

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Aug 16 2024

APPEAL FROM MCCORMICK COUNTY
The Honorable R. Lawton McIntosh, Circuit Court Judge

SC Court of Appeals

Bryantavious K. Murray, Appellant,

v.

Lt. Geoffrey Rice, Lt. Ronald Cook, Lt. James Thompkins,
Sgt. Jeremy McCary, Major Frank Mursier, Joseph Stevens,
Leroy Cartledge, Vera Courson, and South Carolina Department of
Corrections, Defendants,

Of whom South Carolina Department of Corrections is
Respondent.

Appellate Case No. 2023-001375

RESPONDENTS' MOTION TO DISMISS

Pursuant to Rules 240 and 260(a), SCRAP, Respondent South Carolina Department of Corrections ("SCDC") moves to dismiss Appellant's Appeal for failing to follow the requirements and procedures governing appeals on multiple occasions, including failing to file a Record on Appeal that complies with Rule 210, SCRAP.

The grounds for this motion are that despite the fact that the Court of Appeals has issued several deficiency letters to Appellant during the course of this Appeal and issued an Order dated May 21, 2024 setting forth a timeline for filing the Record on Appeal and the content thereof, Appellant has yet to comply. "[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." Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). See also State v. Burton, 356 S.C. 259, 265, n.5, 589 S.E.2d 6, 9 n.5 (2003) ("A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law."); State v. Hollman, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) (stating that established rules of procedure are not to be discarded on appeal merely because a party appeared pro se), overruled on other grounds by Stevenson v. State, 335 S.C. 193, 516 S.E.2d 434 (1999).

Appellant's latest attempt to file a Record on Appeal dated August 10, 2024 and received by the Court on August 12, 2024, still does not contain the correct caption, despite numerous attempts by this Court to provide Appellant with the correct caption, including a letter dated August 5, 2024. Also, despite clear instructions in the Court's letter dated August 5, 2024, the index in this Record on Appeal fails to list the documents designated by Respondent in its Designation of Matters to be Include in the Record on Appeal, including the motion to dismiss dated June 16, 2023, the memorandum in support of the motion to dismiss, the affidavit of service dated May 25, 2023 and the dormant file notice dated February 1, 2019. Further, Appellant continues to include the Amended Request to Charge, which was stricken by this Court in its order dated May 21, 2024. But most egregious is the omission of the actual documents from this purported Record on Appeal. Neither Appellant nor Respondent can finalize and submit their Final Briefs without a Record on Appeal that contains the designated documents in a consecutive pagination sequence. See Rule 211, SCRAP (the parties are required to refer to the specific pages of the Record on Appeal in their Final Briefs).

In the order issued May 21, 2024, Respondent was instructed to provide Appellant with filed copies of the Order on Appeal, the Complaint and the Answer. The order further instructed

Appellant to prepare and file a Record on Appeal within thirty (30) days following Respondent's compliance using those documents. Respondent complied on May 28, 2024, by filing and serving these requested documents on both the Court and Appellant. Additionally, Respondent filed and served on both the Court and the Appellant copies of all the documents it had designated in its Designation of Matters to be Include in the Record on Appeal. Despite being provided these documents, Appellant has yet to submit a Record on Appeal that incorporates these documents with sequential pagination as required by the May 21, 2024 order and Rule 210 of the SCACR. Without a proper Record on Appeal, Respondent cannot prepare and file a final brief in this matter as it cannot incorporate the required citations to the Record on Appeal in its final brief.

The Court has instructed Appellant numerous times regarding the requirements for the Record on Appeal and has given Appellant multiple opportunities to produce a proper Record on Appeal. Because Appellant has failed to provide a proper Record on Appeal in compliance with the SCRAP and this Court's order and instructions, Respondent would request that this Court dismiss his Appeal.

Respectfully submitted,

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Greenwood, SC