

RECEIVED

Aug 05 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY

The Honorable Perry H. Gravely

ROBERT EARL DILLARD,

APPELLANT,

v.

THE STATE,

RESPONDENT.

Appellate Case No.: 2022-000972

**MOTION TO STRIKE IMPROPER RECORD ON APPEAL AND
COMPEL FILING OF RECORD WITH MATTER AS DESIGNATED**

Appellant, Robert Earl Dillard, was convicted by a Pickens County jury in 1995 on two counts of murder. He is currently serving two consecutive life terms as imposed on March 2, 1995, by the Honorable Frank P. McGowan, Jr. Appellant has since that time filed numerous challenges such that his ability to file additional challenges has been limited. This appeal centers on whether Judge Gravely abused his discretion in finding Appellant failed to present a basis for waiving the required fee for Appellant's attempted 2022 motion. The initial briefs have been filed. However, Appellant has failed to prepare, serve and file a proper record on appeal.

On or about July 1, 2024, Appellant filed a document labeled “Rule 267 Record on Appeal.” He attempted additional argument and referenced various rules. Appellant included one of the documents designated by Respondent as “Exhibit (A)-1” to his filing. Respondent may not complete its final brief until Appellant complies with the requirements as set out in Rule 210, SCACR. In support of its motion, Respondent would respectfully submit:

First, because a record on appeal does not allow argument, the prior filing is improper. Second, the prior filing is insufficient as it does not contain the portions of the lower court record relevant to this appeal as designated by the parties. Rule 210(C), SCACR (“Record on Appeal shall include all matter designated to be included by any party...”). Third, the duty is squarely on Appellant to provide a proper record including the matter designated. Rule 210(a), SCACR (tasking the appellant with the duty to provide the record on appeal). *See also Schultze v. Schultze*, 403 S.C. 1, 8, 741 S.E.2d 593, 597 (Ct. App. 2013) (to allow proper appellate review “of a disputed issue, the appellant must provide the court with a sufficient record pertaining to that issue”). Fourth, an appellant’s failure to provide a proper record hinders the filing of final briefs. *See* Rule 211(b), SCACR (final briefs shall include citations to the Record on Appeal). It does so here.

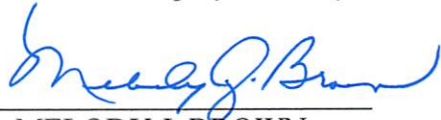
THEREFORE, based on the foregoing, Respondent moves to strike the improper “record on appeal” and compel the filing of a proper record with the relevant matter as designated. Respondent respectfully submits that if the deficiency is not cured within a reasonable time as set by this Court, that the Court should dismiss the appeal. Alternatively, Respondent requests permission to file a final brief without citation to the record on appeal. If the appellate record is found insufficient, the fault of that insufficiency should rest solely on Appellant. *Schultze, supra*.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

BY: 

MELODY J. BROWN
S.C. Bar No. 14244

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

August 5, 2024
Columbia, South Carolina

RECEIVED

Aug 05 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY

The Honorable Perry H. Gravely

ROBERT EARL DILLARD,

APPELLANT,

v.

THE STATE,

RESPONDENT.

Appellate Case No.: 2022-000972

CERTIFICATE OF SERVICE

I, Angela Brown, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the *Motion to Strike Improper Record on Appeal and Compel Filing of Record with Matter as Designated* and Certificate of Service has been forwarded to Appellant addressed as follows:

Robert Earl Dillard, # 220045
Perry Correctional Institution
430 Oaklawn Road Q4b/209
Pelzer, South Carolina 29669

I further certify that all parties required by Rule to be served have been served.

This 5th of August, 2024.

s/ Angela Brown

Angela Brown
Legal Assistant to Melody J. Brown
Senior Assistant Deputy Attorney General

RECEIVED

Aug 05 2024

SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

August 5, 2024

Robert Earl Dillard, #220045
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

Re: Robert Earl Dillard v. State of South Carolina
Appellate Case No: 2022-000972

Dear Mr. Dillard:

Please find enclosed a copy of the *Motion to Strike Improper Record on Appeal and Compel Filing of Record with Matter as Designated* and Certificate of Service, which were electronically filed by the Respondent today.

Sincerely,

s/*Melody J. Brown*

Melody J. Brown
Senior Assistant Deputy Attorney General

MJB/abb
Enclosure