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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

KIERIN M. DENNIS,

Appellant.

Appellate Case No. 2019-001486

RESPONSE IN OPPOSITION TO MOTION TO STRIKE

Respondent hereby makes a Response to Appellant's Motion to Strike Respondent's Petition for Rehearing and Rehearing *En Banc* and Appellant's Motion to Strike Respondent's Memorandum Supporting the Petition for Rehearing and Rehearing *En Banc*.

On Friday, September 13, 2024, pursuant to Rule 221, 240, & 267, SCACR, Respondent previously filed its Petition for Rehearing and Rehearing *En Banc* along with its' Memorandum in Support of the Petition for Rehearing and Rehearing *En Banc* as required by Rule 240 (c)(2), SCACR in the above case. Petitioner subsequently filed a Motion to Strike both the Petition and the Supporting Memorandum of Law.

I.

Petitioner moves to strike Respondent's Petition for Rehearing and Rehearing *En Banc* because it is 18 pages in length. Respondent would note that the fact that the Petition exceeded 15 pages was inadvertent. Respondent was relying on the most current *South Carolina Rules of Court, Volume I-State, 2024* in filing the Petition for Rehearing and Rehearing *En Banc* which contains no page limit for the length of a Petition for Rehearing. Rule 221, SCACR, was amended April 30, 2024, by Order published in the Advance Sheets which now limits a Petition for Rehearing to 15 pages. This Order is not contained in the latest volume of the *South Carolina Rules of Court, Volume I-State, 2024*, on which Respondent was relying. Because Respondent's exceeding the page limit was inadvertent, Respondent is conditionally filing its Amended Petition for Rehearing and Rehearing *En Banc*, which is in compliance with the Amended Rule 221, SCACR, and is 15 pages in length with this Response to the Motion to Strike. Respondent moves and asks this Court to accept the Amended Petition for Rehearing and Rehearing *En Banc* for filing and substitute it for the original Petition. Thus, the motion to strike Petition may be denied as moot.

II.

As to Appellant's Motion to Strike Respondent's Memorandum in Support of the Petition for Rehearing and Rehearing *En Banc*, Respondent opposes the Motion to Strike. Rule 240 (a), SCACR, states that Rule 240, SCACR, is applicable to all motions and petitions filed in the appellate courts of this state **including petitions for rehearing**. *Id.* Rule 240 (c), SCACR, also states as follows:

Each motion or petition shall include the following:

- (1) A certificate or affidavit of service reflecting the date of service upon

all parties. The original certificate or affidavit of service must be filed with the original motion or petition.

- (2) A memorandum with citation of authorities in support of the motion.
- (3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.

Rule 240(c), (1), (2) & (3). SCACR. Respondent included its Memorandum with citation of authorities pursuant to this Rule when it filed its original Petition for Rehearing and Rehearing *En Banc*. Rule 221, SCACR, does not state a page limit for the memorandum pursuant to Rule 240(c)(2). Respondent relied on Rule 221's express incorporation of Rule 240, SCACR in filing the memorandum with the Petition. *See* Rule 221 (referencing Rule 240, SCACR).

Appellant is also wrong in his motion to strike that Respondent is trying to re-brief the case. Respondent's Memorandum is in support of the Petition for Rehearing pursuant to Rule 240, SCACR, which one can see by simply reading the Memorandum itself. In the Memorandum, Respondent only addresses those matters raised and addressed in the Petition for Rehearing. (See Memorandum).

Respondent is refiling the Memorandum in Support of the Petition for Rehearing and Rehearing *En Banc* with the Amended Petition for Rehearing and Rehearing *En Banc* to fully comply with Rule 221 and 240(c)(2). Appellant's motion to strike Respondent's Memorandum is without merit and must be denied.¹

¹ To the extent this Court disagrees with Respondent on this point, the Memorandum is supportive of the Petition for Rehearing and Rehearing *En Banc*, and the Memorandum's removal in no way diminishes or affects the validity of the Petition itself which stands on its' own and is completely factually and legally sufficient.

For the above stated reasons, having made a Response to Petitioner’s Motion to Strike, Respondent moves and asks this Court to accept its Amended Petition for Rehearing and Rehearing *En Banc* because initially exceeding the page limit by only 3 pages was inadvertent and Respondent has now brought the Petition into compliance with the new amended Rule 221, SCACR, effective April 30, 2024. And, Respondent moves this Court to deny Appellant’s motion to strike the supporting memorandum as it is in compliance with Rule 221, 240, (c)(2), and 267, SCACR

Respectfully Submitted,

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By: s/ J. Anthony Mabry
J. ANTHONY MABRY
ATTORNEYS FOR RESPONDENT

September 16, 2024.

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PROOF OF SERVICE

I, **Donna D'Alessio**, am an employee of the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Response in Opposition to Motion to Strike; Amended Petition for Rehearing and Rehearing En Banc and Memorandum in support has been forwarded to Appellant's counsel, Robert M. Dudek, Esq. and Lara Caudy, Esq. via email today, September 16, 2024 to RDudek@sccid.sc.gov and to lcaudy@sccid.sc.gov as well to their assistants kwarren@sccid.sc.gov and to smcinnis@sccid.sc.gov.

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

This 16th day of September, 2024.

s/ Donna D'Alessio

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