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Dec 12 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

Respondent,

v.

TERRY SHAIMEK TYLER,

Appellant.

APPELLATE CASE NO. 2021-001316

MOTION TO STRIKE

Counsel for Appellant, Terry Tyler, moves to strike from the Record on Appeal five videos and two pictures designated by Respondent. Appellant moves to strike these items from the Designation of the Record on Appeal because 1)they were not entered as exhibits in the lower court and are not in the custody of the York County Clerk Court, 2)four of the five videos are not viewable, and 3)the items are not relevant to the issues on appeal. The undersigned makes this motion in accordance with Rule 240, SCACR.

Appellant, who was a juvenile at the time of his arrest, is challenging the constitutionality of his aggregate 60-year sentences as *de facto* life sentences under both the United States Constitution and the South Carolina State Constitution. His sentences were the result of a guilty

plea wherein he admitted to the facts as presented by the State and Appellant has not challenged the factual basis of the plea in this appeal.

During Appellant's sentencing hearing the State played five videos (four surveillance videos and the responding officer's body-camera video) and showed the sentencing court two photographs of E.P. The State did not enter these items as exhibits during the sentencing proceeding and the items are not in the custody of the York County Clerk of Court. Although the videos and photographs are mentioned during the sentencing hearing, it is unclear from the transcript, particularly concerning the videos, what exactly the lower court was shown. To verify that the videos and photographs that Respondent seeks to designate are in fact the ones provided to the lower court would require this Court to rely on information outside of the record to confirm their authenticity. For these items to be properly included in the Record on Appeal they must have been entered as exhibits at the lower court. See State v. Hawkins, 310 S.C. 50, 425 S.E.2d 50 (Ct. App. 2005) (where the evidence was not marked for identification or made part of the lower court record, the appellate court had nothing to review on appeal).

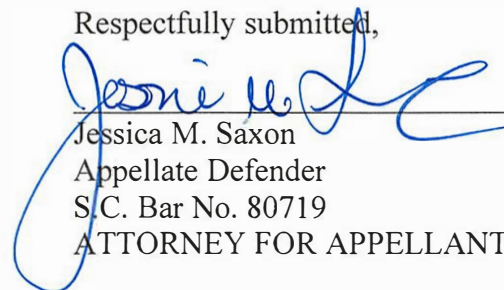
Secondly, four of the five videos are not viewable. Upon receiving Respondent's initial brief and designation, Counsel for Appellant promptly requested copies of the referenced videos and photographs. As the items were not entered into evidence, Counsel for Appellant had no way to retrieve authenticated copies from the York County Clerk of Court. Respondent initially provided the items via a compressed ZIP file. When Counsel for Appellant attempted to view the four items designated as "surveillance recordings from Apartment Complex" the videos would not open or play. Counsel for Appellant requested that Respondent send the videos in a non-compressed format via a drop box and on a separate disc. Respondent complied with the request but again neither of those copies were playable. Counsel for Appellant has worked with the in-

house IT/Database Specialist at the Office of Indigent Defense. He has advised that the videos are unable to be played on any standard video player because the files were compressed using an unsupported codec that requires a proprietary software to view those specific video types. That software information was not provided. As of today, December 12, 2023, Counsel for Appellant has been unable to view four of the five videos that Respondent seeks to include in the Record on Appeal. It would be improper to include material in the Record on Appeal that is unplayable, cannot be authenticated, and was not entered into evidence during the lower court proceeding.

Finally, the items Respondent has designated are not relevant to the appeal. Appellant has raised a purely legal question about the constitutionality of sentencing a juvenile to a *de facto* life sentence. While the facts of the underlying charges are relevant, but they are very thoroughly detailed by the solicitor both at the plea hearing and the sentencing hearing. The videos and photographs alluded to during the hearing are not necessary for this Court to be able to decide the issues that Appellant has raised. See Rule 209(b), SCACR (A party shall not include any matter in his Designation which is not relevant to the appeal).

For these reasons, Appellant respectfully requests that this Court order that the five videos and two photographs be stricken from the Record on Appeal and require an Amended Initial Brief of Respondent to be served with any reference to those items removed from the brief and the Designation of Matter. Appellant further requests that this Court hold in abeyance the deadline for filing the final briefs and Record on Appeal until it has ruled on this motion.

Respectfully submitted,



Jessica M. Saxon
Appellate Defender
S.C. Bar No. 80719
ATTORNEY FOR APPELLANT

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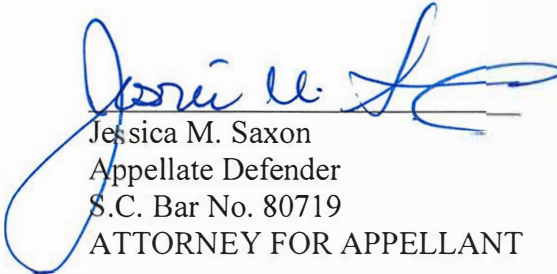
TERRY SHAIMEK TYLER,

APPELLANT.

APPELLATE CASE NO. 2021-001316

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion to Strike in the above referenced case have been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Terry Shaimek Tyler, #385746, at Tyger River Correctional Center, 200 Prison Road, Enoree, SC 29335, this 12th day of December, 2023.



Jessica M. Saxon
Appellate Defender
S.C. Bar No. 80719
ATTORNEY FOR APPELLANT

From: [Stock, Chris](#)
To: [Mark Farthing](#); [SC - COLLINS CAROLINE](#)
Cc: [Saxon, Jessica](#)
Subject: 2021-001316 The State v. Terry Shaimek Tyler - Motion to Strike
Date: Tuesday, December 12, 2023 4:07:00 PM
Attachments: [2021-001316 The State v. Terry Shaimek Tyler - Motion to Strike.pdf](#)

Mr. Farthing,

Please find attached for service the motion to strike for Terry Shaimek Taylor's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris

Chris Stock

Administrative Assistant
Commission on Indigent Defense
Appellate Division
(803) 734-1330