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Apr 06 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No. 2019-000369
Formerly Case No. 2018-001364
W.C.C. File Nos. 1322451, 1319203, 1420487

Terry H Capone, Claimant.....Appellant,

v.

City of Columbia, Employer, and

Companion Third Party Administrator, LLC, Carrier,Respondents.

**APPELLANTS' REPLY TO RETURN OF RESPONDENT IN OPPOSITION TO
APPELLANTS' PETITION/MOTION TO REINSTATE APPEAL**

Appellant Terry H Capone, Employee ("Appellant") submits this Reply To The Return
Of Respondents in Opposition To Appellant's Petition/ Motion To Reinstate Appeal, filed
April 5, 2021.

**MEMORANDUM OF LAW
SWORN DECLARATION**

STATE OF SOUTH CAROLINA §
COUNTY OF RICHLAND §

Pursuant to 28 U.S.C. 1746, I Terry H Capone, declare under penalty of perjury that the
foregoing is true and correct to the best of my knowledge, information and belief and In
opposition, Plaintiff states as follows:

As the Court's is aware of it's March 12, 2021 Order dismissing Appellant's appeal did so on the
basis that the Appellant's pro se under disability has repeatedly brought to the attention of this

Court by proof filed of both under multiple Federal and State agencies, sworn depositions, affidavits, detailed documents and paid motions had been unable to “Serve the final record of appeal, file proof of service” or keep up with the rigors of the courts request and proceedings due to the complexity, effects of multiple disabilities and medications to treat caused by work-related injuries both individually and collectively limit major life activities and the Courts records establish Appellant is profoundly disabled, as a matter of fact and good cause is demonstrated and the Appellants Petition/Motion was timely.

The Appellant is not a lawyer, has no ulterior motive to not want to see his appeal of a void judgment come to completion and has never intentionally disregarded, delayed any filing or did not fail to file to respond to the Courts request for any strategic reason or gain, he simply was unable due to multiple disabilities and medications to treat that include post traumatic stress disorder (PTSD), traumatic brain injury (TBI), neurocognitive disorder, major depression disorder, anxiety, irritable bowel syndrome IBS-D, migraine headaches and other and did not know what the record of the appeal was, hence filing thousands of papers with the Court. I admit that a major part of my disabilities include rumination, triggers and becoming stuck mentally.

This is the reason on April 20, 2020 the Appellant made an ADA accommodation request through a paid Motion Requesting Appointment of Counsel by the Court for assistance in serving the record on appeal as also noted in the accompanying Emergency Motion for Extension of Time serve the record on appeal. Further the Appellant clearly cited: “ The request for counsel would be of assistance to both Appellant and Court for collecting, organizing, and presenting the Record on appeal and all other matters pending before the Court. The Appellant having substantially replied to all requests by the Court, and this request is made as the documents previously provided to the Court show “good cause” and are evidence of my actual disabilities

that greatly impact, among other things, my ability to participate in the judicial system.”

Despite this appeal to the Court for the above assistance specifically with “serving the record on appeal the Court and recognizing the impact my disabilities were having on my ability to keep up with the courts request, the Court denied my request and the Respondents opposed the motions although they were not prejudiced by the request and none were noted.

Similarly, this Petition/Motion to reinstate Appellants appeal does not prejudice the Respondents and in the April 5, 2021, Return of Respondents in Opposition to Appellants Petition/Motion to Reinstate Appeal **No prejudices** are noted. But the Respondents opposition should be Disregarded and stricken for filing scandalous and false documents and facts with this Court by stating on page #2:

“Appellant has yet to serve (or file) an initial brief, designation of matter.....”!

The Respondents and the Court is aware and a simple inquiry of the court docketing system In this case the Appellant has filed and served the Appellants Initial brief, Appellants reply brief, designation of matter and final brief of appellant, and also filed documents under the former Case: 2018-001364.

Although other problems Appellant encountered is the Attorneys can load papers online to a “drive”(or online system), while the pro se Appellant can not, this is a clear disadvantage to the pro se Appellant and the Court docketing system is flawed.

The Court online document files do not all match up to what is stated / filed with the Court, and recently was not able to produce a court document that the Appellant hand delivered and was stamped by the Court itself.

The Americans with Disabilities Act of 1990

Civil rights legislation that prohibits discrimination on the basis of disability and promotes equal opportunity to fully participate in all aspects of life—employment; participation in programs and services; and access to public accommodations

Title II applies to government programs and services, which includes courts

I made an ADA request to this court signaling/ confirming I needed help and was unable to complete what was requested, I was not assigned or forwarded to an ADA Coordinator with this Court, I was unable to secure legal counsel myself and requested the court assistance with assigning legal counsel or the Court could have appointed a temporary or limited legal court guardian to complete this process, although I could pay for the service myself.

Time limitation does not apply where the judgment is based on a fraudulent return. (*Washko v. Stewart*, supra, p. 318; *Richert v. Benson Lbr. Co.*, supra, p. 677.).

“...the right to file a lawsuit pro se is one of the most important rights under the constitution and laws.”*Elmore v. McCammon* (1986) 640 F. Supp. 905

“Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers”. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1959); *Picking v. Pennsylvania R. Co.*, 151 Fed 2nd 240; *Puckett v. Cox*, 456 2nd 233

It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in *Conley v. Gibson* (see case listed above, Pro Se Rights Section). *Puckett v. Cox*, 456 F. 2d 233 (1972) (6th Cir. USCA)

It was held that a pro se complaint requires a less stringent reading than one drafted by a lawyer per Justice Black in *Conley v. Gibson* (see case listed above, Pro Se Rights Section). *Puckett v. Cox*, 456 F. 2d 233 (1972) (6th Cir. USCA)


"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938)

CONCLUSION/ PRAYER

For the reasons stated herein, under the unique “extraordinary circumstances”, principals of equity and tolling should apply and Appellant continues to respectfully request Appellants Petition/Motion to Reinstate Appeal should be *GRANTED* and the court to consider the effects of his disabilities, this appeal of a Void Judgment/Decision Under the APA for Fraud Upon the Court that if not granted would continue in the Denial of Due process, Procedural Due process, Substantive Due Process and Equal protection under the color of Law, Appellant so moves.

I declare under penalty to perjury under the laws of the State of South Carolina that the forgoing is true and correct to the best of my knowledge.



By: 
Terry H Capone, Pro Per Claimant, Appellant
1 Arsenal Hill Court Columbia, SC 29201
tcapone@liberty.edu

Richland, South Carolina

April 6, 2021

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W.C.C. File Nos. 1322451, 1319203, 1420487

Terry Capone, Appellant,

v.

City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier, Respondents.

PROOF OF SERVICE

I certify this 6th day of April 2021 that I have served copies of the

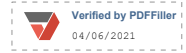
APPELLANTS' REPLY TO THE RETURN OF RESPONDENTS IN OPPOSITION TO
APPELLANTS APPELLANT'S PETITION/MOTION TO REINSTATE APPEAL by electronic
mail addressed to the Following:

Cynthia C Dooley Attorney cdooley@turnerpadget.com
Camelo B Sammataro Attorney ssammataro@turnerpadget.com
Turner Padget Graham & Laney
P.O. Box 1473
Columbia, SC 29202

ATTORNEYS FOR RESPONDENTS

(Signature page to follow.)

April 6, 2021



By: Mr. Terry H Capone
Fire Battalion Chief-Rtired
1Arsenal Hill Court
Columbia, SC 29201
tcapone@liberty.edu

PRO PER APPELLANT



April 6, 2021

VIA E-MAIL (ctappfilings@scourts.org)

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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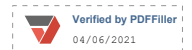
Re: Terry Capone v. City of Columbia and Companion Third Party Administrator, LLC
Appellate Case No.: 2019-000369 / Formerly Case No.: 2018-001364
W.C.C. File Nos. 1322451, 1319203, 1420487

Dear Ms. Kitchings:

Attached for filing are the Appellants' Reply to the Return of Respondents in Opposition to Appellant's Petition/Motion To Reinstate Appeal and Proof of Service regarding the above-referenced matter.

I will continue to inform the Court I am not a lawyer. Thank you for your assistance with this matter, please contact me if you have any questions. Thank you for your consideration.

With The Highest Regards,



Enclosure(s) as Stated
Cc: Cynthia C Dooley
Attorney for Respondents

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Fire Battalion Chief-Retired
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Columbia, SC 29201
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