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Aug 02 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2019-000511

THE STATE,

Respondent,

vs.

AARON McKENZIE CAPERS,

Appellant.

**RETURN IN OPPOSITION TO
“PETITION FOR LEAVE OF COURT TO SUBMIT
AN AMENDED FINAL BRIEF OF APPELLANT
IN LIGHT OF TRANSCRIPTION ERROR
ACKNOWLEDGED BY AFFIDAVIT OF COURT REPORTER”**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

On August 1, 2023, Appellant filed a motion entitled “Petition for Leave of Court to Submit Amended Final Brief of Appellant in Light of Transcript Error Acknowledged by Affidavit of Court Reporter.” As will be explained further, the State opposes this motion.

II.

Through his motion, Appellant requests permission from this Court to be permitted to amend his final—not initial—brief to alter the previous and repeated assertions he made in his initial brief inaccurately asserting he was sixteen years old at the time of his crimes because he

maintains those assertions constituted obvious typographical errors that can properly be corrected in a final brief pursuant to Rule 211(b)(2) of the South Carolina Appellate Court Rules. (IBOA pp. 6-9). However though, Appellant’s inaccurate assertions concerning his age in his initial brief were accompanied by statistics related to the purported projected life expectancy for sixteen-and-seventeen-year-old offenders along with calculations and analysis predicated on Appellant having been sixteen years old at the time of his arrest. (IBOA pp. 8-9). Thus, Appellant’s assertions concerning his age in his brief were not mere typographical errors but were substantive—but erroneous—claims upon which Appellant founded his appellate arguments and analysis.

III.

Pursuant to the mandates of the South Carolina Appellate Court Rules, a party “may correct obvious typographical errors and misspellings which were contained in the initial brief” in the party’s final brief. Rule 211(b)(2), SCACR. However, “[n]o other changes may be made.” Id.

IV.

Because the changes Appellant is seeking to make if permitted to amend his final brief are not mere corrections to typographical errors but are alterations to substantive statements Appellant relied upon in advancing and supporting his appellate arguments, Rule 211(b)(2) does not permit them. Thus, his motion should be denied.

V.

Additionally, supporting the denial of Appellant’s motion, Appellant acknowledges he had notice of the error no later than September 21, 2022. However, instead of immediately seeking permission from this Court to amend his initial brief and alter not just the misstatements

concerning his age but the analysis and calculations Appellant advanced based on his inaccurate assertions of his age, Appellant has waited until: (1) *314 days* after Appellant received notice from the court reporter concerning the isolated error in the transcript; (2) *235 days* after the State filed its Initial Brief of Respondent, which addressed and responded to the inaccurate assertions Appellant founded his appellate arguments upon and which itself was filed 79 days after Appellant was admittedly on notice of the errors with his brief; and (3) 36 days after the Record on Appeals was finally filed in this case. As a result of the significant delay between when Appellant apparently first became aware of the isolated error with the trial transcript and when he first attempted to seek to correct his incorrect assertions about his age in his brief, the State has filed both its initial and final briefs, which would need to be altered and amended as well if Appellant was permitted to alter his final brief now and will result in further delays in this matter. See Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.”); cf. Sloan Constr. Co. v. South Carolina Bd. of Health and Env'tl. Control, 285 S.C. 523, 526, 331 S.E.2d 345, 347 (1985) (deeming a revised version of the appellant’s initial brief, which was filed *after* the respondent filed a responsive brief pointing out defects in the appellant’s original brief, to be “improper,” explaining such a revision is not permitted by our state’s appellate court rules, and explaining “[t]he prejudice created by such a brief is obvious”).

VI.

Furthermore, although Appellant now seeks to attribute his mistaken assertions concerning his age to an single isolated error committed by the court reporter at just one point in the trial transcript, Appellant’s actual age at the time of his offenses was an easily-discoverable

and indisputable fact that was: (1) correctly recited at many other points throughout the trial—including in defense counsel’s *opening statement*—and sentencing proceedings; and (2) readily capable of being quickly determined and verified simply by comparing his birthdate, which was contained in many different documents—including the forensic evaluation report Appellant cited to in his initial brief—that were part of the record in Appellant’s case, to December 21, 2017, which was the date of his heinous offenses. (R. p. 23; p. 325; p. 461; pp. 546-547; 621; pp. 633-634). Accordingly, the court reporter’s isolated transcription error at a single point in the lengthy record from Appellant’s trial and sentencing proceedings had already been repeatedly refuted and shown to have been inaccurate by the other matter in the record even before the court reporter issued her correction on September 21, 2022.

VII.

Accordingly, for all the foregoing reasons, the State respectfully asks this Court to deny Appellant’s motion entitled “Petition for Leave of Court to Submit Amended Final Brief of Appellant in Light of Transcript Error Acknowledged by Affidavit of Court Reporter.” By doing so, this Court will ensure our state’s appellate court rules—including Rule 211(b)—are faithfully adhered to and will allow this already-repeatedly-delayed appeal from a 2017 incident and a 2019 conviction to finally progress past the briefing stage.

WHEREFORE, Respondent prays this Court will deny Appellant’s ““Petition for Leave of Court to Submit Amended Final Brief of Appellant in Light of Transcript Error Acknowledged by Affidavit of Court Reporter;” and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Deputy Attorney General



By: _____

Mark R. Farthing
S.C. Bar Number 76901

August 2, 2023

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PROOF OF SERVICE

I, Grace Sommer, certify I have served the within Return in Opposition to "Petition for Leave of Court to Submit Amended Final Brief of Appellant in Light of Transcript Error Acknowledged by Affidavit of Court Reporter" on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Tara Dawn Shurling, Esquire
3614 Landmark Drive, Suite A
Columbia, SC 29204

I further certify all parties required by Rule to be served have been served.
This 2nd day of August, 2023.



GRACE SOMMER
Legal Assistant

Grace Sommer

From: Grace Sommer
Sent: Wednesday, August 2, 2023 11:38 AM
To: 'tdslaw@shurlinglaw.com'; 'tdshurling@aol.com'
Cc: Mark Farthing
Subject: RE: The State v. Aaron McKenzie Capers (2019-000511)
Attachments: Capers.Return to Motion to File Amended FBOA (03352319xD2C78).PDF

Good Morning Ms. Shurling,

Attached please find the Return in Opposition to Motion to File Amended Final Brief of Appellant in The State v. Aaron McKenzie Capers (2019-000511) with the corrected proof. This return will be filed today with the Court of Appeals via the AIS OneDrive System.

I apologize for the inconvenience.

If you will, please confirm receipt of this email.

Thank you!

Grace Sommer, Legal Assistant
South Carolina Attorney General's Office
Criminal Appeals | Office 803-734-3835 | gracesommer@scag.gov
P.O. Box 11549 | Columbia, SC 29211
scag.gov



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From: Grace Sommer
Sent: Wednesday, August 2, 2023 11:29 AM
To: tdslaw@shurlinglaw.com; tdshurling@aol.com
Cc: Mark Farthing <mfarthing@scag.gov>
Subject: The State v. Aaron McKenzie Capers (2019-000511)

Good Morning Ms. Shurling,

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If you will, please confirm receipt of this email.

Thank you,

Grace Sommer, Legal Assistant
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