

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Chief Administrative Law Judge

Dock. Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP,  
07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP,  
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Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678,  
Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153,  
Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775,  
Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427,  
James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279897,  
Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996,  
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Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324,  
James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866,  
Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890,  
Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768,  
John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911,  
Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047,  
Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868,  
Frank Corley, #292975, James Jackson, #267718, Quintin Linen, #238553,  
Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008,  
Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641,  
Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937,  
Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893,  
Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777,  
Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990,  
James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731,  
Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083,  
Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537,  
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Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593,  
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Taurus Bowman, #252745, Kenneth Carter, #243538, Calvin Drummond, #236322,  
David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820,  
Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487,  
Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428,  
Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756,  
Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961,  
Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474,  
Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563,  
Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235,  
Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910,  
Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135,  
Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552,  
Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947,  
Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539,  
Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396,  
Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007,  
Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429,  
Jeffrey Spears, #281697, Timothy Smith, #296539, David Sims, #278067,  
Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911,  
George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786,  
Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972,  
Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080,

Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118.....Appellants,

v.

South Carolina Department of Corrections.....Respondent.

Appellate Case No. 2012-210588


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APPELLANTS' RESPONSE TO RESPONDENT'S MOTION FOR A 30 DAY PERIOD OF TIME BY WHICH IT MAY FILE A MOTION TO STRIKE ITEMS FROM THE DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL FILED BY APPELLANTS' COUNSEL IN EARLY FEBRUARY 2013

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COMES NOW, Appellants by counsel, who respectfully request that the Court deny Respondent's above described motion, as more fully explained in the attached Memorandum.

Respectfully submitted,

  
Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
(843) 853-9600  
Attorney for Appellants

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\* Additional caption corrections: Fredrick Brown, #289602; Christopher Busch, #300690; Michael Hood, #279897; John Moultrie, #276527; Matin Muntaqim, #142282; Tony Pitts, #280579; Alain Lareau, #128014; Wilbur Jordan, #272264; Sherman Austin, #300028; David Sims, #278067; Tony McNeil, #235846.

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v.

South Carolina Department of Corrections.....Respondent.

Appellate Case No. 2012-210588

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MEMORANDUM IN SUPPORT OF APPELLANTS' RESPONSE TO RESPONDENT'S MOTION FOR A 30 DAY PERIOD OF TIME BY WHICH IT MAY FILE A MOTION TO STRIKE ITEMS FROM THE DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL FILED BY APPELLANTS' COUNSEL IN EARLY FEBRUARY 2013

---

COMES NOW, Appellants by counsel, who submit the within Memorandum In Support of Appellants' Response To Respondent's above described motion, as follows:

I. Introduction

Appellant inmates do not substantially disagree with Respondent SCDC's Relevant Chronology, except it appears that SCDC's Initial Brief and Designation of Matter were due on March 11, 2013 (SCACR 208(a)(2), 262(b)).

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\* Additional caption corrections: Fredrick Brown, #289602; Christopher Busch, #300690; Michael Hood, #279897; John Moultrie, #276527; Martin Muntaqim, #142282; Tony Pitts, #280579; Alain Lareau, #128014; Wilbur Jordan, #272264; Sherman Austin, #300028; David Sims, #278067; Tony McNeil, #235846.

## II. SCDC's Current Motion

In its current motion, SCDC seeks a 30 day period in which to file a Motion to Strike items from inmates' February 8, 2013 Designation of Matter to be Included in the Record on Appeal. The basis for the contemplated motion is that a significant number of items in the February 8 designation were denied inclusion in the ALC record following inmates' May 2011 motion to supplement the record with those items (SCDC Motion, pp. 7-8).

The rules state the Record on Appeal "...shall include all matter designated to be included by any party.." (SCACR 210(c)). In addition, the appellant or counsel "...shall certify that the Record on Appeal contains all material proposed to be included by any of the parties.." (SCACR 210(g)). The rule in SCACR 210(c) is discussed and approved in J. Toal, Appellate Practice in South Carolina, Second Edition, p. 133.

Here, there is no dispute that the documents SCDC seeks to strike were listed in inmates' February 8 designation (SCDC Motion, 8). As a result, inmates contend that these documents fall within SCACR 210(c)'s rule that all designated documents are to be included in the record.

SCDC argues that inclusion of these items violates the provision in SCACR 210(c) that the record shall not "...include matter which was not presented to the lower court or tribunal" (SCDC Motion, 6, 8). In SCDC's March 13/14 motion, page 5, and substantially again in its current motion, pages 7-8, SCDC argues the following: (1) A significant number of

the items inmates designated in February 2013 should not be in the Court of Appeals record. (2) In May 2011, inmates filed a motion to supplement the ALC record which was denied by the ALC in an order dated August 5, 2011. (3) Notwithstanding the ALC order, inmates sought to designate in their February 2013 designation a number of items that the ALC "**..excluded from the record it considered**". (4) In so doing, inmates ran afoul of the rule in SCACR 210(c) that the record shall not include matter not presented to the lower court.

In inmates' March 23, 2013 Response, Memorandum and Affidavit to SCDC's Motions For The Court To Issue An Order, etc., undersigned stated that in inmates' May 23, 2011 motion in the ALC to supplement the record, undersigned attached the proposed documents for record inclusion, and also samples of very lengthy documents that were being proposed.

Inmates contend that the parties' filings in this Court establish beyond doubt that inmates proffered the designated items (which SCDC seeks to strike) for inclusion in the ALC record, and, following consideration by the ALC, they were rejected. As a result, inmates contend these items were thus "presented" to the ALC in compliance with SCACR 210(c), and are properly designated for the Court of Appeals record under that rule.

SCDC seems to equate "presented" in SCACR 210(c) with "admitted" into the ALC record. However, the fact that proffered evidence was not admitted in the court below does not bar such evidence from being a part of the

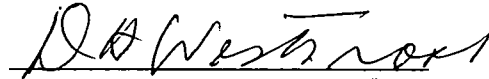
record on appeal. If it did, the ability of the appellate court to rule on the propriety of its exclusion would be severely curtailed (Am Jur 2d (2007), vol. 5, Appellate Review, §441, citing U.S. v. Burke 781 F 2d 1234, 1246 (7 Cir., 1985); C.J.S. (2007), vol. 4, Appeal & Error, §565)). See also, Rawlinson Road Homeowners v. Jackson 716 S.E. 2d 337, 344 (S.C. App., 2011) (Rule that failure to make a proffer of excluded evidence precludes review on appeal, has been relaxed when appellate court can determine from record what testimony was intended to show and prejudice).

Finally, SCDC notes that inmates' notices of appeal do not challenge the ALC's August 5, 2011 order (SCDC motion, 8). Inmates contend that order was an intermediate order, and as such is subject to review by this Court under the principles stated in S.C. Department of Trans. v. Faulkenberry 522 S.E. 2d 822 (S.C. App., 1999) (When there is a final judgment and a party timely files its notice of appeal from that judgment, the appellate court may review any intermediate order necessarily affecting the judgment not earlier appealed); and Pruitt v. Bowers 499 S.E. 2d 250, 253 (S.C. App., 1998) (An order not immediately appealable will nonetheless be considered if there is an appealable issue before the appellate court and a ruling on appeal will avoid unnecessary litigation). These cases were cited and discussed with approval in J. Toal, Appellate Practice in South Carolina, Second Edition, p. 88).

For the above reasons, Appellants respectfully request that SCDC's

motion be denied.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "D H Westbrook".

Douglas H. Westbrook, #6039

23 Broad St.

Charleston, SC 29401

(843) 853-9600

Attorney for Appellants

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Chief Administrative Law Judge

Dock. Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP,  
07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP,  
07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP,  
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\* Docket No. 07-ALJ-04-00826-AP is probably assigned to an unrelated case. See June 8, 2012 letter to the ALC with copy to the Court of Appeals. The number remains in this caption because it appears in the ALC Second Amended Order caption, line 6, and has not yet been deleted by the Court of Appeals.

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v.

South Carolina Department of Corrections.....Respondent.

Appellate Case No. 2012-210588

AFFIDAVIT

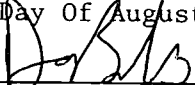
I, Douglas H. Westbrook, depose and state as follows:

1. I represent the Appellants in the above captioned case.

2. In Appellants' May 23, 2011 motion to the ALC to supplement the record, I attached the proposed documents for record inclusion, including samples of very lengthy documents being proposed.

  
Douglas H. Westbrook

Signed and Sealed  
Before Me This 18<sup>th</sup>  
Day Of August 2013.

  
Notary Public for S.C.  
My Commission Expires:  
2-3-2021

\* Additional caption corrections: Fredrick Brown, #289602; Christopher Busch, #300690; Michael Hood, #279897; John Moultrie, #276527; Matin Muntaqim, #142282; Tony Pitts, #280579; Alain Lareau, #128014; Wilbur Jordan, #272264; Sherman Austin, #300028; David Sims, #278067; Tony McNeil, #235846

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Chief Administrative Law Judge

Dock. Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP,  
07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP,  
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08-ALJ-04-01045-IJ, 09-ALJ-04-00304-IJ, 07-ALJ-04-00826-AP\*

Francis Ackerman, #266928, Malik Aljalil, #219551, Linso Allen, #269378,  
Michael Benninger, #264212, Fredrick Brown, #289602, Timothy Brown, #238461,  
Terrell Buchanon, #277262, Christopher Bush, #300690, Rudy Cassady, #238732,  
Sheldon Clark, #264772, Zawaski Cobb, #187136, Kamathene Cooper, #145333,  
Gladstone Cummings, #267450, Patrick Curtis, #175139, Quintin Daniels, #196284,  
Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678,  
Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153,  
Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775,  
Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427,  
James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279897,  
Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996,  
Herbert McFadden, #184297, Michael McFarland, #266870, Earl Mack, #216237,  
John Moultrie, #276527, Matin Muntaqim, #142282, Tony Pitts, #280579,  
Germaine Pringle, #250390, Gene Richardson, #93614, Dennis Richey, #233472,

\* Docket No. 07-ALJ-04-00826-AP is probably assigned to an unrelated case.  
See June 8, 2012 letter to the ALC with copy to the Court of Appeals. The  
number remains in this caption because it appears in the ALC Second Amended  
Order caption, line 6, and has not yet been deleted by the Court of Appeals.

Ignacio Rivera, #300424, Vondell Sanders, #241308, James Sattler, #235043,  
Joseph Schmitz, #173987, Arthur Scott, #251957, Jerome Scott, #153381,  
Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324,  
James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866,  
Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890,  
Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768,  
John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911,  
Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047,  
Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868,  
Frank Corley, #292975, James Jackson, #267718, Quintin Linen, #238553,  
Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008,  
Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641,  
Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937,  
Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893,  
Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777,  
Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990,  
James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731,  
Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083,  
Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537,  
Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981,  
Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593,  
Edward Bryant, #255998, Sherman Austin, #300028, Michael Baylor, #265682,  
Taurus Bowman, #252745, Kenneth Carter, #243538, Calvin Drummond, #236322,  
David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820,  
Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487,  
Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428,  
Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756,  
Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961,  
Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474,  
Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563,  
Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235,  
Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910,  
Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135,  
Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552,  
Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947,  
Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539,  
Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396,  
Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007,  
Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429,  
Jeffrey Spears, #281697, Timothy Smith, #296539, David Sims, #278067,  
Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911,  
George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786,  
Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972,  
Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080,

Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425,  
James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934,  
Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442,  
Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479,  
James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527,  
Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592,  
Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730,  
Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971,  
Rodney Elliott, #251337, Henry Rivers, #219118.....Appellants,

v.

South Carolina Department of Corrections.....Respondent.

Appellate Case No. 2012-210588

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PROOF OF SERVICE

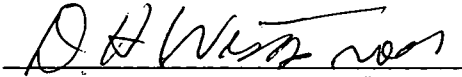
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I certify that I have served the Appellants' Response to Respondent's Motion for a 30 Day Period of Time by Which It May File a Motion to Strike Items From the Designation of Matter to be Included in the Record on Appeal Filed by Appellants' Counsel in Early February 2013; Memorandum in Support of Appellants' Response; and Affidavit, on the S.C. Department of Corrections by depositing copies of these documents in the U.S. Mail, first class postage prepaid on August 1, 2013 addressed to: Lake Summers, Esquire and Katherine Phillips, Esquire, Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Ste. 200, Columbia, SC 29201, its attorneys of record.

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\* Additional caption corrections: Fredrick Brown, #289602; Christopher Busch, #300690; Michael Hood, #279897; John Moultrie, #276527; Matin Muntaqim, #142282; Tony Pitts, #280579; Alain Lareau, #128014; Wilbur Jordan, #272264; Sherman Austin, #300028; David Sims, #278067; Tony McNeil, #235846.

Proof of Service Dated: August 1, 2013

A handwritten signature in cursive script, appearing to read "D. H. Westbrook", is written over a horizontal line.

Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
Attorney for Appellants