

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Darlington County
The Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No: 2012-213363

THE STATE,

Respondent,

vs.

LEROY BENNETT,

Appellant.

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MAY 13 2013

SC Court of Appeals

**RETURN TO PRO SE MOTION FOR SUMMARY JUDGMENT
AND
STATE'S MOTION TO DISMISS APPEAL**

Respondent, by and through undersigned counsel, and making Return to Appellant's Motion for Summary Judgment and moving to dismiss this appeal, would respectfully show unto this Court:

I.

On information and belief, it appears that Leroy Bennett filed a pro se motion for sentence/clarity in the Darlington County Court of Common Pleas but listed his case number as his general sessions' indictment numbers. In the "Statement of the Case" attached to the motion, Appellant indicates he was indicted in 1988 in Darlington County for kidnapping, armed robbery, grand larceny, assault and battery with intent to kill. He also states that he was convicted following a jury trial and was sentenced for the offenses.

Appellant was sentenced to life for kidnapping; twenty-five(25) years, consecutive, for armed robbery, ten (10) years, consecutive, for grand larceny of a vehicle, and twenty years (20), consecutive, for assault and battery with intent to kill.

II.

By Notice of Appeal dated October 26, 2012, Appellant appealed what Appellant states is a decision of the Honorable Michael Baxley. In the Notice of Appeal, Appellant stated that he received written notice of the Order on September 26, 2012. Appellant's proof of service indicates that he served Attorney General Alan Wilson with the Notice of Appeal. Appellant appears to be appealing the Order denying a motion he pursued in April 2012 to clarify sentences received in 1988. He indicates in the motion that he would like his sentence clarified such that the sentences would be served concurrently rather than consecutively. He also moved this Court to accept his Notice of Appeal out of time which this Court granted by Order filed February 13, 2013.

III.

On March 1, 2013, Respondent received an unsigned Initial Brief and unsigned Designation of Matter from Appellant.

IV.

By letter dated March 8 , 2013, this Court returned Appellant's Initial Brief and Designation of Matter with a request that he sign both and return the signed Initial Brief and the signed Designation of Matter within twenty (20) days of the date of the letter. This Court indicated that failure to follows the Court's instructions may result in dismissal of his appeal.

V.

The State submits that it has not received a signed copy of the Initial Brief and Designation of Matter from Appellant or any indication from this Court that it received the documents as requested. Therefore, Respondent has no notice that the deadline for submitting a responsive brief has been triggered by any action taken by Appellant. Accordingly, summary judgment as requested by Appellant is simply not appropriate. Moreover, to the extent that Appellant did respond to this Court's request and simply

failed to notify Respondent, Respondent requests an extension of time to submit its Initial Brief of Respondent and Designation of Matter.

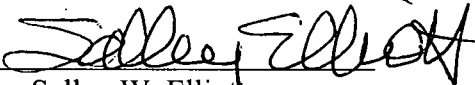
IV.

Moreover, Respondent submits that it was never served with the Notice of Appeal from Appellant in October or November 2012. Accordingly, because timely service was not accomplished as is required by Rule 203, SCACR, this appeal must be dismissed. This appeal must also be dismissed because Appellant failed to file and serve signed copies of his brief and designation of matter

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

BY: 

Salley W. Elliott
S.C. Bar No: 1871

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Post Office Box 11549
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(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 13, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Darlington County
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THE STATE,

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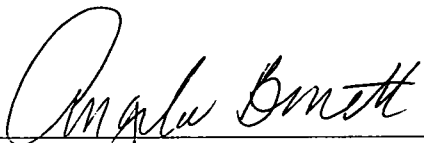
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PROOF OF SERVICE

I certify that I have served the within Return to Appellant's Motion for Summary Judgment and State's Motion to Dismiss, by depositing a copy of the same in the United States mail, postage prepaid, addressed to Leroy Bennett, Lee Correctional Institution, 990 Wisacky Highway, Bishopville, South Carolina 29010.

I further certify that all parties required by Rule to be served have been served.

This 13th day of May, 2013.



Angela Bennett
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

May 13, 2013

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Leroy Bennett
Appellate Case No: 2012-213363

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent's Return to Pro Se Motion for Summary Judgment and State's Motion to Dismiss Appeal in the above case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab
Enclosure

cc: Leroy Bennett, #153421
Ms. Trisha Allen

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