

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Leroy Bennett, #153421,

Plaintiff,

vs.

The State of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS  
) IN THE FOURTH JUDICIAL CIRCUIT

) Case No. 2018-CP-16-422

) ORDER OF DISMISSAL

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SC Court of Appeals

This matter is before this Court pursuant to the State of South Carolina's Motion to Dismiss, filed on July 2, 2018. Plaintiff commenced this case by filing a writ of mandamus on May 9, 2018, and serving the Office of the Attorney General with a copy of the writ of mandamus via regular mail. A hearing was held on the State of South Carolina's Motion to Dismiss on January 10, 2019, at the Darlington County Courthouse. The Plaintiff, Leroy Bennett appeared *pro se*. Assistant Attorney General Harley L. Kirkland appeared on behalf of the State of South Carolina. The Court has considered Plaintiff's pleadings, the State of South Carolina's motion to dismiss, and oral argument offered by both parties. Accordingly, the motion filed by the State of South Carolina is **GRANTED**, and the case is hereby **DISMISSED**.

1. Rule 12(b)(2)

The failure to serve a summons deprives a court of personal jurisdiction. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). Mr. Bennett did not serve a summons in this case. Accordingly, the Court lacks personal jurisdiction over the Defendant.

Additionally, South Carolina Rule of Civil Procedure 65(f)(1) requires: no writ of mandamus shall be granted without notice to the adverse party of the motion for the writ and, in the event that no summons and complaint have been previously filed and served, the notice shall

TRUE CERTIFIED COPY

*Scott B. Suggs*

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DARLINGTON COUNTY, S.C.

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DARLINGTON COUNTY, S.C.

be served together with the summons and complaint. In this case, the Plaintiff filed and mailed a petition for writ of mandamus, though the Plaintiff had not previously filed and served a summons and complaint in case number 2018-CP-16-422. Therefore, this case is dismissed for lack of personal jurisdiction pursuant to Rule 12(b)(2).

2. Rule 12(b)(4), SCRCF

The Plaintiff did not include a summons, which is a violation of both Rule 4(a) and Rule 4(b), SCRCF. The failure to satisfy the requirements of Rule 4 requires dismissal under Rule 12(b)(4), SCRCF; thus, this action is dismissed for insufficiency of process.

3. Rule 12(b)(5)

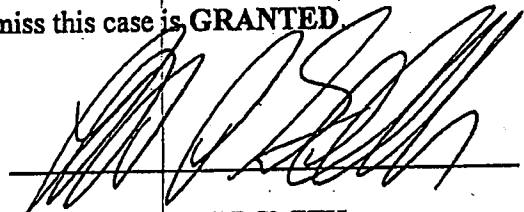
Rule 4(d) (4) describes the method of service that a Plaintiff must follow when he is seeking to commence an action against the State of South Carolina: if the State is a party, service is complete by delivering a copy of the summons and complaint to the Attorney General. In this case, the Plaintiff attempted to initiate his action against the State of South Carolina by sending a copy of his writ of mandamus via regular mail. As the Plaintiff utilized an improper form of service upon the State of South Carolina, the Court dismisses the Plaintiff's complaint against the State for insufficiency of service of process pursuant to Rule 12(b)(5), SCRCF.

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**THEREFORE, THE COURT ORDERS THE FOLLOWING:**

The State of South Carolina's motion to dismiss this case is **GRANTED**.

**AND IT IS SO ORDERED.**



BROOKS P. GOLDSMITH  
CIRCUIT COURT JUDGE

\_\_\_\_\_, South Carolina  
*February 11*, 2019

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*Sam B. Suggs*  
CLERK OF COURT/RMC  
DARLINGTON COUNTY, S.C.

S.C Attorney General's Office  
Civil Division

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