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Sep 16 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KIERIN MARCELLUS DENNIS,

APPELLANT

Appellate Case No. 2019-001486

MOTION TO STRIKE

Pursuant to Rule 240, SCACR, Appellant Kierin Marcellus Dennis respectfully moves this Court to strike respondent's petition for rehearing and rehearing *en banc* as well as respondent's memorandum in support of petition for rehearing and rehearing *en banc*. In support of this motion, undersigned counsel would respectfully show the Court the following:

1. In a published opinion filed August 14, 2024, this Court held appellant was entitled to a new immunity hearing. State v. Dennis, Op. No. 6082 (S.C. Ct. App. Filed August 14, 2024) (Howard Adv. Sh. No. 31 at 31). On August 28, 2024, respondent requested a fifteen day extension of time to file a petition for rehearing. By order filed August 28, 2024, this Court granted respondent's request.

2. On September 13, 2024, respondent filed an eighteen-page petition for rehearing and rehearing *en banc* accompanied by a forty-one page memorandum in support of the petition for rehearing and rehearing *en banc*. The two separate documents total fifty-nine pages.

3. In footnote one of respondent's petition for rehearing, the state cited to Rule 240, SCACR, which the state maintained "provides all petitions, including petitions for rehearing, shall include a memorandum with citation of authorities in support of the motion." Pet. at 1. Respondent indicated the "memorandum is attached to this Petition." Pet. at 1.

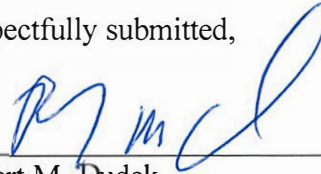
4. Appellant respectfully moves this Court to strike respondent's petition for rehearing and rehearing *en banc* because the state failed to comply with the fifteen page limit set forth in Rule 221(a), SCACR. Appellant also moves this Court to strike respondent's memorandum in support of petition for rehearing and rehearing an *en banc* for failure to comply with the fifteen page limit set forth in Rule 221(a), SCACR.

5. Additionally, appellant moves to strike respondent's memorandum in support of petition for rehearing and rehearing an *en banc* because Rule 240(c)(2), SCACR, which the state cited in support of its filing of a separate memorandum, does not contemplate the filing of a separate memorandum. Rather, the rule merely requires a motion or petition be supported by citations to authorities as opposed to a form motion with no substance. The memorandum filed by respondent is essentially an additional brief in support of the state's position that appellant's conviction should be affirmed. "The purpose of a petition for rehearing is not to present points which lawyers for the losing party have overlooked or misapprehended, nor is the purpose of a petition for rehearing to have the case tried in the appellate court a second time." Toal, Vafai, and Muckenfuss, Appellate Practice in South Carolina, at p. 309 (1999) *citing* Arnold v. Carolina Power & Light Co., 168 S.C.

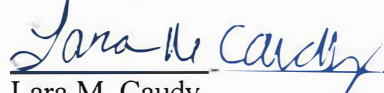
163, 167 S.E.2d 234 (1933). In short, the state is not permitted a “do over” in respect to its brief filed before this Court.

WHEREFORE, undersigned counsel respectfully requests that this Court strike respondent’s petition for rehearing and rehearing *en banc* as well as the memorandum in support of the petition for rehearing and rehearing *en banc* based on the foregoing reasons. Additionally, if a return to the state’s petition for rehearing is requested by this Court pursuant to Rule 221(a), SCACR, appellant respectfully requests the time limit for filing that return to the petition for rehearing and rehearing *en banc*, be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender



Lara M. Caudy
Senior Appellate Defender

ATTORNEYS FOR APPELLANT

This 16th day of September, 2024

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APPELLANT

APPELLATE CASE NO. 2019-001486

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Motion to Strike in the above referenced case has been served upon Anthony Mabry, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 16th day of September, 2024.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

From: [Warren, Kaylynn](#)
To: amabry@scag.gov
Cc: [Dudek, Robert](#); [Caudy, Lara](#); DDALESSIO@SCAG.GOV
Subject: 2019-001486 The State v. Kierin Marcellus Dennis
Date: Monday, September 16, 2024 8:39:00 AM
Attachments: [2019-001486 The State v. Kierin Marcellus Dennis Motion to Strike.pdf](#)

Good Morning,

Attached for service in the above-referenced case is the Motion to Strike which will be filed today, September 16, 2024, with the Court of Appeals via email filing.

Respectfully,

Kaylynn

Kaylynn Warren

Administrative Assistant

South Carolina Commission on Indigent Defense

Division of Appellate Defense

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