

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Mar 23 2021

SC 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.

RETURN TO MOTION TO REINSTATE APPEAL

Respondent, Richie D. Barnes, hereby replies to Appellant's Motion to Reinstate Appeal, filed in the Office of the Clerk of Court for Lexington County on March 22, 2021. There is no indication online that Appellant's Motion (along with the motion fee) has been received by the Court of Appeals.

Said Motion was received by the undersigned counsel on March 22, 2021. Although Appellant claims, by the Proof of Service attached to the Motion, that the Motion was served by depositing it in the mail on March 11, 2021 (or March 10, 2021), the envelope containing the Motion was not post-marked until March 18, 2021.

A Notice of Objection to Order, which was filed by Appellant on March 16, 2021, was

found online by Respondent's counsel. There is no evidence that Appellant attempted to serve Respondent with this Notice. Appellant's reference to Rule 211 is misplaced. This reference does indicate, however, that Appellant is aware of where to go to consult Court Rules, which are intended to be followed by all parties to the appeal.

The Order of the South Carolina Court of Appeals, filed on March 3, 2021, noted the following:

We note this appeal has been pending since December 7, 2018, this Court first notified Appellant the record on appeal was overdue on July 28, 2020, and this court granted Appellant numerous extensions for serving and filing the record on appeal.

Based upon the following circumstances, cited in Respondent's Motion to Dismiss Appeal and Memorandum, this appeal has been strung-out by Appellant for so long that it must be assumed that he has intentionally delayed complying with Court Rules. See the following chronology:

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.

8. 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.

9. The Record on Appeal was not timely filed. Instead, Appellant filed on August 6, 2020, a Motion to be Reheard on Record on Appeal.

10. 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.

11. 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.”

12. 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.

13. 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.)

14. 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.

15. 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 Respondent's Motion to Dismiss Appeal.

As the Court has given Appellant more than enough time to serve the Record on Appeal, in compliance with Rule 210, SCACR, while Appellant only continued to ask for more time, without legitimate excuses, the Court correctly dismissed this appeal.

Respondent objects to the continuation of this appeal, which was filed on December 7, 2018, over 27 months ago.

Respectfully submitted,



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Columbia, South Carolina
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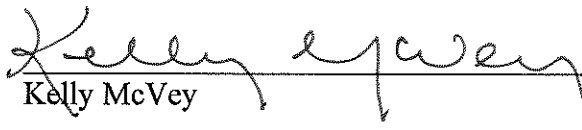
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CERTIFICATE OF SERVICE

I, Kelly McVey, of Jordan Law Firm, attorney for the Respondent, Richie D. Barnes, hereby certify that I have, this 23rd day of March, 2021, served a copy of the attached Return to Motion to Reinstate Appeal 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