

The STATE OF SOUTH CAROLINA
In The Court of Appeals

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SSC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge
Appellate Case No. 2023-001050

Charles Williams, #086721, Appellant,

v.

South Carolina Department of Probation, Parole, and Pardon Services, Respondent.

MOTION TO FILE OUTSIDE THE DEADLINE

I, Charles Williams, SCDC #086721, an indigent inmate whose crimes were committed on September 26, 1975, hereby motions this Court to allow him to file the attached *Final Reply Brief of Appellant* outside the twenty (20) day deadline rule pursuant to Rule 211(a), SCACR. Appellant’s appeal involves a “fundamental right,” so access to the courts is constitutionally required in this case. *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 LEd.2d 113 (1971); *Sullivan v. S. C. Dept. of Corrections*, 355 S.C. 437, 446, 586 S.E.2d 124, 128 (2003).

PROCEDURAL HISTORY

On May 31, 2023, the Honorable Deborah Brooks Durden issued an order dismissing Appellant’s attempt to argue an “as-applied” constitutional challenge before the South Carolina Administrative Law Court without allowing Appellant to formally express his claim through the filing of a brief. Appellant received a copy of the Order on June 5, 2023. Appellant timely filed his *Notice of Appeal* “within thirty (30) days after receipt of the decision” by delivering the same to the Broad River Correctional Institution’s (hereinafter “BRCI”) mail room on June 26, 2023, pursuant to Rule 203(b)(6), SCACR.

Appellant then timely filed the *Initial Brief of Appellant* “within thirty (30) days after serving the notice of appeal” by delivering the same to the BRCI’s mail room on or about August 9, 2023, pursuant to Rule 208(a)(1), SCACR.

The Clerk of the S.C. Court of Appeals, Jenny A. Kitchens, informed Appellant by letter on September 26, 2023, that, “Pursuant to the Court’s order filed September 26, 2023, your previously filed initial brief of appellant and designation matter is accepted as filed.” The September 26, 2023, Order specifically states,

“On August 15, 2023, we dismissed this appeal after Appellant failed to pay the notice of appeal filing fee pursuant to Rule 203(d)(B)(iii) of the South Carolina Appellate Court Rules. Appellant has now filed a motion to reinstate and has paid the filing fee. We grant the motion and reinstate this appeal.”

Respondent was granted “30 days of the date of [the September 26, 2023] letter” to file its initial brief and designation of matter. Respondent filed its *Brief of Respondent and Designation of Matter* on October 24, 2023, and Appellant received the same from the BRCI’s mail room on October 30, 2023.

Appellant then timely filed the *Reply Brief of Appellant* “within ten (10) days after service of respondent’s brief” by delivering the same to the BRCI’s mail room on November 7, 2023, pursuant to Rule 208(a)(3), SCACR. Respondent *did not* file a responsive brief to Appellant’s *Reply Brief of Appellant*.

Appellant then timely filed the *Final Brief of Appellant and Record on Appeal* “within twenty (20) days after the service of the Record on Appeal” by delivering the same to the BRCI’s mail room on November 21, 2023, pursuant to Rule 211(a), SCACR. The Deputy Clerk of the S.C. Court of Appeals, Catherine Harrison, informed Appellant by letter on November 29, 2023, that “Upon reviewing your final brief of appellant ...the document is not accompanied by the required certificate

of counsel.” Appellant corrected this deficiency on December 6, 2023 by filing the *Certificate of Counsel*. Respondent filed its *Final Brief of Respondent* on November 14, 2023, along with proof of service.

The Clerk of the S.C. Court of Appeals, Jenny A. Kitchens, informed Appellant by letter on December 19, 2023, that, “Within ten (10) days of the date of this letter you must provide the final reply brief, along with a motion to file outside the dea[d]line or your final reply brief will not be considered.”

This motion follows.

ARGUMENT

Reply briefs are permitted but not required. See Rule 207 (a)(3), SCACR. Appellate parties must argue the issues in the preliminary briefs and cannot make any new arguments in the final briefs. *Howell v. Pacific Columbia Mills*, 291 S.C. 469, 354 S.E.2d 384 (1987)(decided under the former appellate rules); see also Rule 207 (b)(1)(B), (D) and 210 (b), SCACR. A failure to argue is an abandonment of the issue and precludes consideration on appeal. *State v. Austin*, 306 S.C. 9, 409 S.E.2d 811 (Ct.App. 1991).

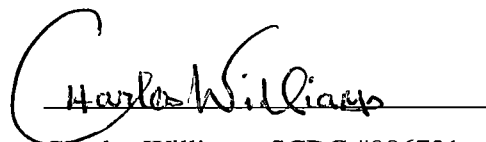
The final briefs may not contain any new arguments. *Sloan Construction Co. v. South Carolina Bd. of Health & Environmental Control*, 285 S.C. 523, 331 S.E.2d 345 (1985). However, an appellant’s arguments in response to new issues raised in the Respondent’s brief should be made in a reply brief. *First Union Nat’l Bank of SC v. Hitman, Inc.*, 306 S.C. 327, 411 S.E.2d 681 (Ct.App. 1991), aff’d, 308 S.C. 421, 418 S.E.2d 545 (1992).

Ordinarily, the filing of a final brief ends the briefing process. No other briefs follow a final brief. The only arguments made by an appellate party following the filing of final briefs is oral arguments, and only if such arguments are granted by the Court. To that end, if Respondent filed a

reply brief in response to the *Reply Brief of Appellant* filed on November 7, 2023, but did not serve process of the same as required by Rule 208 (a)(3), SCACR, then Appellant specifically asks this Court to grant Appellant an extension of ten (10) days after service of Respondent's reply brief to file a final reply brief. In the alternative, if the Respondent did not timely file a reply brief in response to the *Reply Brief of Appellant* filed on November 7, 2023, the *Final Brief of Appellant*, filed November 21, 2023, and the Final Brief of Respondent, filed November 14, 2023, constitute the completion of the briefing process, this motion matter is moot, and this appeal is then ripe for this Court's consideration.

Respectfully submitted,

January 2, 2024
Columbia, South Carolina

A handwritten signature in black ink that reads "Charles Williams". The signature is written in a cursive style and is positioned above a horizontal line.

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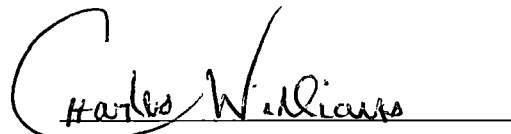
v.

South Carolina Department of Probation, Parole, and Pardon Services, Respondent.

PROOF OF SERVICE

I certify that I have served the *Final Reply Brief of Appellant* and *Motion to File Outside the Deadline* on the S.C. Department of Probation, Parole, and Pardon Services by depositing a copy of the same in the United States Mail, postage prepaid, on January 2, 2024, addressed to the attorney of record, Jessica E. Kinard, Legal Counsel, S.C. Department of Probation, Parole, and Pardon Services, 293 Greystone Blvd., P.O. Box 207, Columbia, S.C. 29250. I further certify that all parties required by rule to be served have been served.

January 2, 2024
Columbia, South Carolina



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