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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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, again, to dismiss this appeal, this time as a consequence of the failure of Appellant, James Reese, to comply with the filing requirements of Rule 210, SCACR.

Based upon Rule 210(a), the normal deadline for Appellant to file the Record on Appeal would have been September 7, 2020, which date itself was 21 months after this appeal was filed. Even with all this extra time – plus another 3 ½ months afforded by this Court’s Order filed on November 30, 2020 – Appellant could still not comply with the Appellate Court Rules. The Appellant’s Record of (sic) Appeal, which was received on December 26, 2020, did not include most of the documents identified in Respondent’s Designation of Matter to be Included in the

Record on Appeal. The Record of (sic) Appeal therefore fails to comply with Rule 210(c), SCACR.

This appeal should be dismissed pursuant to Rule 260(a), SCACR, which provides, in relevant part:

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)

This Court should also comply with its own Orders, specifically the Orders filed on September 18, and November 30, 2020, which stated that Appellant’s failure to comply “will result in the dismissal of this appeal.”

This appeal, which has now been pending for 25 months, should be dismissed.

MEMORANDUM

CIRCUMSTANCES SINCE JULY 28, 2020

1. By the Court’s letter to Appellant dated July 28, 2020, the Court imposed upon Appellant a 10-day deadline – until August 7, 2020 – to serve the Record on Appeal.
2. The Record on Appeal was not timely filed. Instead, Appellant filed on August 6, 2020, a Motion to be Reheard on Record on Appeal.
3. By letter to the Court dated August 12, 2020, Respondent’s counsel inquired whether or not the appeal would be dismissed, as threatened in the said July 28, 2020, letter.
4. By Order filed on September 18, 2020, Appellant’s Motion was granted, and Appellant was directed to serve the Record on Appeal within 30 days – by October 19, 2020 – and stated that, “Failure to comply with the court’s request will result in the dismissal of this appeal.”
5. On October 14, 2020, Appellant filed a Motion to Continue, requesting “60 days

from the 18th of October 2020” (or until December 17, 2020) to provide the Record on Appeal.

6. By Order filed on November 30, 2020, the Court denied Appellant’s Motion to Continue, instead awarding Appellant until December 23, 2020, to serve the Record on Appeal. (Interestingly, and notwithstanding its denying the Motion, the Court awarded Appellant an extension of 71 days from the date of the Motion – and 6 days beyond the date requested by Appellant.)

7. Respondent’s counsel received Appellant’s Record of (sic) Appeal (of sorts). This document failed to include Respondent’s Designation of Matter to be Included in the Record on Appeal, notwithstanding that, by letter dated December 15, 2020, Respondent’s counsel had reminded Appellant to make sure that the Record on Appeal included such matters.

8. By letter to Appellant dated December 28, 2020, Respondent’s counsel pointed-out the deficiencies in the Record of (sic) Appeal and requested that Appellant voluntarily serve (hand-deliver) a complete Record on Appeal by January 4, 2021. No revised Record on Appeal has been received, and Appellant has made no effort to communicate with Respondent’s counsel in that regard, necessitating this Motion to Dismiss Appeal.

EARLIER MOTION TO DISMISS APPEAL AND
DELAYING TACTICS BY APPELLANT

1. 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.

2. On April 24, 2019, the appeal was dismissed only to be reinstated on June 28, 2019.

3. 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.

4. 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.)

5. The said 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) The cover letter also made it clear that Appellant’s failure to comply with said order “will result in the dismissal of your appeal.”

6. Notwithstanding the extreme generosity of the Court and the unambiguous directive, the initial brief was filed with the Court on December 5, 2019. The designation of matter was not served and filed with Appellant’s initial brief. Appellant then filed an Amended Initial Brief (which included a Designation of Matter) on December 12, 2019.

7. 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. Appellant filed his initial brief 3 business days after the filing-deadline established by court order, and he filed his designation of matter 8 business days after the filing-deadline established by court order.

Respectfully submitted,



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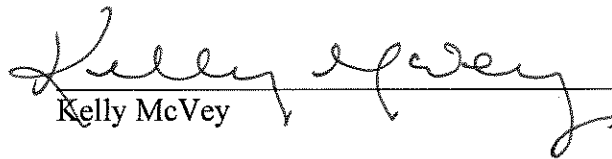
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CERTIFICATE OF MAILING

I, Kelly McVey, of Jordan Law Firm, attorney for the Respondent, Richie D. Barnes, hereby certify that I have, this 6th day of January, 2021, 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