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Dec 29 2023

SC Court of Appeals

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Dorchester County
Court of Common Pleas

The Honorable Maite Murphy, Circuit Court Judge

Trial Court Case No. 2022-CP-18-00442
Appellate Case No. 2023-000920

Benjamin Heyward,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

**RESPONDENTS' MOTION TO COMPEL THE APPELLANT TO COMPLY
WITH THE APPELLATE RULES IN REGARDS TO THE RECORD ON APPEAL**

The Respondents submit this motion in regards to issues related to the Record on Appeal from the Appellant, served/filed on December 12, 2023, moving to compel the Appellant to correct the Record on Appeal to include matters that were presented in the lower court and designated by the Respondents.

Rule 210(c) of the South Carolina Appellate Court Rules provides that: "The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record on Appeal filed by the Appellant does not comply with Rule 210.

Respondents designated (# 2) “Amended Complaint, filed January 23, 2023; (3) Answer to Amended Complaint, filed February 6, 2023; (4) Motion to Dismiss Amended Complaint, filed February 6, 2023; and 5) Memorandum in Support of Motion to Dismiss Amended Complaint, filed April 14, 2023 with Exhibit, in their Designation of Matter to be Included in the Record on Appeal which was filed and served on November 30, 2023. The Appellant did not include items 2 through 4 and only included the first page of item 5 in the Record on Appeal, page 17. Further it appears the Record is missing hearing transcript page 11 as the Record served jumps from page 10 to page 12. Accordingly, the Respondents now move the Court for an order directing the Appellant to correct the Record on Appeal comply with Rule 210 and include all pleadings and pages of the transcript as designated.

Request to Hold Final Briefing in Abeyance

Pursuant to Rule 211, the Respondents are required to file and serve their final brief within 20 days of service of the Record on Appeal. Based on the Appellant’s certificate of service, the Respondent’s final brief would be due January 1, 2024. The Respondents request that the Court hold the final brief due date in abeyance pending disposition of this motion and service of a Record on Appeal that complies with the Appellate Rules.

Inasmuch as the Appellant already has filed his final brief, Respondents respectfully submit that when a corrected Record on Appeal has been served and filed, Appellant also should be allowed to correct his final brief with record citations to the new pagination of the corrected Record on Appeal, as needed.

Conclusion

While the Appellant is proceeding *pro se*, the Respondents maintain that he still must comply with the Appellate Court Rules, in regards to the matters set forth above.

WHEREFORE, the Respondents respectfully move the Court to order the Appellant to correct the Record on Appeal to include all pleadings including exhibits as filed in the lower court and designated by Respondents and well as include the missing page of the hearing transcript.

Respectfully submitted,

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172 Meeting Street
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Charleston, SC 29402
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Email: Info@hoodlaw.com

December 29, 2023
Charleston, South Carolina

/s/ Ellore A. Ganes
Ellore A. Ganes (SC #70509)
elloree.ganes@hoodlaw.com
[Evan M. Sobocinski \(SC #104259\)](#)
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Attorneys for Respondent
South Carolina Department of Corrections

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 29th day of December, 2023, a copy of the Motion to Compel the Appellant to Comply with Appellate Court Rules regarding the Record on Appeal on behalf of Respondent South Carolina Department of Corrections was served by mailing a copy on the following at the address listed below:

Benjamin Heyward #165514
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

HOOD LAW FIRM, LLC

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Post Office Box 1508
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/s/ Ellore A. Ganes

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*Attorneys for the Respondent
South Carolina Department of Corrections*

December 29, 2023

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Via E-Filing and U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29211

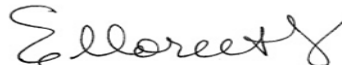
Re: Benjamin Heyward v. South Carolina Department of Corrections
C/A No. and Jurisdiction: 2022-CP-18-00442, Dorchester CP
Appeal No. 2023-000920
HLF File No. 1.446

Dear Ms. Kitchings:

Enclosed for filing please find the **RESPONDENTS' MOTION TO COMPEL THE APPELLANT TO COMPLY WITH THE APPELLATE RULES IN REGARDS TO THE RECORD ON APPEAL** in the above-referenced case. By copy of this letter, I am serving Appellant by mail. Also enclosed is our filing fee in the amount of \$50.00.

Kind regards,

Yours truly,



Elloree A. Ganes

EAG/jad
Enclosures

cc: Benjamin Heyward #165514
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827