

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
COURT OF GENERAL SESSIONS

HON: J. MICHAEL BAXLEY, CIR. CT. JUDGE

CASE NO. 2012-213363
TRIAL CASE #1988-GS-16-904

THE STATE,....., RESPONDENT,

v.

LEROY BENNETT,....., APPELLANT.

MOTION FOR SUMMARY JUDGMENTS
DUE TO THE RESPONDENT'S DEFAULTING, etc.

LEROY BENNETT, 153421
LEE CI
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
APPELLANT, pro se

SALLEY W. ELLIOTT, ESQ.
DEPUTY ASSIST. ATTY. GEN.
PO BOX 11549
COLUMBIA, S.C. 29211-1549
RESPONDENT

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MAY 03 2013

SC Court of Appeals

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DATE

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THE STATE OF SOUTH CAROLINA
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HON: J. MICHAEL BAXLEY, CIR. CT. JUDGE

CASE NO. 2012-213363
TRIAL CASE #1988-GS-16-00904, etc

THE STATE,....., RESPONDENT,

v.

LEROY BENNETT,....., APPELLANT.

CERTIFICATE OF COUNSEL

I THE UNDERSIGNED CERTIFY THAT THE APPELLANT IS STATING IS TRUE AND BASED UPON THE RECORDS FACTS AS IS BEING PLEADED IN THE SUBMITTED MOTION FOR SUMMARY JUDGMENT AGAINST THE RESPONDENT FOR DEFAULTING BY NOT ANSWERING TO APPELLANT'S INITIAL BRIEF.

MAY 3, 2013

SI Leroy Bennett
LERROY BENNETT, 153421
990 WISACKY HWY.
BIHSHOPVILLE, S.C. 29010
APPELLANT

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SC Court of Appeals

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PROCEDURAL HISTORY OF BELAIED APPEAL:

APPELLANT LEROY BENNETT WAS GRANTED TO FILE AN APPEAL OUT OF TIME ON FEBRUARY 13, 2013, BY THE COURT, AND THE APPELLANT WAS GIVEN (30) DAYS TO FILE THIS APPEAL FROM THE DATE OF THE ORDER ISSUED FOR THE APPELLANT TO FILE HIS INITIAL BRIEF AND THE DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD OF APPEAL, etc., THE APPELLANT FILED THE INITIAL BRIEF AND THE DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD OF APPEAL ON FEBRUARY 28, 2013, AS IT WAS RECEIVED BY THE COURT OF APPEALS BY WAY OF IT BEING STAMPED BY THE COURT ON 2/28/2013, THE RESPONDENT WAS SERVED WITH A TRUE COPY OF THE APPELLANT'S BRIEFS PERSONALLY THROUGH THE U.S. MAIL AS REQUIRED BY PROOF OF SERVICE, AS THE COURT DOES HAVE THE ORIGINAL COPY OF THE PROOF OF SERVICE ON IT'S RECORDS AND FILES. THE APPELLANT NOW COMES AND FILES HIS MOTION FOR SUMMARY JUDGMENT IN HIS FAVOR, etc., ON THIS 3rd DAY OF MAY 2013.

JUSTIFICATIONS FOR APPELLANT'S MOTION FOR SUMMARY JUDGMENT:

THE APPELLANT'S MOTION FOR SUMMARY JUDGMENT IN HIS FAVOR DUE TO THE RESPONDENT NOT ANSWERING TO THE CLAIMS PROPERLY PRESENTED TO THE APPELLATE COURT IN HIS APPEAL, THE RESPONDENT FAILED TO ANSWER TO THE CLAIMS THAT THE APPELLANT HAS SUBMITTED TO THE COURT OF APPEALS, etc., AND BEING THE RESPONDENT NOT ANSWERING THE CLAIMS SUBMITTED BY THE APPELLANT FOR AN APPELLATE REVIEWS CAN ONLY BE CONSTRUED THAT THE RESPONDENT ADMITS THAT ALL OF APPELLANT'S CLAIMS ARE TRUE, THE APPELLANT ALSO MAKES THE FACTUAL CONTENTIONS THAT THE RESPONDENT DID NOT COMPLY WITH THE APPELLATE COURT RULE SUCH AS RULE 208, SCACR, STATING THAT THE RESPONDENT MUST SERVE ONE COPY OF HIS BRIEF ON ALL PARTIES TO THE APPEAL AND FILE WITH THE CLERK OF APPELLATE COURT & ONE COPY* OF THE BRIEF WITH THE PROOF OF SERVICE, WITH THIS REQUIREMENT THE RESPONDENT MUST BE IN COMPLIANCES OF AND DID NOT, IS TO BE SHOWN THAT THE RESPONDENT FAILED TO COMPLY WITH THE RULES OF THE COURT, BY NOT ANSWERING TO THE APPELLANT'S INITIAL BRIEF ON APPEAL, NO

MOTION FOR TIME EXTENSION WAS FILED BY THE RESPONDENT IN THIS CASE IF THE RESPONDENT HAD NEEDED A TIME ENLARGEMENTS, AND SINCE THE RESPONDENT DID NOT GIVE NO INDICATIONS TO THE COURT THAT IT NEEDED A TIME EXTENSION THE COURT MUST CONSTRU THE FOLLOWING: THE RESPONDENT FAILED TO ANSWER THE APPELLANT'S CLAIMS, THE RESPONDENT WAIVED ANY RIGHTS TO FILE HIS RESPONDENT'S BRIEF TO THE COURT PURSUANT TO RULE 208, SCACR, THE RESPONDENT FAILING TO ANSWER APPELLANT'S CLAIMS ON APPEAL GIVES CONFIRMATIONS THAT IT AGREES WITH THE APPELLANT'S CLAIMS ARE TRUE AND THE ERRORS THAT ARE COMMITTED IN THE APPELLANT'S SENTENCES MUST BE CORRECTED.

THE APPELLANT MOVES TO REQUEST THAT THE COURT DO NOT ISSUE AN ORDER THAT IS CONSISTED OF THE RESPONDENT FILING HIS BRIEF OUT OF TIME BEING THAT THE APPELLANT HAS NOW FILED HIS MOTION FOR SUMMARY JUDGMENT BASED UPON THE RESPONDENT DEFAULTING AS IS SHOWN BY THE RECORD OF THE COURT IN THE APPELLANT'S APPEAL, THIS REQUEST ARE SUBMITTED DUE TO THE FACTS THAT THE COURT WOULD VERY MUCH SO DISMISS THIS APPEAL IF IT WOULD HAVE BEEN THE APPELLANT NOT COMPLYING WITH THE RULES OF THE APPELLATE COURT AS MENTIONED IN THIS PLEADINGS, AND AS THE COURT OF APPEALS RECORDS WILL REFLECT IT HAS IN THE PAST DISMISSED APPELLANT'S APPEALS AND PETITION/PLEADINGS FOR NOT COMPLYING WITH THE COURT'S RULES, etc. AND HAVING THIS TO BE PRESENTED BY FACTS AND CLEAR CONTENTIONS SUBMITTED TO THE COURT IT MUST ALSO BE CONSTRUED THAT THIS MOTION FILED BY THE APPELLANT IS NOT FOR ANY TIME DELAYS NOR TO CAUSE ANY DISADVANTAGES FOR THE RESPONDENT IN THIS APPEAL MATTER BEFORE THE HONORABLE COURT OF APPEALS.

CONCLUSION

WHEREAS, BENNETT RESPECTFULLY REQUEST THAT THIS HONORABLE COURT GRANT HIS MOTION FOR SUMMARY JUDGMENT BASED UPON THE FACTS AND RECORDS OF THE COURT THAT THE RESPONDENT FAILED TO ANSWER THE APPELLANT'S CLAIMS ON APPEAL ACCORDINGLY TO THE COURT RULES, RULE 208, SCACR, etc., IT IS THEREFORE PRAYED.
SUBMITTED ON THIS 3rd DAY OF MAY 2013.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM DARLINGTON COUNTY
COURT OF GENERAL SESSIONS

THE HON: J. MICHAEL BAXLEY, Cir. Ct. Judge

CASE NO. 2012-23363
TRIAL CASE #1988-GS-16-00904

THE STATE,....., RESPONDENT,

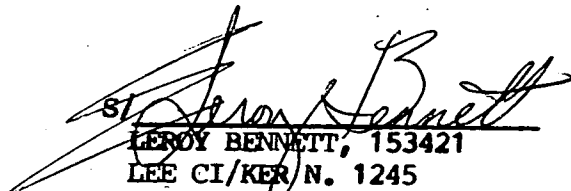
v.

LEROY BENNETT,....., APPELLANT.

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED THE APPELLANT'S INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD OF APPEAL BY DEPOSITING A COPY OF IT IN THE U.S. MAIL, POSTAGE PREPAID, ON: 3/13/2013, 2013, ADDRESSED TO SALLEY W. ELLIOTT, ESQ, OFFICE AT: PO BOX 11549, COLUMBIA, S.C. 29211-1549 BY PERSONALLY DELIVERING IT TO THE POSTAL DIRECTOR IN THE PRISON MAILROOM ON THIS 13th DAY OF March 2013.

March 13, 2013


LEROY BENNETT, 153421
LEE CI/KER N. 1245
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
APPELLANT

RESPONDENT COUNSEL SERVED
SALLEY W. ELLIOTT, ESQ.
DEPUTY ASSIST. ATTY. GENERAL
PO BOX 11549
COLUMBIA, S.C. 29211-1549
RESPONDENT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
COURT OF GENERAL SESSIONS

HON: J. MICHAEL BAXLEY, CIR. CT. JUDGE

CASE NO. #1988-CS-16-00904
APPELLATE CASE NO. 2012-213363

THE STATE,....., RESPONDENT,

v.

LEROY BENNETT,....., APPELLANT.

PROOF OF SERVICE

I LEROY BENNETT CERTIFY THAT I DID SERVE A TRUE COPY OF THE MOTION FOR SUMMARY JUDGMENT DUE TO THE RESPONDENT'S DEFAULTING BY NOT RESPONDING AND COMPLYING TO THE APPEAL COURT RULES, etc. BY WAY OF U.S. MAIL, POSTAGE PREPAID, ON THIS 3rd DAY OF MAY 2013, AT THE RESPONDENT'S ADDRESS AS: ATTY. GEN. OFFICE, PO BOX 11549, COLUMBIA, S.C. 29211-1549, AS SALLEY W. ELLIOTT, Esq., BY PERSONALLY DELIVERING IT TO THE PRISON MAILROOM ON THIS DAY OF MAY 2013 FOR VERIFICATION AND PROOF OF LEGAL MAIL MAILOUT.

MAY 3, 2013

Leroy Bennett
LEROY BENNETT
LEE CI
999 WISACKY HWY.
BISHOPVILLE, SC 29010

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MAY 03 2013
DATE

LEROY BENNETT, 153421
LEE CI/KER N 1245
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

MAY 3 , 2013

HON: J.A. KITCHINGS, CLERK
SC COURT OF APPEALS
PO BOX 11629
COLUMBIA, S.C. 29211

RE: THE STATE V. LEROY BENNETT, 2012-3363, TRIAL CASE NO. 88-GS-16-00904,
SEE ENCLOSURES AS APPELLANT'S MOTION FOR SUMMARY JUDGMENT, etc., PROOF OF
SERVICES.

DEAR MS. KITCHINGS:

PLEASE SEE ENCLOSED FOR YOUR FILING MY MOTION FOR SUMMARY JUDGMENT
AND PROOF OF SERVICE, etc., PLEASE RETURN MY COPIES BACK TO ME AT
YOUR EARLIEST AVAILABLE TIME TO DO SO.

THANKING YOU IN THE ADVANCE FOR YOUR TIME AND HELP GIVEN TO ME
IN THIS CRUX MATTERS AND I LOOK FORWARD IN HEARING FROM YOU IN
VERY NEAR FUTURE, AND IF YOU HAVE ANY QUESTIONS PLEASE DO NOT
HESITATE TO CONTACT ME AT THE GIVEN ADDRESSES.

MAY 3 , 2013

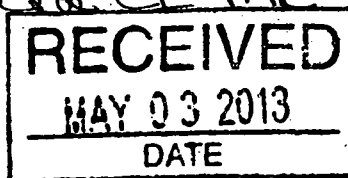
ENCLOSURE:

LB/cm

cc: SALLEY N. ELLIOTT, ESQ.
FILES/LB

RESPECTFULLY SUBMITTED,

Leroy Bennett
LEROY BENNETT, 153421
LEE CI/KER N 1245
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010



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MAY 03 2013

SC Court of Appeals