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Sep 11 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 TO SUBMIT AMENDED
INITIAL AND FINAL BRIEFS OF APPELLANT
REFLECTING CORRECTION TO TRIAL TRANSCRIPT
PROVIDED BY THE COURT REPORTER”**

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

I.

On August 1, 2023, Appellant served and 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.” While that motion was still pending, Appellant filed—but mistakenly forgot to serve—a similar motion entitled “Petition to Submit Amended Initial and

Final Briefs of Appellant Reflecting Correction to Trial Transcript Provided by the Court Reporter.”¹

II.

Through the first of those motions, Appellant requested 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 maintained those assertions constituted obvious typographical errors that could properly be corrected in a final brief pursuant to Rule 211(b)(2) of the South Carolina Appellate Court Rules. (IBOA pp. 6-9). This Court denied that motion through an order issued on August 23, 2023.

III.

Now, through the second motion of his motions, Appellant again requests permission from this Court to amend his final brief for the exact same reasons advanced in support of the earlier motion. However, in addition to that, Appellant now *also* requests permission to be permitted to amend his initial brief *and* be permitted to file a reply brief if he decides to do so this time. Notably, Appellant did *not* previously file a reply brief after the State’s initial brief was served and filed.

IV.

At its core, Appellant’s motion seeks to begin the briefing phase anew in this already-repeatedly-delayed appeal. And, again, Appellant seeks such relief based on his attribution of his mistaken assertions concerning his age to a single isolated error committed by the court reporter at just one point in the trial transcript. However, as previously noted, Appellant’s actual

¹ The second of Appellant’s motions was filed with this Court on August 21, 2023, and served on the State fifteen days later on September 6, 2023.

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). Thus, 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, which constitutes a compelling reason for Appellant’s latest motion to be denied.

V.

Moreover, with agreement from the State, Appellant has already included the following information in his final brief as presently filed with this Court:

The Amended Initial Brief of Appellant was filed in the South Carolina Court of Appeals on **June 20, 2022**. On **September 21, 2022**, Counsel for Appellant received a digital copy of an affidavit from the Court Reporter who prepared the trial transcript in this case on. In that affidavit she acknowledged that she made a “**transcription error**” on page 793 of the trial record in which she erroneously quoted Deputy Solicitor Anne Williams as saying Appellant was 16 at the time of the crime in this case. She indicated that she had listened to her tapes and confirmed that Attorney Williams in fact said Appellant was 18 at the time the crime was committed. *See, R.p. 556, Affidavit of Court Reporter.*

(IBOA p. 7). Likewise, at other points in his final brief as presently filed, Appellant has included similar footnotes calling this Court’s attention to the transcription error as the identified cause of

the errors in his brief. (IBOA pp. 8-9). Therefore, through the alterations to his final brief that have *already occurred*, Appellant has been able to offer his explanation for why he incorrectly stated he was sixteen years old at the time of his crimes even without beginning the briefing process anew in this appeal, which constitutes another compelling reason for his latest motion to be denied just like the first one.

VI.

Relatedly, as reflected in Appellant's final brief as currently filed, Appellant has acknowledged he had notice of the transcript error no later than September 21, 2022. However, as previously noted, Appellant did not immediately seek permission from this Court to amend his initial brief and alter the misstatements concerning his age along with the analysis and calculations Appellant advanced based on his inaccurate assertions of his age. Instead, Appellant has waited nearly a full year after he received notice from the court reporter concerning the isolated error in the transcript to first seek to remedy the issues in his brief. 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 briefing process has now been completed, the record on appeal has finally been filed, and all the final briefs have been submitted. Those factors likewise constitute compelling reasons for Appellant's latest motion to be denied. 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”).

VII.

Accordingly, for all the foregoing reasons, the State respectfully asks this Court to deny Appellant’s motion entitled “Petition to Submit Amended Initial and Final Briefs of Appellant Reflecting Correction to Trial Transcript Provided by the Court Reporter.” By doing so just as it did with Appellant’s earlier similar motion, this Court will again ensure our state’s appellate court rules 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 to Submit Amended Initial and Final Briefs of Appellant Reflecting Correction to Trial Transcript Provided by the 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
Senior Assistant Deputy Attorney General



By: _____
Mark R. Farthing
S.C. Bar Number 76901

September 8, 2023

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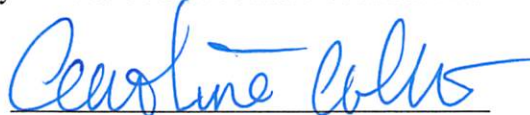
Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Return in Opposition to "Petition to Submit Amended Initial and Final Briefs of Appellant Reflecting Correction to Trial Transcript Provided by the 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 8th day of September, 2023.



CAROLINE COLLINS

Administrative Coordinator

Caroline Collins

From: Caroline Collins
Sent: Friday, September 8, 2023 4:32 PM
To: tdshurling@aol.com; tdsaw@shurlinglaw.com
Cc: Mark Farthing
Subject: The State v. Aaron McKenzie Capers (2019-000511)
Attachments: Capers.Return to Motion to File Amended Initial and Final Briefs (03383867xD2C78).PDF

Good Afternoon Ms. Shurling,

Attached please find the Return in Opposition to "Petition to Submit Amended Initial and Final Briefs of Appellant Reflecting Correction to Trial Transcript Provided by the Court Reporter" in The State v. Aaron McKenzie Capers (2019-000511). This return will be submitted to the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

CAROLINE COLLINS, Administrative Coordinator
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scag.gov



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