

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2017-CP-23-05529

State of South Carolina ex rel. W. Walter Wilkins, III,  
Solicitor, Thirteenth Judicial Circuit.....Respondent,

David Green.....Appellant.

MOTION TO DISMISS

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APR 27 2020  
SC Court of Appeals

The undersigned counsel would respectfully request a dismissal of this case. In support of this motion, counsel would respectfully show the Court the following:

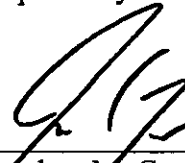
The Appellant, David Green, has no standing to appeal the Circuit Court order of forfeiture of a 2006 Ford F-350. The appellant is not an Aggrieved Party. Under Rule 201(b) of the South Carolina Appellate Court Rules “only a party aggrieved by an order, judgement, sentence or decision may appeal.” In this case, the Appellant is not an Aggrieved Party and, therefore, does not have standing to appeal. This appeal should be dismissed.

The South Carolina Supreme Court addressed this issue in Bivens v. Knight, 254 S.C. 10, 173 S.E.2d 150 (1970). In this case the Supreme Court addressed the question of whether the Appellant had standing to bring an appeal. In Bivens, the South Carolina Supreme Court quoted Parker v. Brown, 195 S.C. 35, 10 S.E. (2d) 892, “we held that an

aggrieved party is one who is injured in a legal sense; one who has suffered an injury to person or property. A good definition of an aggrieved party is contained in the case of Bowles v. Dannin, 62 R.I. 36, 2 A . (2d) 892. It is there stated that an aggrieved party within statute relating to appeals is a person who is aggrieved by the judgement or decree when it operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation.” In our case, the Appellant argued in Circuit Court that the 2006 Ford F-350 belonged to his mother, Tonja Flythe Harkless, and he was merely using the vehicle without her permission. There was nothing in the record to contradict that assertion. The Honorable Judge Alex Kinlaw found that the vehicle should be forfeited to the State of South Carolina. Since the Appellant was not the owner of the vehicle; he cannot be considered an Aggrieved Party. The Circuit Court order of forfeiture did not deny the Appellant of his property right in the 2006 Ford F-350 because the vehicle did not belong to him.

Wherefore, premises considered, counsel hereby respectfully requests this case be dismissed.

Respectfully submitted,



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Jonathan M. Gregory, Esq.  
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Fax: (864) 467-8610  
Attorney for Respondent

TABLE OF AUTHORITIES

CASES

<u>Bivens v. Knight</u> , 254 S.C. 10, 173 S.E.2d 150 (1970).....	1
<u>Parker v. Brown</u> , 195 S.C. 35, 10 S.E. (2d) 892.....	1
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State of South Carolina *ex rel.* W. Walter Wilkins, III,  
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David Green.....Appellant.

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PROOF OF SERVICE

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I, Jonathan M. Gregory, counsel for the Respondent, certify that I have served two (2) copies of the within motion for an extension to file Initial Brief of Respondent and Designation of Matter via U.S. mail to David Green, Inmate Number 300923-0355, Greenville County Detention Center, 20 McGee Street, Greenville, South Carolina 29601.

I further certify that all parties required by Rule to be served have been served.

This 22nd day of April, 2020.



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Greenville County Courthouse  
305 E. North Street, Suite 325  
Greenville, SC 29601-2185

Solicitor  
W. Walter Wilkins

April 22, 2020

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

Re: State of South Carolina ex rel, W. Walter Wilkins, III,  
Solicitor, Thirteenth Judicial Circuit v. David Green  
Appeal from Greenville County  
Appellate Case No. 2018-001462

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Dear Ms. Kitchings:

Enclosed for filing are the original and six (6) copies of the Respondent's Motion for Dismissal, together with Proof of Service, in the above-referenced matter.

Thank you for your assistance in this matter.

Sincerely,

  
Jonathan M. Gregory  
Attorney for Respondent

Enclosures

cc: David Green (w/copy of encls.)

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2  
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SC Court of Appeals

W. WALTER WILKINS, SOLICITOR  
Thirteenth Judicial Circuit  
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The Honorable Jenny A. Kitchings  
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