the Clerk of Court, Jenny Abbott Kitchings.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

COA
Refusal
Because
S.C. Atty of
Record



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 26, 2016

Mr. Brent Biagio Greenberg, Esquire
PO Box 2061
Charleston SC 29465

Re: David Scot Lynd v. Dawn Caldwell
Appellate Case No. 2016-002024

Dear Counsel:

Pursuant to Rule 264, SCACR, you remain the attorney of record for Mr. Lynd. If you no longer wish to represent Mr. Lynd you must file a motion to be relieved as counsel of record with this Court within 10 days. We cannot accept pro se filings from a represented party.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. A. Kitchings", written in a cursive style.

CLERK

cc: David Scot Lynd
Sandra J. Senn, Esquire
James Jordan Johnson, Esquire
Timothy Alan Domin, Esquire
David Leon Morrison, Esquire
Christopher Thomas Dorsel, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 28, 2016

Mr. Brent Biagio Greenberg, Esquire
PO Box 2061
Charleston SC 29465

David Scot Lynd
2605 Rustown Dr.
Mesquite TX 75150

Re: David Scot Lynd v. Dawn Caldwe
Appellate Case No. 2016-002024

Date
Case #
Assign

Dear Counsel and Mr. Lynd:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals.

The South Carolina Court of Appeals

David Scot Lynd, Appellant,

v.

Isle of Palms, Dawn Caldwell, Individually and in
capacity as an officer of the Isle of Palms Police
Department, and South Carolina Law Enforcement
Division, Respondents.

Appellate Case No. 2016-002024

ORDER

On November 3, 2016, Brent B. Greenberg, Esquire, filed a motion to be relieved as counsel for Appellant and served Appellant with the motion. On November 8, 2016, this court sent Appellant a letter, giving him ten days from the date of the letter to file any return to the motion. On November 23, 2016, this court had received no return, and granted Mr. Greenberg's motion to be relieved. This court has now received Appellant's "Objection to Motion to Withdraw [and] Request to Rehear Motion to Withdraw." First, pursuant to Rule 240(i) of the South Carolina Rules of Appellate Procedure, this court does not act on "petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." Second, to the extent Appellant is seeking this court to appoint counsel to represent Appellant on appeal, that request is denied. *Ex parte Dibble*, 279 S.C. 592, 310 S.E.2d 440 (Ct. App. 1983) (holding there is no constitutional right to counsel in civil cases). This case will be held in abeyance for thirty days to allow Appellant time to obtain counsel. Appellant must notify this court and opposing counsel of the name and contact information for the new attorney within thirty days of the date of this order or this court will presume Appellant is proceeding pro se.

FOR THE COURT

FILED

November 20, 2017

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

FORM 4

JUD

CASE

Daw
office

Sout
DEF

David Scot Lynd,

PLAINTIFF(S)

Submitted by:

DISPOSITION TYPE (CHECK

- ☐ **JURY VERDICT.** This action came before the court have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: The Plaintiffs' Motion for Relief from Orders Granting Summary Judgment to Defendants South Carolina Law Enforcement and Dawn Caldwell is denied as untimely filed.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2151
Judge Code

July 28, 2016
Date

The South Carolina Court of Appeals

David Scot Lynd, Appellant,

v.

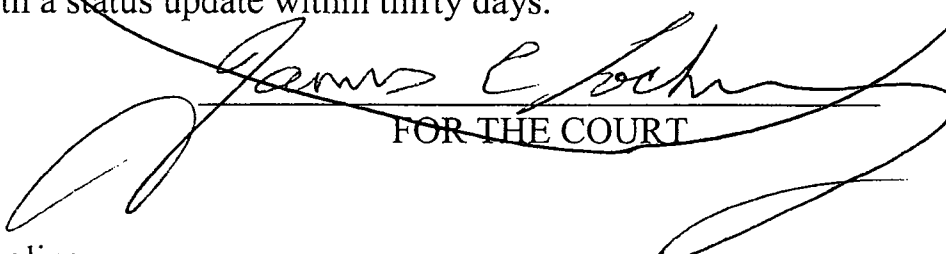
Isle of Palms, Dawn Caldwell, Individually
capacity as an officer of the Isle of Palms P
Department, and South Carolina Law Enfo
Division, Respondents.

Appellate Case No. 2016-002024

After heard files
Brief. Cost of A
allows new order
Based on Brief
not motions
and arguments

ORDER

Appellant has appealed from the circuit court's August 3, 2016 order, which indicates a formal order is to follow. The form order further provides the order "does not end the case." Accordingly, we hold this appeal in abeyance and remand the matter in part for the circuit court to issue its final order. The parties shall provide this court with a status update within thirty days.


FOR THE COURT

Columbia, South Carolina

cc:

The Honorable Kristi Lea Harrington

The Honorable Julie J. Armstrong

David Scot Lynd

James Jordan Johnson, Esquire

Timothy Alan Domin, Esquire

Christopher Thomas Dorsel, Esquire

FILED

Feb. 7, 2018



North Carolina Court of Appeals

CLERK OF COURT

CLERK OF COURT

CLERK OF COURT

CLERK OF COURT

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CLERK OF COURT

January 16, 2018

David Scot Lynd -
2605 Rustown Dr.
Mesquite TX 75150

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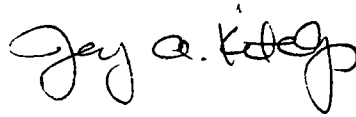
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Dear Counsel and Mr. Lynd:

The Court is reviewing respondents' motions to dismiss. The appellant must provide the date the appellant's trial counsel received written notice of the entry of the circuit court's May 11, 2016 order within fifteen days of the date of this letter, or the Court will proceed with its consideration of the respondents' motion to dismiss.

Additionally, the Court asks the parties to provide an update regarding the status of the appellant's Rule 60(b), SCRCPP motion. The August 3, 2017 Form 4 order indicates a formal order is to follow. Within fifteen days of the date of this letter, the Court asks the parties to notify the Court whether a formal order has been issued.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jay A. Kite".

CLERK

The South Carolina Court

David Scot Lynd, Appellant,

v.

Isle of Palms, Dawn Caldwell, Individual capacity as an officer of the Isle of Palms Department, and South Carolina Law Enforcement Division, Respondents.

Appellate Case No. 2016-002024

ORDER

In May 2015, Appellant filed this action against Respondents relating to the loss of his jet skis. On September 29, 2015, the circuit court granted summary judgment to Isle of Palms and Dawn Caldwell, in her official capacity, disposing of all claims against them. On May 11, 2016, the circuit court granted summary judgment to South Carolina Law Enforcement Division (SLED) and Dawn Caldwell, in her individual capacity, disposing of all claims against them. On June 23, 2016, Appellant filed a post-judgment motion for relief, which the circuit court denied. Appellant thereafter served and filed a notice of appeal from the September 2015 summary judgment order and the denial of his post-judgment motion.

Respondents SLED and Dawn Caldwell, in her individual capacity, have filed motions to dismiss, or alternatively, for extensions of time to file their initial briefs, arguing Appellant did not timely appeal the May 2016 order or file a Rule 59(e) motion requesting reconsideration of the order. They also argue Appellant either improperly filed his post-judgment motion instead of appealing or improperly captioned his motion as one under Rule 60(b) instead of one under Rule 59(e). Respondent Isle of Palms also filed a motion to be dismissed as a party to this appeal, arguing Appellant failed to properly appeal the September 2015 order. The motions to dismiss are granted in part.

New Order
By Court
Counters Point
IN Brief
NOT Argued IN
motion

Appellant's post-judgment motion, whether construed as an untimely motion to alter or amend under Rule 59(e), SCRCF, or a timely motion for relief from judgment under Rule 60(b), SCRCF, did not toll the time to appeal the circuit court's May 2016 order. See Rule 203(b)(1), SCACR (providing a *timely* motion to alter or amend under Rule 59 shall stay the time for appeal); Rule 59(e), SCRCF ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."); *Coward Hund Const. Co. v. Ball Corp.*, 336 S.C. 1, 5-6, 518 S.E.2d 56, 59 (Ct. App. 1999) (recognizing Rule 60 motions do not have any tolling effect on the right to appeal). As a result, the time to appeal the May 2016 order expired before Appellant served his notice of appeal. See Rule 203(b)(1), SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.").¹ Furthermore, Appellant's appeal of the denial of his post-judgment motion does not allow this court to review the merits of the May 2016 order. See *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."); *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 23, 594 S.E.2d 478, 485 (2004) (stating a Rule 60(b) order is separate and distinct from the underlying judgment).

To the extent Appellant attempted to appeal the May 2016 order, that appeal is dismissed as untimely. Additionally, because Appellant did not timely appeal the May 2016 or September 2015 order, Isle of Palms's motion to dismiss is granted. See S.C. Code Ann. § 14-3-330(1) (2017) (providing this court may review an intermediate judgment involving the merits after final judgment is entered); *Lancaster v. Fielder*, 305 S.C. 418, 421, 409 S.E.2d 375, 377 (1991) ("[I]f there is a final judgment, and the party timely files his notice of intent to appeal from that judgment, under [s]ection 14-3-330(1) this [c]ourt can review any intermediate order or decree necessarily affecting the judgment not before appealed from." (emphasis added)). However, because Appellant timely appealed the circuit court's denial of his post-judgment motion, the motions to dismiss that appeal by SLED and Dawn Caldwell, in her individual capacity, are denied.

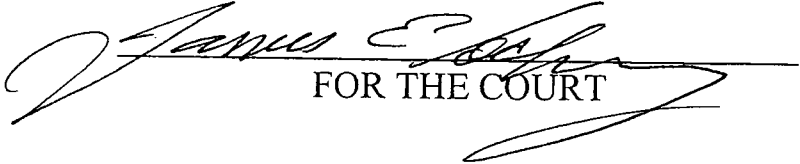
✓
Final
Entry

¹ Although Appellant was unable to inform this court when he received written notice of the May 2016 order, it must have been prior to his filing of the June 23, 2016 post-judgment motion, which was more than thirty days before Appellant served his notice of appeal.

Not
Applicable
Not A.

The only order remaining before this court is the denial of Appellant's post-judgment motion, which relates only to SLED and Dawn Caldwell, in her individual capacity. Accordingly, Isle of Palms and Dawn Caldwell, in her official capacity, are dismissed as parties to this appeal. Additionally, because Appellant's initial brief raises arguments relating to the circuit court's summary judgment orders, the brief is stricken. Appellant shall serve and file an amended initial brief, addressing only the circuit court's denial of his post-judgment motion, within thirty days of this order. The remaining Respondents—SLED and Dawn Caldwell, in her individual capacity—shall serve and file their initial briefs within thirty days of receipt of Appellant's amended brief.

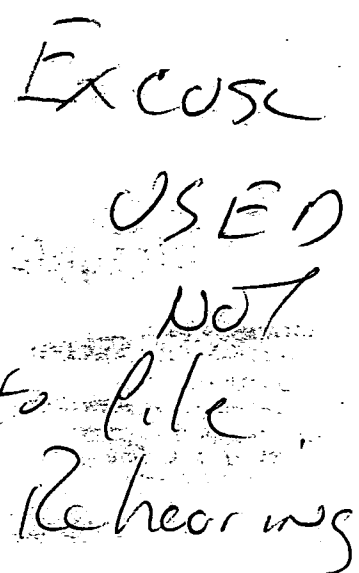
Finally, Appellant filed a motion requesting electronic notification of all filings in this case. This motion is denied.


FOR THE COURT

Columbia, South Carolina

cc: David Scot Lynd
James Jordan Johnson, Esquire
Timothy Alan Domin, Esquire
Christopher Thomas Dorsel, Esquire
David Leon Morrison, Esquire
Sandra J. Senn, Esquire
Julie J. Armstrong
The Honorable Kristi Lea Harrington

FILED
March 22, 2018



V. CLAIRE ALLEN
DEPUTY CLERK

April 11, 2018

David Scot Lynd
2605 Rustown Dr.
Mesquite TX 75150

Re: David Scot Lynd v. Dawn Caldwell
Appellate Case No. 2016-002024

Dear Mr. Lynd:

Upon reviewing your petition for rehearing and rehearing en banc, the deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this order. If your petition may not be considered:

- The money order provided with required filing fee completely filled out and is not accepted. We are

Very truly yours,

V. Clair Alt.

CI

cc: James Jordan Johnson, Esquire
Timothy Alan Domin, Esquire
Christopher Thomas Dorse
David Leon Morrison, Esquire
Sandra J. Senn, Esquire

hearing and rehearing en banc, the South Carolina Appellate Court within ten (10) days of the date:

with required filing fee not accepted. We are

very truly yours,

V. Claimant

CI

ir

POSTAL MONEY ORDER
Twenty Five Dollars and 00/100
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Official Number
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84921

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Court of Common Pleas

Kristi Lea Harrington, Presiding Circuit Court Judge

Appellate Case No. 2016-002024

RECEIVED

OCT 23 2017

SC Court of Appeals

David Scot Lynd,

Appellant

v.

Isle of Palms, Dawn Caldwell, Individually and in her capacity
as an officer of the Isle of Palms Police Department, and South
Carolina Law Enforcement Division,

Respondents

**MOTION TO DISMISS APPEAL AS TO THE ISLE OF PALMS
AND TO STAY THE DEADLINE FOR FILING OF
ISLE OF PALMS' RESPONDENT'S BRIEF
AND DESIGNATION OF MATTER**

Isle of Palms, a municipality, hereby requests this Court dismiss the appeal as to it and to hold in abeyance the deadline for filing the Isle of Palms' responsive brief and designation of matter pending the outcome of this motion. (Technically, the parties are currently awaiting Lynd to fix procedural deficiencies in his brief, but he will presumably fix those defects while this motion is pending.) Mr. Lynd's appeal was not timely as to the Isle of Palms and this is a jurisdictional defect as to the Isle of Palms requiring dismissal.

The Isle of Palms was granted summary judgment by an order of dated September 28, 2015 on the basis of the statute of limitations. (See attached Exhibit A). No appeal was filed within 30 days. On May 11, 2016, summary judgment was granted as to the remaining two defendants---Dawn Caldwell and the South Carolina Law Enforcement Division (SLED). (Exhibit B and C) Lynd did not file a Rule 59 or other motion to reconsider nor did he file an appeal within 30 days of notice of May 11, 2016 orders. On June 22, 2016, the plaintiff filed a Rule 60(b) (3) motion for relief from the orders granting summary judgment to Dawn Caldwell and SLED. (Exhibit D, without voluminous attached supporting documents). That motion was denied on August 3, 2016. (During this entire time, Lynd was represented by counsel and notice to his counsel of the orders was provided to all counsel of record by the Clerk of Court. No appellate time limits are based on when Lynd himself received notice of an Order.)

The plaintiff had a right to file an appeal as to the Isle of Palms within 30 days of notice of the September 28, 2015. The decision was immediately appealable pursuant to S. C. Code Ann. § 14-3-330. As a matter of logic and policy, once one party is granted summary judgment, they are no longer participating in discovery or hearings and an appeal should have to be initiated immediately as to that party.

However, under Rule 54 of the South Carolina Rules of Civil Procedure, there is some basis for Lynd to argue the September 28, 2015 order in favor of Isle of Palms could have been appealed within 30 days of summary judgment being granted to all remaining defendants. However, Lynd did not do that either.

Instead, Mr. Lynd waited over 30 days and then filed a Rule 60(b)(3) motion. Mr. Lynd's 60(b)(3) motion does not and did not extend the time for filing an appeal. Only a timely Rule 59 motion or motion for reconsideration within 10 days would stay the time for filing an appeal. Elam v. S.C. DOT, 361 S.C. 9, 602 S.E.2d 772 (2004)

And more importantly, Lynd's Rule 60 motion was only directed to Defendants Caldwell and SLED and as to the summary judgment granted to Caldwell and SLED. (This is potentially because the order in favor of the Isle of Palms was now more than a year old which is an absolute time limit for most Rule 60 motions.) Lynd cannot bootstrap an appeal of the September 28, 2015 order granting the Isle of Palms summary judgment via a Rule 60 motion filed against two parties other than the Isle of Palms. And there can be no appeal as to the Isle of Palms from the decision of August 3, 2016 because the motion was not directed to the Isle of Palms.

To accept Lynd's appeal as timely would allow anyone to file a Rule 60 motion within a year of the final judgment then bootstrap an appeal of an otherwise unappealed final order.

The Isle of Palms requests Lynd's appeal as to it be dismissed as untimely and that the portion of the appeal relating to the order of September 28, 2015 be dismissed as untimely. The requirement to timely appeal is a jurisdictional matter which cannot be extended by estoppel or agreement or other arguments. (See Exhibit D) The Rule 60 motion was only directed at Dawn Caldwell and SLED.

CLAWSON and STAUBES, LLC



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Fax: (843) 722-2867
Email: tdomin@clawsonandstaubes.com
Attorney for Respondent, Isle of Palms

Charleston, South Carolina

October 20, 2017

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

46



TIMOTHY ALAN DOMIN
126 SEVEN FARMS DR STE 200
DANIEL ISLAND SC 29492-8144

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

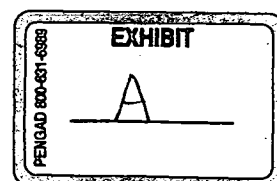
Order/Granting Defnt Isle of Palms' mot for sum judg

CASE NO: 2015CP1002824

David Scot Lynd VS Isle of Palms Police Department

This judgment was entered on the 29th day of September, 2015, and notice mailed first class on Wednesday, September 30, 2015, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.



APPEAL IN A CIVIL CASE
THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Case#: 2016-002024

APPEAL FROM CHARELSTON COUNTY

Court of Common Pleas

Kristi Harrington, Circuit Court Judge
Dennis Markley, Circuit Court Judge

Case No. 2015CP1002824

David Scot Lynd

VS

Isle of Palms

Dawn Caldwell,
Individually and in her capacity as an Officer of the Isle of Palms Police
Department

South Carolina Law Enforcement Division

Appellants Response to I.O.P.'S Motion To Dismiss.

First IOP thru its counsel Domin argues a time barred appeal, but then goes on to state that under some grounds it is not time barred, as well as misstates the facts and filings. IOP is

seeking a favor on a filing it admits is timely filed. IOP is asking the court to seek some extreme interpretation to benefit IOP when it is evident in all the filings, and IOPP's own motion that the appeal is timely. IOP is seeking to avoid an Issue it can't defeat on a made up technicality but fails to mention that the motion to dismiss it filed is the one untimely.

IOP goes on to state that under rule 54 that the appeal filed after the final ruling is the correct time to file the appeal. This is also echoed by the COA clerk's office when asked, and the trial court's court administrators office of Rosalyn W. Frierson, that is to avoid numerous and lengthy appeals, that the appeal is taking after the final ruling dismissing the case.

IOP goes on to even caption the motion 'Judge Kristy Harrington' in its motions caption, as the trial judge which is correct and is who issued the final order and ruling, in its motions caption, when it is trying to claim a prior motion ruling by a different Judge is the basis. The ruling it is trying to use to start the appeal clock was not the final ruling. And as stated rule 54 (b) clearly states it was not a final ruling.

RULE 54, (b) Judgment Upon Multiple Claims or Involving Multiple Parties.

In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties

Hagood v. Sommerville, 607 SE 2d 707 - SC: Supreme Court 2005

*An appeal ordinarily may be pursued only after a party has obtained a final judgment. Mid-State Distributors, Inc. v. 195*195 Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993); S.C.Code Ann. § 14-3-330(1) (1976); Rule 72, SCRPC; Rule 201(a), SCACR.*

An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed. Tatnall v. Gardner, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct.App.2002).

Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.

This is IOP, same as the trial level, crying and attempting to create a time issues, because **it cannot face or beat the facts of the case**, those being that IOP destroyed Lynd's property without notice, and in doing so committed conversion under the statute. Unable to deny or defeat that it has embarked on a campaign of *technical issues creation* to avoid facing the issue. That is the exact cause of riots in the streets these days, police depts. at fault, and lying to cover it up.

IOP tries to imply this was a final judgement in the case and Lynd is bootstrapping an appeal to a separate case. That is not the facts, this was a motion filed along with other motions filed that was ruled on and the rule 59 and 60 motion filed on the final ruling.

IOP fails to name the motions to rehear that were filed and ruled on by another judge, knowing full well that defeats its argument.

The courts and defendants stretching out of Summary judgement motions and hearings over a year, cannot in any way effect Lynd's right to appeal a final dismissal of a case. As a note, the motion to reconsider was filed after awaiting a signed order that was never entered. AS of this date the final order has never been entered, only a form 4 entry with an attached order to come later, of which never materialized. That caused Lynd's attorney at the time problems that it could only file a motion to rehear or reconsider on what was heard in court, not on facts or opinions found in a written order to reference. The rule 59/60 motion was correct.

Remember the 2nd and 3rd summary judgements were based on the ruling of the first, and the issuance of that ruling, and followed that ruling to the letter, **so an appeal of one on the facts would apply to all three, since they are all granted and based on the same date and occurrence, and the transcripts show and discuss that.**

The South Carolina Supreme Court has held that the motion Lynd filed does apply to start/toll the appeal time limit and the motion in 2015 was not required to be a separate appeal. The Court also outlines the times and cause of order entry's to file the rule 59/60 motions as well as the application of all the previous motions in a particular case. This is the standard precedent the court has set to correlate all the prior precedents.

Elam v. South Carolina Dept. of Transp., 602 SE 2d 772 - SC: Supreme Court 2004

We take this opportunity to clarify the limits and rationale of *Quality Trailer, supra*, and two Court of Appeals' opinions, *Coward Hund Const. Co. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct.App.1999), and *Collins Music Co. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct.App.2002). We conclude the Court of Appeals in the present case and in *Matthews v. Richland County School Dist. One*, 357 S.C. 594, 594 S.E.2d 177 (Ct.App.2004) has extended the holdings and rationale of those three cases in a manner which unnecessarily complicates post-trial and appellate practice.

After studied review, we reject the rationale and result reached by the Court of Appeals in the present case and in *Matthews*. We conclude a party usually is free to file an initial Rule 59(e) motion, regardless of whether the previous JNOV/new trial motions were made orally or in writing, without unnecessary concern the repetition of an issue or argument made in a previous motion will result in a subsequent appeal being dismissed as untimely. In essence, we view the use of oral or written JNOV/new trial motions, followed by an initial Rule 59(e) motion, **as part and parcel of a party's "single bite at the apple" in presenting his case to the trial court.**

We believe this view of the propriety of post-trial motions to be the correct approach for several reasons. First, it is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court "alter or amend the judgment," but also as a vehicle to seek "reconsideration" of issues and arguments. A motion under Rule 59(e) long has been viewed as "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *See, e.g., Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) ("purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to 22*22 request the judge to reconsider matters properly encompassed in a decision on the merits"); *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 585 S.E.2d 272 (2003) (an example of the many cases in which trial and appellate courts describe a Rule 59(e) motion as a "motion to reconsider" or "motion for reconsideration"); James Flanagan, *South Carolina Civil Procedure* 474-475 (2d ed. 1996). There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. **It is inherently unfair to disallow such an opportunity.**

Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.^[3] Neither contains any provision for a motion for "reconsideration." However, federal courts consider it appropriate for a party to make a "motion for reconsideration" under Rule 59(e) even though the rule mentions only a "motion to alter or amend a judgment." **This view holds true even when a party mislabels a post-trial motion.** *See Blair v. Equifax Check Services, Inc.*, 181 F.3d 832, 837 (7th Cir.1999) (Rule 4(a)(4), FRAP, restates long-accepted practice of considering motions for reconsideration, a practice independent of any appellate rule); 12 *Moore's Federal Practice* § 59.30[2][a] and [7]; 11

Wright, Miller & Kane § 2810.1; 20 *Moore's Federal Practice* §§ 304.13[2] and 304.13[4][b] (3d ed. 2003). "\\\

In fact, the United States Supreme Court explicitly has described a motion under federal Rule 59(e) as one which "involves *reconsideration* of matters properly encompassed in a decision on the merits." *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174, 109 S.Ct. 987, 990, 103 L.Ed.2d 146, 154 (1989) 23*23 (a request relating to discretionary prejudgment interest is a part of the plaintiff's compensation and thus a part of the decision on the merits, which means a Rule 59(e) motion raising prejudgment interest tolled the time for appeal; Court cited precedent in which Rule 59(e) motions relating to attorney's fees and case costs are deemed collateral issues, thus such motions did not toll the time for appeal) (emphasis added). The Court explained its decision furthered the goals of avoiding piecemeal appeals and fostering informed appellate review. *Osterneck*, 489 U.S. at 177-178, 109 S.Ct. at 992, 103 L.Ed.2d at 156

The commentators explain that the approach taken in today's rules allowing a motion for reconsideration which addresses the merits of the case at hand originated in the common law. "It is absolutely necessary *to justice*, that there should, upon many occasions, be opportunities of *reconsidering* the cause by a new trial." 11 Wright, Miller & Kane § 2801 (quoting a 1757 opinion written by an English judge) (emphasis in original); 12 *Moore's Federal Practice* 59 App. 102 (even before 1946 amendment adding subdivision (e) to Rule 59, courts routinely found that motions seeking such relief as rehearing or reconsideration were proper under Rule 59, although the motions were not literally or technically motions for a new trial).

Third, our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Fourth, South Carolina appellate courts do not recognize the "plain error rule," under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party. *Dykema v. Carolina Emergency Physicians, P.C.*, 348 S.C. 549, 554, 560 S.E.2d 894, 896 (2002); *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 25*25 564 S.E.2d 322 (2001). **Our mandatory preservation requirements make it doubly important that litigants generally be freely allowed to file a first, written Rule 59(e) motion without concern a later appeal will be deemed untimely.**

Fifth, civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party, but a

Careful consideration of this issue has led us to conclude that is precisely the effect of an unwarranted expansion of *Quality Trailer*.

Cf. Gamble v. State, 298 S.C. 176, 379 S.E.2d 118 (1989)

If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review. But in filing the motion, he may unwittingly forfeit the right to an appeal if an appellate court later determines the Rule 59(e) motion was unnecessary because he already had raised the issue and obtained a ruling. We strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place.^[5]

We reaffirm the principles set forth in *Coward Hund*, 336 S.C. 1, 518 S.E.2d 56; *Quality Trailer*, 349 S.C. 216, 562 S.E.2d 615; and *Collins Music*, 353 S.C. 559, 579 S.E.2d 524. We reverse the Court of Appeals' order in the present case and overrule the Court of Appeals' opinion in *Matthews*, 357 S.C. 594, 594 S.E.2d 177. We conclude SCDOT timely served its notice of appeal after receipt of written notice of entry of the order denying its Rule 59(e) motion.

Let's remember this appeal went from attorney of record, Greenberg, to pro-se Lynd without the attorney supplying the file or record to Lynd. Therefore Lynd due to the actions of a South Carolina court officer was impeded from the start. Lynd contacted and filed all documents the clerks requested, but according to the clerks could not be accepted till the attorney of record was removed, this was later done by an order from the COA. IT is clear on the record that Lynd made a good faith effort to perfect the appeal.

Is equity in the courts what is sought or grounds to absolve Government agencies of its error by the manufacture of SOL dates in contradiction to equity and good faith appeals. This is one of the oldest questions in legal thought, one that can be traced back at least to Aristotle -- and the U.S. Supreme Court weighed in, 5-4, on the side of equity, with Justice Anthony Kennedy providing the deciding vote.

The technical issue before the justices in federal courts case, *U.S. v. Kwai Fun Wong*, had to do with what happens when a plaintiff who alleges that he's been injured by the government files suit after the statute of limitations has run its course. The law says, rather

biblically, that a suit "shall be forever barred" if the plaintiff misses one of the required deadlines.

The "equitable" part means that the court is exercising the form of justice known as "equity." That's the English translation of what Aristotle had in mind when he proposed that the strict letter of the law **should be overridden when following it would produce an unjust result.**

The Supreme Court had to decide whether the words "shall be forever barred" do or don't permit equitable tolling. The majority decision, analyzed the issue by asking whether Congress had made a "clear statement" that equitable tolling shouldn't apply to a suit brought under the FTCA.

According to the Court, if Congress clearly stated that a court lacked the jurisdiction to proceed on a time-barred claim, then equitable tolling shouldn't be allowed. But it concluded that Congress had made no such clear statement. It followed that equitable tolling is allowed, and that the law can be bent when there is good reason to do so.

The key to the Court's opinion was to establish it as the default position that a statute of limitations may be tolled in a suit against the government. In other words, the Court was implying that the **primary job of the courts is to do substantial justice, which means using equity.**

Under every South Carolina ruling, the recent Supreme Court ruling, and the South Carolina Supreme Court rulings covering both rule 59 & 60 motions, ineffective assistance of counsel, tolling, and Good faith attempts; it is clear Lynd's appeal is timely filed and perfected.

IOP goes on to state, that all this time Lynd was represented by counsel, and notice was made to counsel, and Lynd's receipt of that has no bearing. **On the contrary even though the appeal is timely on all parties, any error that caused an untimely appeal would be the fault of counsel of record.** Not an error on Lynd, and Lynd's good faith appeal would survive an equity ruling. And clearly and unequivocally would fall under the ineffective assistance of counsel standard. That ineffective assistance of counsel is one of the grounds being heard on this

appeal. So the court would have to rule on that matter to determine if the appeal was untimely due to Lynd or due to Lynd's counsel.

Lynd's contract with counsel clearly shows the appeal was contracted for, as well as emails discussing the filing of the notice of appeal, and counsel advice that it was not time. Lynd then upon his own contacted all, the court administrator, the COA, and the trial clerk, all of which corroborated Lynd's counsel statement that after all matters were ruled on was the start of the time limit to file a notice of appeal.

Lynd's counsel then refused to file the notice and Lynd to preserve the appeal, filed the notice of appeal himself, as outlined before, the COA clerks would not accept it while Greenberg was still shown as attorney of record, **but do show the filing accepted and as timely by Lynd.** The Court of Appeal clerk has dozens of notices to Lynd counsel discussing Lynd's timely filing and Counsel Responsibility to do it himself.

Lynd made numerous attempts to start the appeal, **and made a clear and concise Good faith effort under the rules** and has perfected a timely appeal on all parties and all matters in the cause of action.

US v. Peak, 992 F. 2d 39 - Court of Appeals, 4th Circuit 1993

In its answer, the government conceded that "*failure to file a notice of appeal when so instructed by the client constitutes ineffective assistance of counsel for purposes of § 2255.*" (emphasis added). In a supplemental memorandum, the government reported that it had been unable to locate attorney Brown to see whether he could contradict Peak's representation that he had requested the filing of a notice of appeal. Accordingly, said the government, "the court should grant whatever relief it deems necessary in this case under the circumstances."

However effective or ineffective Peak's counsel was before the judgment of conviction, **his failure to file the requested appeal deprived Peak of the assistance of counsel on direct appeal altogether.**

We touched on this issue in *Becton v. Barnett*, 920 F.2d 1190 (4th Cir.1990). In remanding a dismissed ineffectiveness claim based, in part, **on a failure to file a notice of appeal**, we said (920 F.2d at 1195):

The effect of counsel's failure to appeal was that Becton lost his ability to protect his "vital interests at stake." See *Evitts [v. Lucey]*, 469 U.S. [387] at 396, 105 S.Ct. [830] at 836 [1985]. He was unable to attempt to demonstrate that his conviction was unlawful

through the appellate process. *See id.* For whatever reason, Becton's appeal was not filed. As a result, Becton might well have been prejudiced by his counsel's ineffective assistance. Therefore, Becton has presented a colorable claim of ineffectiveness based on counsel's failure to appeal.

In *Becton*, there was a potential factual dispute as to whether the petitioner had actually requested his attorney to file the notice of appeal. Hence, we simply remanded for an evidentiary hearing. If *Becton* left any doubt as to the showing required of petitioners raising this type of claim, we dispel it today: we join those circuits that hold that a criminal defense attorney's failure to file a notice of appeal when requested by his client deprives the defendant of his Sixth Amendment right to the assistance of counsel, notwithstanding that the lost appeal may not have had a reasonable probability of success.

The judgment is reversed, and the case is remanded with instructions to vacate Peak's judgment of conviction and enter a new judgment from which an appeal can be taken. *See Estes*, 883 F.2d at 649.

Becton v. Barnett, 920 F. 2d 1190 - Court of Appeals, 4th Circuit 1990

Although Becton did not give notice of appeal at the trial, he alleged in this petition that he contacted counsel three days 1192*1192 after the trial to ask counsel to appeal. **He alleged further that counsel assured him that there was still time to appeal as the ten day period for appeal had not yet run. However, no appeal was ever filed.**

Therefore, the ultimate conclusion of a state or federal court that counsel was effective is not binding upon a court reviewing the issue. *Hyman v. Aiken*, 824 F.2d 1405, 1412 (4th Cir.1987); *Lee v. Hopper*, 499 F.2d 456 (5th Cir.), *cert. denied*, 419 U.S. 1053, 95 S.Ct. 633, 42 L.Ed.2d 650 (1974). As a reviewing court, it is proper for us to address the ineffectiveness claims anew, regardless of the findings of the district court.

Becton alleged that counsel was ineffective for a second reason: failure to appeal. In North Carolina, persons convicted of a criminal charge on a plea of not guilty are entitled to appeal the adverse judgment as a matter of right. N.C.Gen.Stat. § 15A-1444(a) (1988). **In order for the appeal as of right to be adjudicated in accord with due process of law, the appellant must have the effective assistance of counsel. *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821 (1985).**

Turner v. North Carolina is another case involving ineffectiveness regarding appeal. 412 F.2d 486 (4th Cir.1969). There, counsel gave oral notice to the court of his desire to appeal at defendant's request. However, counsel never took any further action in connection with the appeal. This court stated that after conviction,

when time is an important factor in obtaining appellate review, no one is in better position to insure the indigent defendant of the appeal which he has requested than counsel who has represented him at trial.

After desire to take an appeal is shown by an indigent defendant the very least which counsel must do is inform the defendant of his right to appeal without cost; of the need for a transcript of the 1195*1195 trial proceedings; and of the availability of this transcript without cost. If at this time appointed trial counsel decides that he cannot or will not continue to represent the defendant he must so inform the defendant, in addition to informing him of his right to appointment of other counsel, and of the procedure through which the trial transcript and appeal may be obtained if assistance of counsel is not desired.

Id. at 489. This court held that petitioner was denied his right to assistance of counsel due to the inaction and neglect of his attorney. *Id.*

Counsel candidly admitted that he cannot remember whether or not he advised Becton of his right to appeal.

The district court stated that it could not say that the failure to appeal resulted in a different outcome. However, this court should properly address the issue of ineffectiveness of counsel anew because it is a mixed question of law and fact. *Strickland*, 466 U.S. at 698, 104 S.Ct. at 2070. Becton asserted that he asked his attorney to appeal. No affirmative evidence refutes that assertion other than counsel's general statement of his habit. Proper records of counsel might have cleared up this issue; however, none were presented.

US v. Poindexter, 492 F. 3d 263 - Court of Appeals, 4th Circuit 2007

In preparation for the appellate phase of the case, an attorney in an appeal waiver case still owes important duties to the defendant. First and foremost, the attorney, as recognized in *Flores-Ortega*, **has the duty to respect the appellate wishes of his client by filing a timely notice of appeal if he is unequivocally instructed to do so.** 528 U.S. at 476, 120 S.Ct. 1029. Second, as further recognized in *Flores-Ortega*, even if his client does not express (or clearly express) a desire to appeal, the attorney may be required to file a timely notice of appeal after appropriate consultation with the his client. *Id.* at 478.^[5]

If a notice of appeal is ultimately filed, an attorney has yet other duties owing to his client. These duties include examining the trial record and identifying and weighing potential issues for appeal. If the appropriate review reveals a meritorious issue for appeal, the attorney is ethically required to prepare a brief on the merits and argue the appeal. If the appropriate review reveals only frivolous issues, the attorney can file a brief in accordance with *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).^[6]

Our decision today is consistent with the four United States Courts of Appeal that have concluded that an attorney renders constitutionally ineffective assistance of counsel if he fails to follow his client's unequivocal instruction to file a notice of appeal. See *Sandoval-Lopez*, 409 F.3d at 1195-99 “But even though no one would think a doctor incompetent for refusing to perform unwise and dangerous surgery, the law is

that "***a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable.***"^[18] Indeed, in *Peguero v. United States*,^[19] the Supreme Court summarized its previous holding in *Rodriguez v. United States*^[20] as "when counsel fails to file a requested appeal, a defendant is entitled to resentencing and to an appeal without showing that his appeal would likely have had merit."^l

In sum, we hold that an attorney is required to file a notice of appeal when unequivocally instructed to do so by his client,

Hill v. Braxton, 277 F. 3d 701 - Court of Appeals, 4th Circuit 2002

The court's "exercise of ... discretion should not be automatic, but must in every case be informed by those factors relevant to balancing the federal interests in comity and judicial economy against the petitioner's substantial interest in justice." *Yeatts*, 166 F.3d at 262

second, notice and an opportunity to respond are particularly appropriate when the prisoner is *pro se*, like Hill, and the long-standing practice is to construe *pro se* pleadings liberally. See *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) (per curiam). A seasoned habeas practitioner might try to preempt an anticipated statute of limitations defense by including facts to show that the petition is timely. A *pro se* prisoner, however, is generally less able to anticipate affirmative defenses. This problem was made worse in Hill's case because, as a *pro se* § 2254 petitioner, Hill was required to use a standard government form that did not direct him to address the timeliness issue or ask him to include facts that might be outside of the record but relevant to timeliness under § 2244(d). See *Acosta*, 221 F.3d at 125

There are large quantities of case law, both State of South Carolina and federal that shows Lynd filed the appeal timely and correctly. IOP's attempt to hold Lynd in some false light to seek pity from the court on issues it cannot overcome is a shame. This is once again IOP begging for help from the courts to avoid it having to face its failures. The appeal should move forward to the interest of justice and equity.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Case#: 2016-002024

APPEAL FROM CHARELSTON COUNTY

Court of Common Pleas

**Kristi Harrington, Circuit Court Judge
Dennis Markley, Circuit Court Judge**

Case No. 2015CP1002824

David Scot Lynd

VS

Isle of Palms

**Dawn Caldwell,
Individually and in her capacity as an Officer of the Isle of Palms Police
Department**

South Carolina Law Enforcement Division

PROOF OF SERVICE

I hereby certify that the above named parties were served this reply by **U.S.P.S. mail on 10-30-2017** to the address on file with the court shown below.

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