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SC Court of Appeals

THE State of South Carolina  
Court of Appeal

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Appeal from administrative law court  
Hon. Milton G. Kimpson, Administrative law court  
Case No: 2019-001566

Jack Kuykendall..... Appellant

V.

S.C. Dept of Corrections..... 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 law library, mail room, and to get copies made, so therefore could not file my notice of appeal to all the parties correctly and 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 serve the notice of appeal to the general counsel. On July 22, 2019 the General Counsel filed for a motion to dismiss since I didn't serve them my notice of appeal within thirty days because I am indigent and had no way to get envelopes since I was lockdown. On July 31, 2019 I filled out the proof of service on the notice of appeal and sent my notice of appeal, certificate of service, and a motion to amend notice of appeal by S.C. RCP rule is (5)(E) Appellant respectfully requesting that the court denies respondents motion to dismiss and would allow to serve respondent in the case of justice any other party would not be prejudiced by this amendment. Then Aug. 14, 2019 I received a letter order of dismissal by Judge Kimpson. On Aug. 20, 2019 I sent a motion to file outside of timeline due to being restricted to access the law library, and mailroom. They sent me a copy of the motion back stamped stating "motions for reconsideration are prohibited see ACC Rule 65." Then I sent my notice of appeal to S.C. court of appeals on Sept. 11, 2019.

## 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 petitioners 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 made 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 F.3d 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 thirty 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 the court access grounded 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 I am asking the court for reversed decision on similar grounds since petitioner was denied court access, and allow petitioner the opportunity to properly serve notice to the appropriate parties.

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## Conclusion

Due to the Petitioner's movement 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 could not 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  
# 3557188  
Appellant

VS.

S.C. Dept of  
Corrections  
Respondent

## Certificate of Service

Appellant Case NO: 2019-001566

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:

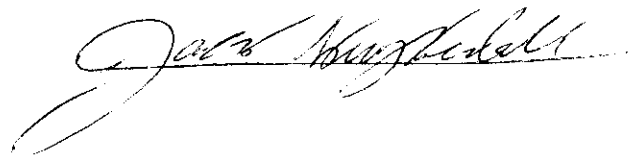
Cheron Hess  
Administrative Asst. office of General Counsel  
S.C. Dept of Corrections P.O. Box 21787  
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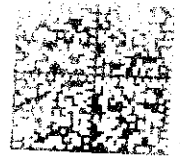
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