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Aug 14 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Honorable Steven H. DeBerry IV, Circuit Court Judge
Appellate Case No. 2023-001182

THE STATE,

Respondent,

vs.

ANTONIO DENON BRAYBOY,

Appellant.

**MOTION TO STRIKE
AND
REQUIRE FILING OF
AMENDED INITIAL BRIEF OF APPELLANT**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In October of 2020, Appellant Antonio Denon Brayboy was arrested following an investigation into the murder of Rashad Jones and charged with murder and possession of a weapon during the commission of a violent crime. In December of 2020, the Florence County Grand Jury indicted Appellant for murder and possession of a weapon during the commission of a violent crime. On July 17-20, 2023, a jury trial was commenced in the Florence County Court of General Sessions with the Honorable Steven H. DeBerry IV, Circuit Court Judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted, and the trial judge sentenced

him to 50 years for murder and 5 years for possession of weapon during the commission of a violent crime. Appellant then timely initiated an appeal, which is currently pending before this Court.

II.

On appeal, Appellant filed an Initial Brief of Appellant and Designation of Matter. In Appellant's Issue I section, Appellant relies heavily on *State v. Gibbs*, Op. No. 2017-001846 (S.C. Ct. App. Aug. 19, 2020), an unpublished opinion with no precedential value. (App. Br. pp. 1-16). This is in violation of Rule 268(d)(2), SCACR. The Rule provides as follows: "Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." *Gibbs* is not directly involved as to this matter, thus no citation to *Gibbs* is warranted.

As previously noted, Appellant heavily relies on the factual circumstances and the decision in *Gibbs* in support of his argument regarding Issue I. Appellant repeatedly compares the facts of his case to the circumstances in *Gibbs*, and argues the unpublished opinion as a basis for relief. (See App. Br. pp. 5-7; pp. 10-12) (Appellant compares the warrant and affidavit in *Gibbs* to the warrant and affidavit in the case at hand). Further, *Gibbs* unambiguously notifies that its opinion has no precedential value and that it should not be cited or relied upon as precedent in any proceeding except as provided by Rule 268(d)(2), SCACR. See *State v. Gibbs*, Op. No. 2017-001846 (S.C. Ct. App. Aug. 19, 2020).

Because of such reliance, his appellate brief as presently filed does not currently comply with the unambiguous requirements of our state's appellate court rules. See *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) ("[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through

which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.”). Accordingly, this Court should require the filing of an amended Initial Brief of Appellant which relies only on appropriate controlling authorities in reference to Issue I.

Thus, based on the plain requirements of our state’s appellate court rules, appellate briefs *must* not cite unpublished opinions as having precedential value, much less place primary reliance on such an opinion. Allowing Appellant’s argument to stand, would thus require Respondent to address the *Gibbs*-centered argument in violation of the state appellate court rules.

III.

The South Carolina Appellate Court Rules govern the form and content of appellate briefs. *See* Rule 208, SCACR (establishing the required format for initial briefs); Rule 211, SCACR (establishing the required format for final briefs). Appellant additionally has failed to comply with the proper formatting as directed by Rule 267(c), SCACR, specifically as to the variation of font size and inconsistent margins throughout the brief. (App. Br. pp. 7-9, pp. 13-14; pp. 16-17; p. 24) (referencing pages containing smaller than 12-point font and margins inconsistent with one-inch). *See* Rule 267(c), SCACR (Type size shall be standard 12-point or larger and double spaced on white bond paper of not less than twenty-pound weight, 8 1/2 inches by 11 inches); *see also* Rule 267(d), SCACR (Typewritten papers or reproductions must have a blank margin of one inch on all sides). Thus, this court should require the filing of an amended initial brief which complies with the proper formatting, which is critically important for orderly appellate review, in a manner consistent with the plain requirements of the appellate court rules.

WHEREFORE, the State prays this Court will strike Appellant’s appellate brief as presently filed that contains reference to an unpublished opinion, which Appellant primarily

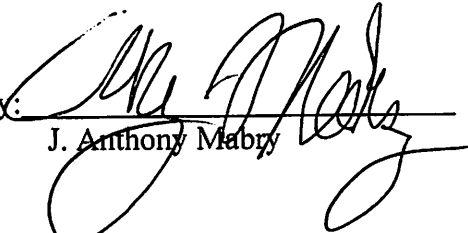
relies upon in support of his argument as to Issue I; require proper formatting as required by Rule 267 of the South Carolina Appellate Court Rules; hold the time period for service and filing of the Initial Brief of Respondent and Designation of Matter in abeyance pending a ruling on this motion; and for such other and further relief as the Court may deem just and proper.

Respondent has attempted to advise opposing counsel of the issues discussed above and provide the opportunity to amend the initial brief, however, Respondent has not received a response as of this date.

Respectfully submitted,

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By: 
J. Anthony Mabry

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PROOF OF SERVICE

I, Donna D'Alessio, certify I have served the within Motion to Strike and Require Filing of Amended Initial Brief of Appellant on Appellant, by sending an electronic copy via email to the address listed in AIS for the following individuals:

Ralph J. Wilson
Lauren K. Anderson
RALPH WILSON LAW, PC
Post Office Box 349
Myrtle Beach, South Carolina 29578

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

This 14th day of August 2024.

s/ Donna D'Alessio

Donna D'Alessio
Legal Assistant to J. Anthony Mabry,
Senior Assistant Attorney General