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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Alison Renee Lee, Presiding Judge

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JAN 02 2020

SC Court of Appeals

Case No. 2016-CP-32-01385

Appellate Case No. 2018-002157

Richie D. Barnes,..... Respondent,

v.

James Reese,..... Appellant.

MOTION TO DISMISS APPEAL
AND MEMORANDUM

Respondent, Richie D. Barnes, hereby moves to dismiss this appeal as a consequence of the failure of Appellant, James Reese, to comply with the filing requirements of Rules 208 and 209, SCACR, as extended by court order filed on October 25, 2019.

[Note that a Motion to Dismiss Appeal was filed by Respondent on January 18, 2019. Appellant subsequently corrected several deficiencies, and that Motion was denied on March 27, 2019. Subsequently, on April 24, 2019, the appeal was dismissed only to be reinstated on June 28, 2019. On July 23, 2019, Appellant moved for a first extension of time to file his initial brief, which motion was granted on July 30, 2019. The filing-deadline was extended to September 9, 2019. On September 6, 2019, Appellant moved for a second extension of time

to file his initial brief, which motion was granted on October 25, 2019.]

MEMORANDUM

1. By court order filed on October 25, 2019, the filing-deadline was extended to December 2, 2019 – extending the filing for a total of 87 additional days after the Motion (requesting the extension) was filed. The final extension allowed Appellant a total of 146 days after his acknowledged receipt of a hard copy of the trial transcript (July 9, 2019; see document filed on July 10, 2019) to file his initial brief. (Appellant admitted receiving the transcript via email “on or about June 30, 2019” (see document filed on September 17, 2019), making the elapsed time between actual receipt of the transcript and the filing-deadline a total of 155 days.)

2. Appellant’s initial brief was dated December 5, 2019. Curiously, it was declared by Appellant to be served on December 2, 2019.

3. The initial brief was filed with the Court on December 5, 2019.

4. Respondent’s undersigned counsel received Appellant’s initial brief by mail on December 6, 2019.

5. The designation of matter was not served and filed with Appellant’s initial brief.

6. Appellant then filed an Amended Initial Brief (which included a Designation of Matter) on December 12, 2019. Curiously, it was declared to be served on December 5, 2019.

7. Respondent’s counsel received the Amended Initial Brief and Designation of Matter by Federal Express on December 16, 2019.

8. The last court order (10/25/19), together with the accompanying cover letter, is unambiguous: “You must serve and file the appellant’s initial brief and designated of matter by December 2, 2019.” (emphasis added)

9. The cover letter also made it clear that Appellant’s failure to comply with said order

“will result in the dismissal of your appeal.”

10. Notwithstanding the extreme generosity of the Court and the unambiguous directive, and there being no request for a third extension, Appellant was obligated to file both the initial brief and the designation of matter by December 2, 2019. (Appellant was also obligated to serve both by said date; but with regard to both the initial brief and the amended initial brief, he has dated (clearly back-dated) the document, which raises an issue of the actual service dates.)

11. The designation of matter was not filed until December 12, 2019.

12. Appellant filed his initial brief 3 business days after the filing-deadline established by court order.

13. Appellant filed his designation of matter 8 business days after the filing-deadline established by court order.

14. Rule 208(a)(4), SCACR, in relevant part, provides:

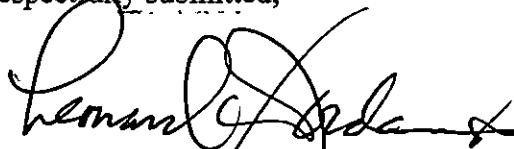
Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260. . . . (emphasis added)

15. Rule 260(a), SCACR, in relevant part, provides:

Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties (emphasis added)

Appellant’s initial brief and designation of matter were not timely filed, in accordance with Rules 208 and 209, SCACR, as extended by court order to December 2, 2019. Based upon said court order and Rules 208 (a)(4) and 260, SCACR, the appeal should be dismissed.

Respectfully submitted,



Leonard R. Jordan, Jr., #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Respondent

Columbia, South Carolina
January 2, 2020

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CERTIFICATE OF MAILING

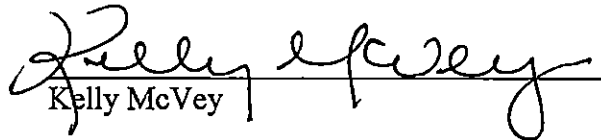
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SC Court of Appeals

I, Kelly McVey, of Jordan Law Firm, attorney for the Respondent, Richie D. Barnes, hereby certify that I have, this 2nd day of January, 2020, served a copy of the attached Motion to Dismiss Appeal and Memorandum upon James Reese, Appellant, by mailing a copy thereof to him, postage prepaid, to the address indicated below:

Mr. James Reese
717 Cindy Drive
Columbia, SC 29203


Kelly McVey