

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APR 12 2019

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2017-CP-26-07411

(Appellate Case No. 2019-000519)

Jimmy A. Richardson, II, Solicitor for the 15th Judicial Circuit,
on Behalf of the 15th Circuit Drug Enforcement Unit,

Appellant,

v.

Twenty Thousand Seven Hundred Seventy-One and 00/100 Dollars
(\$20,771.00), U.S. Currency and Travis Green,

Respondent.

PETITION FOR EXPEDITED CONSIDERATION OR IN THE ALTERNATIVE
SUPERSEDEAS RELIEF

This motion is filed pursuant to Rules 263 and 241 of the South Carolina Appellate Court Rules. Rule 263 governs the computation of time for performing acts. Rule 241 governs the petition for an order of supersedeas.

For the expedited consideration and the supersedeas relief, Appellant seeks the same relief – the scheduling of this case for trial. The basis for this motion is set forth below in the format described for supersedeas relief, Rule 241(d), SCACR.

(A) Statement of Facts

i. Lower Court Proceedings

On November 10, 2017, Appellant filed the underlying forfeiture action. On January 9, 2018, Respondent Travis Green (“Green”) filed his Answer. Appellant and Green’s attorney conducted discovery and attempted in good faith to settle this case without success.

This case first appeared on the non-jury trial roster for the week of September 4, 2018. Green’s attorney filed a motion for continuance, which the circuit court granted and then continued this case to the next available term of court.

This case again appeared on the non-jury trial roster for the week of October 29, 2018. The circuit court again continued the case to the next available term of court due to limited court time, other jury trials taking precedence, and the time required to transport Green from prison.

On February 20, 2019, the Clerk of Court for Horry County emailed the parties notice of the instant case being on the non-jury trial roster for the week of March 18, 2018.

The next day, February 21, 2019, the Honorable Steven H. John (“Judge John”) issued an Administrative Order which ordered “that all civil forfeitures within the Fifteenth Judicial Circuit should be immediately suspended until such time as the South Carolina State Legislature takes action in regards to the holding of the United States Supreme Court in *Timbs v. Indiana*.” (Ex. 1, Administrative Order). The Administrative Order was neither the result of a petition from any party nor connected to any forfeiture action. Upon information and belief, it is the only such order in South Carolina.

Shortly thereafter, the Clerk of Court amended the non-jury trial roster for the week of March 18, 2019 by adding next to this case the note “Action stayed per Judge John’s Administrative Order.”

At the roster hearing on March 18, 2019, the Honorable George M. McFaddin, Jr. (“Judge McFaddin”) stayed the instant case. Neither Appellant nor Green’s attorney had moved for a continuance, and Judge McFaddin did not request input from the parties. On March 19, 2019, Judge McFaddin issued a Form 4 Order staying the instant case “per Judge John’s Administrative Order dated February 21, 2019.” (Ex. 2, Form 4 Order Staying Case).

While Judge McFaddin’s Form 4 Order relates to the instant case, this petition concerns Judge John’s Administrative Order. Judge McFaddin, at the time of the roster hearing, was a visiting judge assigned to the Horry County Court of Common Pleas trial docket. His Form 4 Order was a reiteration of Judge John’s Administrative Order, and any errors with the Administrative Order apply to Judge McFaddin’s Form 4 Order. In the interests of clarity, the focus of this petition is the Administrative Order.

ii. Underlying Criminal Charges

In October and September of 2017, Agent Freddie Curry with the 15th Circuit Drug Enforcement Unit (“DEU”) utilized a confidential informant (“CI”) to purchase several grams of cocaine from Green on three separate occasions. On November 2, 2017, DEU Agents arrested Green for distributing and trafficking cocaine and executed a search warrant at his home in Myrtle Beach. At his home, Agents discovered 132 grams of crack-cocaine, 32 grams of cocaine, 319 grams of marijuana, 27 Morphine tablets, and \$20,771.00 in U.S. Currency. The seized currency is the subject of this forfeiture action and to date is held in the DEU’s forfeiture bank account.

On October 16, 2018, Green pled guilty to two charges arising out of the November 2, 2017 arrest: distribution of cocaine, 2nd offense,¹ and possession with intent to distribute marijuana, 1st offense. Judge John sentenced Green to 15 years incarceration for the cocaine offense and 5 years incarceration for the marijuana offense – both sentences to run concurrently.

(B) Grounds for Petition

This Court should grant Appellant’s petition for either expedited consideration or an order of supersedeas because the Administrative Order: (1) violated the South Carolina Constitution’s unified court system; (2) violated the separation of powers; (3) appropriated Appellant’s prosecutorial discretion; and (4) denied procedural due process.

i. The Administrative Order Was a Violation of the Unified Court System.

The purpose of the unified court system, as expressed in the South Carolina Constitution, Article V, Section 1, is “to insure that each participant in the judicial system, be he litigant, lawyer or judge, can find in the Constitution, statutes and rules of [the Supreme Court] a court system which is the same in each county of the state.” *Spartanburg County Dept. of Social Services v. Padgett*, 296 S.C. 79, 85, 370 S.E.2d 872, 876 (1988).

The Administrative Order is a violation of the unified court system in that it: (1) is a local, non-uniform rule; (2) usurped the authority of the Chief Administrative Judge for the Court of Common Pleas; and (3) abdicated judicial review.

a. The Administrative Order Was a Local, Non-Uniform Rule.

By reason of the mandate of Article V of the South Carolina Constitution, a court may not adopt its own rules of administration or practice and procedure. “Such local, non-uniform rules are inconsistent with both the provisions and purpose of the constitutional mandate and are

¹ On July 16, 2014, Green was first convicted of distribution of crack-cocaine.

therefore unconstitutional and void.” *Id.* at 85, 875. “[T]here is no place in the unified judicial system for local rules which have the effect of varying the administrative and procedural rules of practice from circuit to circuit and court to court.” *Id.* at 85, 876; *State v. Duncan*, 274 S.C. 379, 382, 264 S.E.2d 421, 423 (1980) (“We hold that under these constitutional mandates a circuit court may not promulgate its own “...rules governing...practice and procedure...””) (internal citations omitted).

The Administrative Order stayed this case until “such time as the South Carolina State Legislature takes action in regards to the holding of the United States Supreme Court in *Timbs v. Indiana*.” (Ex. 1, Administrative Order). The legislature could change the state’s forfeiture laws tomorrow, next year, in five years, or never. Moreover, any changes to the forfeiture law may or may not take into account *Timbs v. Indiana*, 139 S.Ct. 682 (2019). Presumably, Judge John will determine when, if ever, these conditions have been met and allow this case, along with the 72 other pending forfeiture cases in the 15th Judicial Circuit, to go forward. However, these events may never occur.

In the interim, the Administrative Order created a system whereby Appellant must ask Judge John for special permission before any action can be taken regarding any forfeiture case.

The following is a timeline of the Administrative Order’s impact:

February 26, 2019: In *Richardson v. Gamble and Johnson*, 2018-CP-22-700, the Georgetown Clerk of Court denied a proposed consent order correcting a clerical error due to the Administrative Order. (Ex. 3, Email Georgetown Clerk of Court, Rejection Notice (Feb. 26, 2019)).

February 28, 2019: In *Richardson v. Jordan and Jordan*, 2018-CP-26-2238, the Horry County Clerk of Court denied Appellant’s counsel’s request for a hearing on a motion to amend his petition and informed him that if the motion was for the case to go forward, it could not be heard due to the Administrative Order. (Ex. 4, Email Horry County Clerk of Court, Forfeiture case motion to amend (Feb. 28, 2019)).

March 18, 2019: In the same case, Richardson v. Jordan and Jordan, Appellant's counsel sent an email to Judge John's law clerk asking for special permission to add a third-party claimant so a settlement could go forward. Judge John approved the motion and signed an order allowing the addition of a third-party claimant only for the purposes of settlement. (Ex. 5, Email Judge John Law Clerk, Richardson v. Jordan (March 18, 2019)).

March 19, 2019: Judge McFaddin stayed this case and Richardson v. Billy Freshley, 2018-CP-26-649, due to the Administrative Order. (Ex. 6, Richardson v. Freshley Form 4 Order).

March 25, 2019: After the Horry County Clerk of Court rejected the settlement agreement in Richardson v. Pickett, 2018-CP-26-6446, due to the Administrative Order, Appellant's counsel emailed Judge John's law clerk again for special permission to approve the settlement. Initially, Judge John agreed to sign the settlement agreement. (Ex. 7, Email Judge John Law Clerk, Retraction (March 25, 2019)).

However, in a subsequent filing Judge John denied the settlement "until the state Supreme Court takes action in regards to our Civil Forfeiture Statute and the US Supreme Court ruling in Timbs v. Indiana." (Ex. 8, E-Filing Court Review).

April 3, 2019: The Horry County Clerk of Court rejected the filing of four forfeiture petitions due to the Administrative Order. (Ex. 9, Four Emails Rejecting Filing).

These are just the cases that have had an adjudication. At present there are 72 pending forfeiture cases in the 15th Judicial Circuit. All of these cases involve property in the possession of a law enforcement agency, and the Administrative Order has cut off all means of determining the lawful owner of this property – be it the state or private party.

On information and belief, the Administrative Order is the only one of its kind in South Carolina. Its effect has been the creation of special rules and procedures particular only to the 15th Judicial Circuit. Therefore, by creating its own local rule, the Administrative Order is a violation of the unified court system.

b. The Administrative Order Usurped the Authority of the Chief Administrative Judge for Common Pleas Court.

At the time of his Administrative Order, Judge John was the Chief Administrative Judge for the Court of General Sessions in the 15th Judicial Circuit. (Ex. 1, Administrative Order). The Honorable Larry B. Hyman, Jr. was the Chief Administrative Judge for the Court of Common Pleas in the 15th Judicial Circuit. Forfeiture actions, pursuant to S.C. Code Ann. § 44-53-530(a), must be filed in the Court of Common Pleas.

Judge John's responsibilities were to maintain the General Sessions trial docket as described in Supreme Court Administrative Order, 2011-02-04-01 (February 4, 2011). By issuing an Administrative Order which indefinitely stayed forfeiture cases in Common Pleas Court, Judge John usurped the authority of the Chief Administrative Judge for Common Pleas Court. *See* Supreme Court Admin. Order, 2011-02-04-01 (Feb. 4, 2011) ¶ 2 (“[T]he authority of circuit judges designated as chief judges for administrative purposes shall include...[t]o set jury and nonjury trial rosters and/or dockets for all civil terms of circuit court and to designate which presiding judge shall hear each roster or rosters.”).

Judge Hyman, as the Chief Administrative Judge for Common Pleas Court, set the March 18, 2019 non-jury trial docket and assigned Judge McFaddin to preside over this docket. In short, the trial docket was an order from Judge Hyman that these cases should be heard. *Id.*; *State v. Langford*, 400 S.C. 421, 435, 735 S.E.2d 471, 478 (2012) (“Setting the trial docket therefore is the prerogative of the court.”); *Newman v. Old West, Inc.*, 286 S.C. 394, 397, 334 S.E.2d 275, 276 (1985) (“Since the adoption of the new Judicial Article V to the South Carolina Constitution in 1973, a new system of operation has come into being such that in the interest of judicial economy and disposition of cases for all litigants, the administrative judge must have control of the trial docket.”).

The Administrative Order, which came from General Sessions Court, usurped control of portions of the Common Pleas Court trial docket. This usurpation of authority violated the unified court system.

c. The Administrative Order Is an Abdication of Judicial Review.

The Administrative Order based its stay of forfeiture cases on *Timbs v. Indiana*, 139 S.Ct. 682 (2019). However, by blocking the adjudication of any forfeiture cases, the Administrative Order blocked judicial review of *Timbs* to the facts of this case and/or South Carolina's forfeiture statute.

Timbs held the 8th Amendment's Excessive Fines Clause applies to the States. *Id.* at 687 ("The Excessive Fines Clause is therefore incorporated by the Due Process Clause of the Fourteenth Amendment."). While it is an important decision, it did not order South Carolina or any other state to stay their forfeiture cases. Justice Ginsberg, writing for the majority in *Timbs*, specifically excluded the issue of "[w]hether the Eighth Amendment's Excessive Fines Clause restricts States' use of civil asset forfeitures." *Id.* at 690.

To the extent *Timbs* affects this case, another forfeiture case, or the South Carolina forfeiture statute as a whole, those issues are better addressed through a trial and subsequent judicial order. In other words, judicial review is the preferred avenue for clarifying recent interpretations of the law. *See Marbury v. Madison*, 5 U.S. 137 (1803) *and its progeny*.

This Court, the U.S. Fourth Circuit Court of Appeals, the U.S. Supreme Court, and any other court with jurisdictional authority routinely issue orders which instruct law enforcement on search and seizure, use of force, and general police powers. *Timbs* is only the most recent such judicial order, and it does not contain any extraordinary mandate requiring the deadlock of this case and all other forfeiture cases. If anything, the Administrative Order exacerbates the

concerns in *Timbs* by indefinitely keeping property in the possession of law enforcement and precluding the parties' access to a fair trial.

At a more fundamental level, hearing cases is the primary duty of the circuit court. *See* Rule 501 Preamble, SCACR (“Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us...The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.”).

By abdicating judicial review, the Administrative Order further violated the unified court system.

ii. The Administrative Order Was a Violation of Separation of Powers.

Appellant, as the Solicitor for the 15th Judicial Circuit, is an “officer of the executive department.” *State v. Singleton*, 100 S.C. 465, 84 S.E. 989, 990 (1915). He has the right to carry out the duties of his office without interference from the other branches of government. *See* S.C. Const. art. 1, § 8. Separation of powers (“In the government of the State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.”); *S.C. Public Interest Foundation v. S.C. Trans. Infrastructure Bank*, 403 S.C. 640, 649, 744 S.E.2d 521, 526 (2013) (“Under a separation of powers, the legislative department makes the laws, the executive department carries the laws into effect, and the judicial department interprets and declares the laws.”).

A solicitor's duties are derived from state statutes and the common law. *See* S.C. Const. art V, § 24 (“[t]he General Assembly shall provide by law for their duties.”). In this instance, S.C. Code Ann. § 44-53-530(a) mandated forfeiture of property “must be accomplished by

petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized.”

Once the case is brought to trial, “[t]he judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed.” S.C. Code Ann. § 44-53-530(a).

Judge John’s Administrative Order deadlocked the forfeiture process and obstructed Appellant from carrying out his statutory duty.

iii. The Administrative Order Appropriated Appellant’s Prosecutorial Discretion.

“The South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor’s hands. . . Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they may simply decide not to prosecute the offense in its entirety.” *State v. Needs*, 333 S.C. 134, 146, 508 S.E.2d 857 (1998) (internal citations omitted).

“The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor’s actions.” *Id.*

In this instance, the Administrative Order does not review or interpret the facts or the law of this case or any other forfeiture case brought by Appellant. Instead, the Administrative Order is a blanket pre-trial stay over all forfeiture actions without explanation or analysis. Therefore, it is an appropriation of Appellant’s prosecutorial discretion.

iv. The Administrative Order Denied Procedural Due Process.

Finally, “the office of the solicitor is a quasi judicial one and his duty is to seek justice and not just convictions in every case.” *State v. Addis*, 257 S.C. 482, 487, 186 S.E.2d 415, 417 (1972).

Access to the court system is a fundamental and deeply rooted right in the American judicial system. *See* U.S. Const. amend. XIV, § 1 (“nor shall any State deprive any person of life, liberty, or property, without due process of law”); S.C. Const. art. I, § 3 (“The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”).

In this case, the Administrative Order is a clear violation of Green’s procedural due process rights. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest.”); *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972) (“The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment...”); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (The opportunity to be heard “must be granted at a meaningful time and in a meaningful manner.”).

As the 15th Circuit Solicitor, Appellant represented to Green and other claimants that their seized property would be handled fairly and in accordance with the law. The Administrative Order obstructed those representations by denying claimants access to the court.

(C) Extraordinary Circumstances

An application for this relief was not made to the lower court due to extraordinary circumstances.

A motion to lift the Administrative Order would be asking Judge McFaddin to lift his Form 4 Order. This would mean asking Judge McFaddin to overrule Judge John’s

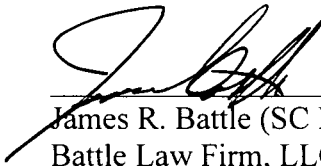
Administrative Order. There is a general rule prohibiting one circuit judge from overruling another. *See Narruhn v. Alea London Ltd.*, 404 S.C. 337, 341, 745 S.E.2d 90, 92 (2013); *see also Binkley v. Burry*, 352 S.C. 286, 295, 573 S.E.2d 838, 843 (Ct. App. 2002) (“Generally, one circuit court judge may not reverse or modify the order of another circuit court judge.”); and *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 454, 661 S.E.2d 81, 88 (2008) (“[O]ne circuit court judge may not overrule another.”).

Alternatively, Appellant could request Judge John lift the Administrative Order, but Judge John is the Chief Administrative Judge for General Sessions Court, and this case is in Common Pleas Court. It is unclear how Judge John could hear such a case without some special motion hearing, which would conflict with the unified court system. *See argument section supra.*

Due to the extraordinary circumstances surrounding the Administrative Order, an application for relief was not made to the lower court.

CONCLUSION

For the reasons set forth above, this Court should order the expedited consideration of this appeal or supersedeas relief and set this case for trial.


James R. Battle (SC Bar No. 73604)
Battle Law Firm, LLC
PO Box 530
1200 Main St.
Conway, SC 29528
T: 843-248-4321
Attorney for Appellant

April 9, 2019

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2017-CP-26-07411

Jimmy A. Richardson, II, Solicitor for the 15th Judicial Circuit,
on behalf of the 15th Circuit Drug Enforcement Unit.....Appellant,

v.

Twenty Thousand Seven Hundred Seventy-One and 00/100 Dollars
(\$20,771.00), U.S. Currency and Travis Green.....Respondent.

NOTICE OF APPEAL

Appellant Jimmy A. Richardson, II, Solicitor for the 15th Judicial Circuit, appeals the order and ruling of the Honorable George M. McFaddin, Jr. indefinitely staying the instant case due the February 21, 2019 Administrative Order of the Honorable Steven H. John. Judge McFaddin signed his order on March 19, 2019, and counsel for Appellant received electronic notice of entry of this order on the same day. A copy of Judge McFaddin's order and Judge John's Administrative Order are attached.

Signature Follows

March 25, 2019

s/James R. Battle
S.C. Bar No. 73604
Battle Law Firm, LLC
PO Box 530
Conway, SC 29528
T: 843-248-4321
F: 843-248-4512
jbattle@battlelawsc.com

Attorney for Appellant

Conway, South Carolina

Counsel of Record:

B. Alex Hyman
S.C. Bar No. 0075416
The Hyman Law Group
1208 Third Ave.
Conway, SC 29526
T: 843-248-2024
F: 843-248-3230

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2017-CP-26-07411

(Appellate Case No. 2019-000519)

Jimmy A. Richardson, II, Solicitor for the 15th Judicial Circuit,
on Behalf of the 15th Circuit Drug Enforcement Unit,

Appellant,

v.

Twenty Thousand Seven Hundred Seventy-One and 00/100 Dollars
(\$20,771.00), U.S. Currency and Travis Green,

Respondent.

VERIFICATION

Personally appeared before me, Appellant Jimmy A. Richardson, Solicitor for the 15th Judicial Circuit, who being duly sworn, deposes and states: that he is the Appellant in this case; that he has read the attached petition; that the statements contained therein are true and correct as to his own knowledge, except as to those allegations based upon information and belief; and as to those he believes them to be true and correct.

Signature Follows

Jimmy A. Richardson II
Jimmy A. Richardson
Solicitor for the 15th Judicial Circuit

Sworn to before me this 9th
day of April, 2019

Lou Ann Williams
Notary Public for
State of South Carolina

My Commission Expires: 3/8/26

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2017-CP-26-07411

Jimmy A. Richardson, II, Solicitor for the 15th Judicial Circuit,
on behalf of the 15th Circuit Drug Enforcement Unit.....Appellant,

v.

Twenty Thousand Seven Hundred Seventy-One and 00/100 Dollars
(\$20,771.00), U.S. Currency and Travis Green.....Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent Alex Green by depositing a copy of it in the United States Mail, postage prepaid, on March 25, 2019, addressed to his attorney of record, B. Alex Hyman, Esq., Hyman Law Group, 1208 Third Avenue, Conway, SC 29526.

March 25, 2019

s/James R. Battle
S.C. Bar No. 73604
Battle Law Firm, LLC
PO Box 530
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T: 843-248-4321
F: 843-248-4512
jbattle@battlelawsc.com

Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTIES OF HORRY AND)
GEORGETOWN)

IN THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT

ADMINISTRATIVE ORDER

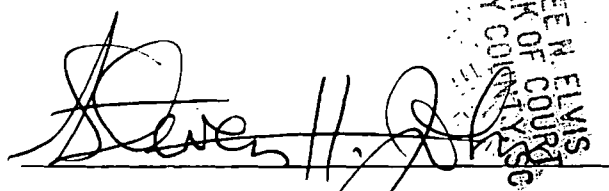
To: THE OFFICE OF THE SOLICITOR IN THE FIFTEENTH JUDICIAL CIRCUIT; HORRY COUNTY SHERIFF'S OFFICE; GEORGETOWN COUNTY SHERIFF'S OFFICE; HORRY COUNTY CLERK OF COURT; GEORGETOWN COUNTY CLERK OF COURT

Re: CIVIL FORFEITURES

Pursuant to the Administrative Order of the Chief Justice of the State of South Carolina dated December 20, 2018 appointing the undersigned as Administrative Judge for the Court of General Sessions of Fifteenth Judicial Circuit, the Court finds that all civil forfeitures within the Fifteenth Judicial Circuit should be immediately suspended until such time as the South Carolina State Legislature can address and implement the holding of the United States Supreme Court in *Timbs v. Indiana*. It is therefore

ORDERED that all civil forfeitures within the Fifteenth Judicial Circuit should be immediately suspended until such time as the South Carolina State Legislature takes action in regards to the holding of the United States Supreme Court in *Timbs v. Indiana*.

IT IS SO ORDERED.



THE HONORABLE STEVEN H. JOHN
Chief Administrative Judge
Court of General Sessions
Fifteenth Judicial Circuit

REBECCAH N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
CERTIFIED COPY

February 21, 2019
Conway, South Carolina

2019 FEB 21 AM 11:08

FILED

Exhibit 2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2607411

Jimmy A Richardson, II et al
PLAINTIFF(S)

Travis Lee Green
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. 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
- STAYED DUE TO BANKRUPTCY**
- 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:

Actions is STAYED per Judge John's Administrative Order dated February 21, 2019.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/19/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

RENEE N. ELY
CLERK OF COURT
HORRY COUNTY, SC

CERTIFIED COPY

Page 1 of 2

ELECTRONICALLY FILED - 2019 Mar 19 4:36 PM - HORRY - COMMON PLEAS - CASE#2017CP2607411

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Jimmy A Richardson II , plaintiff, et al VS Travis Lee Green
Case Number: 2017CP2607411
Type: Order/Electronic Form 4

So Ordered

S/George M. McFaddin, Jr., #2759

Electronically signed on 2019-03-19 14:38:40 page 3 of 3

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

CERTIFIED COPY

James Battle

From: efiledonotreply@sccourts.org
Sent: Tuesday, February 26, 2019 4:30 PM
To: James Battle
Cc: Teresa Phillips
Subject: Rejection Notice: Your filing, Re: 2018CP2200700 - (840) Forfeiture-Petition - Proposed Order/Amend, was rejected

To: James Richard Battle, II jbattle@battlelawsc.com
From: efiledonotreply@sccourts.org
Date: 2019-02-26 10:30:49.277
Subject: Your electronic filing, Re: 2018CP2200700 - (840) Forfeiture-Petition - Proposed Order/Amend, was rejected by CIRCUIT COURT.

Case Number: 2018CP2200700
Case Type: (840) Forfeiture-Petition
Document Type: Proposed Order/Amend
Document Type: Order/Order Cover Sheet \$25.00

Reason(s) rejected: Per Judge John's Administrative Order, all forfeitures with the Fifteenth Judicial Circuit should be immediately suspended until such time as the SC State Legislature can address and implement the holding of the US Supreme Court in *Timbs v. Indiana*. I've also sent a copy of this Order to Judge John's law clerk, asking if this order falls under the Administrative Order. She stated the Court can not sign the order as proposed. Also, 2008 Chevrolet Truck is in paragraph 5(c) and there isn't a subparagraph (b).

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**James Battle**

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**From:** Cessna, Cecilia <cessnac@HorryCounty.org>  
**Sent:** Thursday, February 28, 2019 9:21 AM  
**To:** James Battle  
**Subject:** Forfeiture case motion to amend

Mr. Battle,

After asking Judge John about the pending motion in forfeiture case # 2018-CP-26-02238, he told me that “the purpose of the administrative order was to have all civil forfeiture cases immediately suspended until the SC legislature has dealt with the issue”, so if the motion is for the case to go forward, it can’t be heard.

Best regards,

Cecilia Cessna | Non Jury/Motions/ADR Coordinator  
**Horry County Clerk of Court**  
Court of Common Pleas  
1301 2nd Avenue, Conway, South Carolina 29526  
Tel: (843) 915-6803 | Fax: (843) 915-6081 | [cessnac@horrycounty.org](mailto:cessnac@horrycounty.org)  
[www.horrycounty.org](http://www.horrycounty.org)

\*\*\*\*

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**James Battle**

---

**From:** John, Steven H. Law Clerk (Meagan Allen) <SJohnLC@sccourts.org>  
**Sent:** Friday, March 15, 2019 12:03 PM  
**To:** James Battle  
**Subject:** RE: Richardson v. Jordan - Forfeiture Action

Mr. Battle,

I just spoke with Judge John regarding the questions you had during our earlier phone conversation. He indicated that the proposed order should have language granting your Motion to Amend so that Ernest and Robert Jordan can receive their settlement. Additionally, he indicated that the other two cases (Freshley and Green) will be continued from next week's roster. Please let me know if you have any additional questions.

Best,  
Meagan

**Meagan Allen**

Law Clerk to the Honorable Steven H. John  
1301 2<sup>nd</sup> Avenue  
Conway, SC 29526  
Phone: (843) 915-6697  
Fax: (843) 915-5859  
[sjohnlc@sccourts.org](mailto:sjohnlc@sccourts.org)

---

**From:** James Battle <[jbattle@battlelawsc.com](mailto:jbattle@battlelawsc.com)>  
**Sent:** Friday, March 15, 2019 11:07 AM  
**To:** John, Steven H. Law Clerk (Meagan Allen) <[SJohnLC@sccourts.org](mailto:SJohnLC@sccourts.org)>; Richardson, Jimmy A. <[richj@horrycounty.org](mailto:richj@horrycounty.org)>; HixsonS@HorryCounty.org; Scott Bellamy ([sbellamy@sccoast.net](mailto:sbellamy@sccoast.net)) <[sbellamy@sccoast.net](mailto:sbellamy@sccoast.net)>; Cessna, Cecilia <[cessnac@HorryCounty.org](mailto:cessnac@HorryCounty.org)>; 'alex@thehymanlawgroup.com' <[alex@thehymanlawgroup.com](mailto:alex@thehymanlawgroup.com)>  
**Subject:** Richardson v. Jordan - Forfeiture Action

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Richardson v. Jordan  
CA No. 2018-CP-26-2238

Meagan,

This email concerns a motion to add Robert Jordan to the above referenced forfeiture action. Robert Jordan is the uncle of Respondent Ernest Jordan. After Ernest Jordan's attorney, Scott Bellamy, and I settled the above forfeiture but before a judge could sign the settlement, Robert Jordan contacted me and claimed an interest in the seized money. Robert Jordan and I also reached a settlement for his claim. Robert Jordan is pro se.

Pursuant to SC Code Sec. 44-53-530(a) any person with an interest in the seized property must be added to the forfeiture action. Moreover, all forfeiture settlements must be approved and signed by a judge. The purpose of amending the petition is to add Robert Jordan and get court approved settlement agreements for Ernest Jordan and Robert Jordan.

After speaking with the Clerk's Office, it is my understanding that the court has stayed the motion to amend because it moves the forfeiture case forward. See attached order. I would ask that the motion to amend go forward so this case can be settled and Ernest and Robert Jordan can receive their portion of the settlement.

If the court wishes to stay the motion to amend, please issue an order to that effect.

Beyond the above case, two cases on the roster for next week have been stayed by the court, Richardson v. Freshley, 18-CP-26-649, and Richardson v. Green, 18-CP-26-7411. I would also ask the court to issue an order to that effect.

I have copied the Solicitor, the Clerk's Office, and opposing counsel in this email.

Please let me know if you have any questions.

-James

---

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|                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>JAMES R. BATTLE<br/><b>BATTLE LAW FIRM, LLC</b><br/>P.O. BOX 530<br/>1200 MAIN STREET<br/>CONWAY, SOUTH CAROLINA 29528<br/>(843)248-4321<br/><a href="mailto:jbattle@battlelawsc.com">jbattle@battlelawsc.com</a></p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2600649

Jimmy A Richardson, II et al
PLAINTIFF(S)

Billy Freshley
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. 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
- STAYED DUE TO BANKRUPTCY**
- 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:

ACTION STAYED PER JUDGE STEVEN JOHN ADMINSTRATIVE ORDER DATED FEBRUARY 21, 2019.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/19/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Jimmy A Richardson II , plaintiff, et al VS Billy Freshley
Case Number: 2018CP2600649
Type: Order/Electronic Form 4

So Ordered

S/George M. McFaddin, Jr., #2759

James Battle

From: John, Steven H. Law Clerk (Meagan Allen) <SJohnLC@sccourts.org>
Sent: Monday, March 25, 2019 9:22 AM
To: James Battle; Richardson, Jimmy A.; Teresa Phillips
Cc: Harrelson, Sheila (harrelsh@HorryCounty.org); Cessna, Cecilia
Subject: RE: Retraction: Courtesy NEF RE: 2018CP2606446

Good morning,

I believe that Judge John electronically signed the order some time on Friday. I am CC'ing Ms. Harrelson and Ms. Cessna on this email so that they will be aware of Judge John's signature and approval of the consent settlement order in this matter. Please let me know if this resolves the issue or if you need anything else from our office. I hope that you all have a wonderful day!

Best,
Meagan

Meagan Allen

Law Clerk to the Honorable Steven H. John
1301 2nd Avenue
Conway, SC 29526
Phone: (843) 915-6697
Fax: (843) 915-5859
sjohnlc@sccourts.org

From: James Battle <jbattle@battlelawsc.com>
Sent: Friday, March 22, 2019 2:35 PM
To: John, Steven H. Law Clerk (Meagan Allen) <SJohnLC@sccourts.org>; Richardson, Jimmy A. <richj@horrycounty.org>; Teresa Phillips <tphillips@battlelawsc.com>
Subject: FW: Retraction: Courtesy NEF RE: 2018CP2606446

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Meagan,

The clerk of court rejected the attached consent order due to Judge John's Administrative Order. See below. I would ask that this settlement order be signed or approved so I can send Mr. Pickett the settlement funds.

Thanks and have a good weekend,

James

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

JAMES R. BATTLE
BATTLE LAW FIRM, LLC
P.O. BOX 530
1200 MAIN STREET
CONWAY, SOUTH CAROLINA 29528
(843)248-4321
jbattle@battlelawsc.com

From: efiledonotreply@sccourts.org <efiledonotreply@sccourts.org>
Sent: Friday, March 22, 2019 8:53 AM
To: James Battle <jbattle@battlelawsc.com>
Cc: Teresa Phillips <tphillips@battlelawsc.com>
Subject: Retraction: Courtesy NEF RE: 2018CP2606446

The Notice below is RESCINDED
The filing was not filed.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP2606446

Official File Stamp: 03-20-2019 01:12:35 PM
Court: CIRCUIT COURT
Common Pleas
Horry
Case Caption: Jimmy A Richardson II , plaintiff, et al VS Roy Benjamin Pickett Jr
Event(s): Order/Order Cover Sheet \$25.00
Document(s) Submitted: Proposed Order/Forfeiture Consent Order
Filed by or on behalf of: James Richard Battle, II

This notice was automatically generated by the Court's auto-notification system.

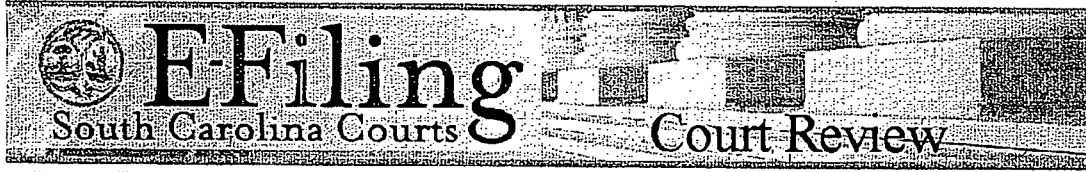
The following people were served electronically:

James Richard Battle, II for Jimmy A Richardson, II et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Roy Benjamin Pickett, Jr

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# Home Filings CASEaDia My Profile Logout user: Sheila Harrelson

Home → My Queue Entries → Judicial Queue Entry - Clerk of Court

Judicial Queue Entry - Clerk of Court

| Case Number    | Court Agency | County | Case Caption                                                                                 | Case Subtype              | Opened Date | Judge                                     |
|----------------|--------------|--------|----------------------------------------------------------------------------------------------|---------------------------|-------------|-------------------------------------------|
| 2018CP22606446 | Common Pleas | Horry  | Jimmy A Richardson II, plaintiff, et al VS Roy Benjamin Pickett Jr (840) Forfeiture-Petition | (840) Forfeiture-Petition | 11-14-2018  | Clerk Of Court C P, G S, And Family Court |

Document Information - Assigned To Sheila Harrelson

| Document                                | File Date  | Assign           |
|-----------------------------------------|------------|------------------|
| Proposed Order/Forfeiture Consent Order | 03-25-2019 | Sheila Harrelson |

New Action

View Remove Replace Document Action

99FCOR : Order/Forfeiture Consent Order

On Behalf of Jimmy A Richardson, II Police Department Horry County

Edit Data My Signa

Note from Filer: None

Note History:

| Date                   | From           | To               | Note                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------|----------------|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 03-26-2019 10:37:08 AM | Meagan Allen   | Sheila Harrelson | Sheila, Judge requests that all civil forfeiture orders (even the ones that are consent orders) be held until the state Supreme Court takes action in regards to our Civil Forfeiture Statute and the US Supreme Court ruling in Timbs v. Indiana. We anticipate that a Writ of Mandamus will be filed with the SC Supreme Court soon which will hopefully lead to a resolution of the constitutionality issues presented by our current statute. |
| 03-25-2019 12:26:06 PM | Marie Campagna | Meagan Allen     | Reassigned                                                                                                                                                                                                                                                                                                                                                                                                                                        |

Note to Clerk/Court Staff: Add Standard Text: Select Predefined Note

[Text input area for note to clerk]

Note to Filer: Add Standard Text: Select Predefined Note

[Text input area for note to filer]

Action:

Sign and Submit Document 
  Remove from Queue 
  Reassign Queue: [- Same Queue -] To: [ ] 
  Direct 
  Gatekeeper

Back Sign/Remove/Reassign

online help | support | sccourts.org

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**James Battle**

---

**From:** efiledonotreply@sccourts.org  
**Sent:** Wednesday, April 3, 2019 10:29 AM  
**To:** James Battle  
**Cc:** Teresa Phillips  
**Subject:** Rejection Notice: Your filing, Re: Filing ID 1606214 - (840) Forfeiture-Petition - ADR/Certificate of Exemption, was rejected

**To:** James Richard Battle, II jbattle@battlelawsc.com  
**From:** efiledonotreply@sccourts.org  
**Date:** 2019-04-02 16:32:08.62  
**Subject:** Your electronic filing, Re: Filing ID 1606214 - (840) Forfeiture-Petition - ADR/Certificate of Exemption, was rejected by CIRCUIT COURT.

Case Type: (840) Forfeiture-Petition

Document Type: ADR/Certificate of Exemption

Document Type: Summons & Complaint

Reason(s) rejected: Rejecting per Administrative Order from Judge John signed 2/21/19. Forfeiture cannot be filed until further notice. Thanks

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James Battle

From: efiledonotreply@sccourts.org
Sent: Wednesday, April 3, 2019 10:30 AM
To: James Battle
Cc: Teresa Phillips
Subject: Rejection Notice: Your filing, Re: Filing ID 1606251 - (840) Forfeiture-Petition - ADR/Certificate of Exemption, was rejected

To: James Richard Battle, II jbattle@battlelawsc.com
From: efiledonotreply@sccourts.org
Date: 2019-04-02 16:36:51.493
Subject: Your electronic filing, Re: Filing ID 1606251 - (840) Forfeiture-Petition - ADR/Certificate of Exemption, was rejected by CIRCUIT COURT.

Case Type: (840) Forfeiture-Petition

Document Type: ADR/Certificate of Exemption

Document Type: Summons & Complaint

Reason(s) rejected: Rejecting per Administrative Order from Judge John signed 2/21/19. Forfeiture cannot be filed until further notice. Thanks

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## James Battle

---

**From:** efiledonotreply@sccourts.org  
**Sent:** Wednesday, April 3, 2019 10:30 AM  
**To:** James Battle  
**Cc:** Teresa Phillips  
**Subject:** Rejection Notice: Your filing, Re: Filing ID 1606310 - (840) Forfeiture-Petition - ADR/Certificate of Exemption, was rejected

**To:** James Richard Battle, II [jbattle@battlelawsc.com](mailto:jbattle@battlelawsc.com)  
**From:** efiledonotreply@sccourts.org  
**Date:** 2019-04-02 16:41:56.953  
**Subject:** Your electronic filing, Re: Filing ID 1606310 - (840) Forfeiture-Petition - ADR/Certificate of Exemption, was rejected by CIRCUIT COURT.

Case Type: (840) Forfeiture-Petition

Document Type: ADR/Certificate of Exemption

Document Type: Summons & Complaint

Reason(s) rejected: Rejecting per Administrative Order from Judge John signed 2/21/19. Forfeiture cannot be filed until further notice. Thanks

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James Battle

From: efiledonotreply@sccourts.org
Sent: Wednesday, April 3, 2019 10:30 AM
To: James Battle
Cc: Teresa Phillips
Subject: Rejection Notice: Your filing, Re: Filing ID 1606352 - (840) Forfeiture-Petition - ADR/Certificate of Exemption, was rejected

To: James Richard Battle, II jbattle@battlelawsc.com
From: efiledonotreply@sccourts.org
Date: 2019-04-02 16:46:45.38
Subject: Your electronic filing, Re: Filing ID 1606352 - (840) Forfeiture-Petition - ADR/Certificate of Exemption, was rejected by CIRCUIT COURT.

Case Type: (840) Forfeiture-Petition

Document Type: ADR/Certificate of Exemption

Document Type: Summons & Complaint

Reason(s) rejected: Rejecting per Administrative Order from Judge John signed 2/21/19. Forfeiture cannot be filed until further notice. Thanks

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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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RECEIVED

APR 12 2019

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

George M. McFaddin, Jr., Circuit Court Judge

---

Case No. 2017-CP-26-07411

(Appellate Case No. 2019-000519)

---

Jimmy A. Richardson, II, Solicitor for the 15th Judicial Circuit,  
on Behalf of the 15th Circuit Drug Enforcement Unit,

Appellant,

v.

Twenty Thousand Seven Hundred Seventy-One and 00/100 Dollars  
(\$20,771.00), U.S. Currency and Travis Green,

Respondent.

---

PROOF OF SERVICE

---

Teresa M. Phillips certifies that she is a Paralegal with Battle Law Firm, LLC, attorneys for Appellant and that she has mailed Appellant's Motion for Expedited Consideration or in the alternative Supersedeas Relief to the address shown this 9th day of April, 2019, with proper postage attached thereto.

B. Alex Hyman  
1208 Third Avenue  
Conway, SC 29528  
Attorney for Respondent



Teresa M. Phillips, Paralegal  
Battle Law Firm, LLC  
PO Box 530  
Conway, SC 29528  
(843)248-4321  
tphillips@battlelawsc.com