

THE STATE OF SOUTH CAROLINA
COURT OF APPEAL

APPEAL FROM ADMINISTRATIVE LAW COURT
HON. MILTON G. KIMPSON, ADMINISTRATIVE LAW COURT
CASE NO: 19C0306

Jack Huykendall APPELLANT

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v.

OCT 07 2019

S.C. Dept of Corrections **SC Court of Appeals** RESPONDENT

BRIEF OF APPEAL

STATEMENT OF ISSUES

I am a layman of the law and procedures. Due to being in a dorm in the institution that stayed lockdown I am being restricted to access the legal library, mail room, and to get copies made. So therefore could not file my notice of appeal to all the parties within the time frame.

Statement of Case

Date assigned 6-13-2019 filed an notice of appeal with a blank Proof of Service to administrative law court and failed to mail the notice of appeal to the general counsel. On July 22, 2019 the dept. of General Counsel filed for a motion to dismiss since I didn't send them the notice of appeal within thirty days because I am indigent and had no way to get legal envelopes since I was lockdown. On July 31, 2019 I filled out the proof of certificate on the notice of appeal, ~~sent~~ sent certificate of service, and a motion to amend notice of appeal by S.C.R. civil.P. Rule (59)(E)... Appellant respectfully requesting that the court denies respondents motion to dismiss and allow to serve respondent in the case of justice any other party would not be prejudiced by this amendment. Then Aug. 14, 2019 I recieved a letter order of dismissal by Judge Kimpson. On Aug. 20, 2019 I sent motion to file outside of timeline due to being restricted to access the legal library, and mail room. They sent a copy of the motion back, stamped stating motions for reconsideration are prohibited see ALR Rule 65. Then sent my notice of appeal to . S.C. Court of appeals Sept 11, 2019
(over 1)

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SC Court of Appeals

ARGUMENT

Under S.C.R. Civil P. rule 60 (b)(1) Excusable Neglect, Petitioner is an inmate housed in a security threat group dorm. Under these conditions the petitioner movements is restricted. Petitioner is also an indigent inmate who is only provided with two envelopes a month. South Carolina department of corrections at this time is extremely under man; causing even less opportunity to get copies from the law library. Petitioner did the best he could with the little that he had and literally could not send extra copies to all parties in the time under those circumstances. *Hebbe v. Pliler*, 627 F3d 338 (p.340) *Hebbe* states in his complaint that he was on lockdown, and thus had no access to the law library for the entire three day period. He asserts that he was therefore unable to research and file a supplement appellate brief by the imposed deadline. (p.342) *Hebbe* alleges that the prison officials violated his constitutional right to court access, ground in the first amendment right to petition and the fourteenth amendment right to due process, by denying him access to the prison law library while the facility was on lockdown, and that the denial prevented him from filing a brief in support of his appeal of this state court conviction. This case was reversed and remanded on grounds that the prisoner stating claim to court access, and prisoner stated eighth amendment claim. So petitioner is asking the court to reverse it's decision on similar grounds since petitioner was denied court access, and allow petitioner the opportunity to properly serve notice to the appropriate parties.

Conclusion

Due to the Petitioner's movements being restricted and not able to access the legal library to research the law and procedures or to get copies made.

Also due to petitioner being indigent and couldn't get to mail room to get legal envelopes the

Petitioner could not serve all parties in the correct time. Petitioner is asking for the court to reverse its decision to dismiss his appeal and allow the petitioner to serve notice to all parties.

Jack Kuykendall
#355988
Appellant

Certificate of Service

Appellant Case NO: 2019-001566

S.C. Dept of corrections
Respondent

I hereby certify a copy of the foregoing motion was this date served upon the following individuals by placing a copy of the same via mail to his/her last known address as follows:

Cheron Hess
Administrative Asst, office General Counsel
S.C. Dept of corrections P.O. Box 21787
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Columbia, S.C. 29201
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State of S.C.
Administrative Law Court
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Jack Kuykendall

S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

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