

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Oct 20 2020

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

The Honorable Edgar W. Dickson, Circuit Court Judge

Case No. 2018-CP-40-01318
Appellate Case No. 2020-000451

Rufus Rivers and Merle Rivers, pro se Appellant,

v.

James Smith, Jr. Respondent.

**RESPONDENT’S MOTION TO DISMISS APPEAL FOR FAILURE TO SERVE
RECORD ON APPEAL**

Pursuant to Rule 260(a), SCACR, Respondent James Smith, Jr., submits this Motion to Dismiss Appeal, requesting that this Court dismiss this appeal for Appellants’ failure to comply with the requirements of the Rule 210(c), SCACR, regarding the service, format, and content of the Record on Appeal.

On October 19, 2020, counsel for Respondent received in the mail from Appellants a five-page document labeled “Record on Appeal.” **(Ex. 1.)** This document fails to comply with Rule 210(c), SCACR, for two reasons:

1. The document purporting to be the “Record on Appeal” does not contain copies of any of the documents designated for inclusion in the Record on Appeal by Appellants or Respondent.

2. The document purporting to be the “Record on Appeal” does not even reference the documents designated by Respondent for inclusion in the Record on Appeal.

Respondent understands that a Motion to Dismiss Appeal is an extraordinary request. However, a Motion to Strike would be ineffective because the time has not yet come to file the Record on Appeal with this Court. In the alternative, Respondent requests that this Court direct Appellants to serve the Record on Appeal (with the required contents and properly formatted) within 10 days of the date of an Order on this Motion.

Respectfully submitted,

s/Kathleen McDaniel
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ATTORNEYS FOR JAMES SMITH, JR.

Columbia, South Carolina

October 20, 2020

Exhibit 1

RECORD ON APPEAL

IN THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2020-000451

Rufus Rivers and Merle Rivers
pro se

Appellant

VS

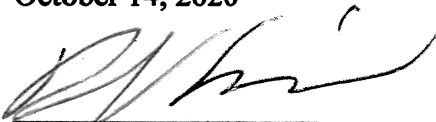
James Smith, Jr.

Respondent

PROOF OF SERVICE

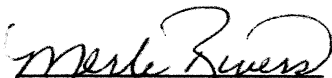
We certify that we have served appellants' Record On Appeal on James Smith, Jr. by filing a copy with the Court Of Appeals and emailing a copy to his attorney of record, Kathleen McDaniel at kmscdaniel@burnette.law on October 14, 2020.

October 14, 2020



Rufus Rivers, pro se

Kathleen McDaniel, esq.
P. O. Box 1929
Columbia, South Carolina 29202



Merle Rivers, pro se

STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court Of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2020-000451

Rufus Rivers and Merle Rivers
pro se

Appellants

VS.


James Smith, Jr.

Respondent

RECORD ON APPEAL


Rufus Rivers, pro se
Appellant

Kathleen McDaniel, Esq.
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Merle Rivers, pro se
Appellant

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Order February 21, 2020

Rufus Rivers, plaintiff, et al VS James Smith Jr.
Case Number : 2018CP3801339
Order/Electronic Form 4
Judge Edgar W. Dickson

Order January 6, 2020

Rufus Rivers and Merle Rivers, Appellants VS James Smith, Jr., Respondent
Case Number: 2018CP3801339
ORDER ON APPEAL
Judge Edgar W. Dickson

Notice of Intent to Appeal October 18, 2018

Rufus Rivers and Merle Rivers, Appellants VS James Smith, Jr. Respondent
Case Number: 2018CP3801339
Notice Of Intent To Appeal

Testimony of Appellant, Rufus Rivers

Transcript page 2

Appellants' Exhibit A

Rufus Rivers and Merle Rivers, Appellants VS James Smith, Jr., Respondent
Summons and Complaint
Case No. 2018-CP-38-01016

Appellants' Exhibit B

Rufus Rivers and Merle Rivers, Appellants VS James Smith, Jr., Respondent
Plaintiff's Certified Receipts
Case No. 2018-CP-38-01016

Appellants Exhibit C

Rufus Rivers and Merle Rivers, Defendants VS James Smith, Jr. Plaintiff
Bond Undertaking and Proposed Order
Magistrate Court Case No. 2018CV3810702780

Appellant's Exhibit D

Rufus Rivers and Merle Rivers, Appellants VS James Smith, Jr., Respondent
Order on Appeal January 6, 2020
Case No. 2018CP3801339

Appellant's Exhibit E

Rufus Rivers and Merle Rivers, Appellants VS James Smith, Jr., Respondent
Appellants' Motion For Reconsideration and Opposition to Judge's Order January 12, 2020
Case No. 2018-CP-38-01339

Appellants' Exhibit F

Rufus Rivers and Merle Rivers, Appellants VS James Smith, Jr., Respondent
Affidavit To Court Of Appeals
Case Number: 2020-000451

Appellant's Exhibit G

Rufus Rivers and Merle Rivers, Appellants VS James Smith, Jr., Respondent
Form 4/Order February 21, 2020
Case No. 2020-CP-38-01339

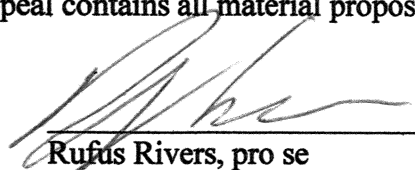
Appellant's Exhibit H


Rufus Rivers and Merle Rivers, Defendants VS James Smith, Jr., Plaintiff
Reply to Rule To Show Cause September 17, 2018
Case No. 201CV3810702780

Certificate of Appellants

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 14, 2020



Rufus Rivers, pro se


Merle Rivers, pro se

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Case No. 2018-CP-40-01318
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Rufus Rivers and Merle Rivers, pro se Appellant,

v.

James Smith, Jr. Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of Respondent’s Motion to Dismiss Appeal for Failure to Service Record on Appeal in the above-referenced matter has been served on Appellants by electronic mail to the following:

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October 20, 2020

Columbia, South Carolina