

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Summary Court

The Honorable Tera Richardson, Magistrate

The Honorable Brian Gibbons, Circuit Court Judge in Appellate Capacity

**RECEIVED**

AUG 23 2019

**SC Court of Appeals**

Appellate Case No. 2019-001068

Tyler Evans. .... Respondent,

v.

The State of South Carolina ..... Appellant.

**RETURN ON APPELLANTS MOTION/MOTION TO DISMISS**

Pursuant to Rule 220(e), SCACR, the Respondent Tyler Evans (Evans) is requesting that this court deny Appellant’s request for an extension of time to order the transcript. Furthermore, pursuant to Rule 260, SCACR, Respondent moves for a dismissal of this appeal due to Appellant’s failure to timely file their initial brief and designation of matter to be included in the record on appeal.

On June 28, 2019, Appellant filed its Notice of Appeal with the South Carolina Court of Appeals. In Appellant’s Motion to Order Transcript Out of Time dated August 9, 2019, Appellant acknowledges that it “had a duty to order the transcript with ten (10) days

of service of its Notice of Appeal, or no later than July 8, 2019, and that it failed to do so.” Appellants Mot. P. 1. Appellant further admits that its failure to comply with the South Carolina Appellate Court Rules was “inadvertent and unintentional.” Id.

South Carolina Appellate Court Rules 207(a)(1) states “Where a transcript of the proceeding must be prepared by the court reporter, appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements, in writing with the court reporter for furnishing the transcript. In appeals from the court of common pleas . . . , the transcript must be ordered within ten (10) days after the date of service of the notice of appeal.” amended 2018.

Rules 208(1) and 209, SCACR requires the Brief of Appellant and Designation of Matter to be Included in the Record on Appeal (hereinafter, “Designation”) to be filed within thirty (30) days after service of the notice of appeal in cases in which no transcript needs to be ordered. Rule 208(4), SCACR, provides for an order of dismissal by the clerk of the appellate court when appellant fails to file and properly serve their brief within the requisite time.

When Appellant filed its notice of appeal, it should have been fully aware of the time for requesting the transcript and calendared accordingly. All parties involved are subject to complying with these rules and therefore, without good cause, should not be allowed to circumvent said responsibilities and duties based on a failure to timely manage their case. Mere forgetfulness to comply with the South Carolina Appellate Court Rules should not be adequate reasoning for this Court to enlarge Appellant’s request.

Furthermore, prior to receiving Appellant’s motion, Respondent was in the process of mailing out his Motion to Dismiss based on Appellant’s failure to comply with rules 208

and 209, SCACR, in timely filing it's Brief of Appellant and Designation. See Attached Exhibit A.<sup>1</sup> Respondent is now having to incur additional fees and expenses so as to comply with Rule 240(e), SCACR, in ensuring that Appellants motion is not deemed a consent should Respondent fail to timely file his return.

Since Appellant has not provided an adequate reason for their failure to comply with Rule 207, SCACR, Respondent Evans, requests that the Court deny Appellant's Motion to Order Transcript Out of Time. Moreover, due to Appellant's failure to timely file Brief of Appellant and Designation, Respondent Evans also moves for dismissal of this appeal with prejudice.



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Counsel for the Respondent

August 22, 2019  
Summerville, South Carolina

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<sup>1</sup> Appellant's Certificate of Service for their motion was dated August 9, 2019 however, Respondent's attorney's office did not receive said motion until August 13, 2019, the same date Respondent's initial Motion to Dismiss was scheduled to be mailed out. NOTE: This document was pulled before mail was sent out.

# **EXHIBIT A**



**FROST LAW GROUP, LLC**

126 E. 2<sup>ND</sup> NORTH ST.  
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August 13, 2109

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

Re: The State of South Carolina, Appellant v. Tyler J. Evans, Respondent  
Appellate Case No.: 2019-001068

Dear Ms. Kitchings:

Enclosed for filing is a Motion to Dismiss in the above case. Also enclosed is the proof of service of the same on Appellant counsel.

No filing fee included pursuant to SCACR 240(d).

Please do not hesitate to reach out to our office with any questions or concerns.

Best regards,

Megan C. Euper  
Paralegal to Tara L. Frost Esquire  
Paralegal to Jack C. Frost Esquire

Cc: Teckla S. Henderson, Assistant General Counsel  
South Carolina Department of Public Safety  
Office of General Counsel  
Post Office Box 1993  
Blythewood, South Carolina 29016



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August 22, 2109

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

Re: The State of South Carolina, Appellant v. Tyler J. Evans, Respondent  
Appellate Case No.: 2019-001068

Dear Judge Kitchings:

Enclosed for filing is Respondent's Return on Appellants Motion/Motion to Dismiss in the above referenced matter. Also enclosed is the proof of service of the same on Appellant counsel.

No filing fee included pursuant to SCACR 240(d).

Please do not hesitate to reach out to our office with any questions or concerns.

Best regards,

Megan C. Euper  
Paralegal to Tara L. Frost Esquire  
Paralegal to Jack C. Frost Esquire

Cc: Teckla S. Henderson, Assistant General Counsel  
South Carolina Department of Public Safety  
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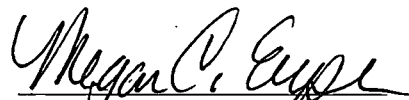
The State of South Carolina ..... Appellant.

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**PROOF OF SERVICE**

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I do hereby certify that I have served the Return on Appellants Motion/Motion to Dismiss in the above -captioned action, by depositing it in the United States Mail, Postage prepaid, on this 22<sup>nd</sup> day of August 2019, addressed to Teckla S. Henderson, Assistant General Counsel, South Carolina Department of Public Safety, Office of General Counsel, Post Office Box 1993, Blythewood, South Carolina 29016.

  
Megan C. Euper, Paralegal  
Frost Law Group, LLC

August 22, 2019  
Summerville, South Carolina

