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Aug 05 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Maite Murphy, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT

V.

ANTHONY NICHOLAS ARGOE,

APPELLANT

APPELLATE CASE NO. 2023-000223

**Return in Opposition to Respondent's Motion to Reconsider,
filed as, "Motion to Supplement the Record
Based on Change of Circumstances"**

Counsel for Appellant, Anthony Nicholas Argoe, opposes the state's motion to supplement the record. Counsel respectfully submits the following:

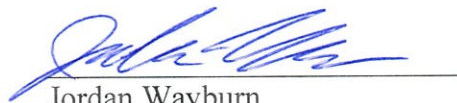
1. This Court has already determined the emails the state refers to were not "presented" to the trial court. Relying on Rule 210(c), SCACR, itself, *State v. Washington*, 431 S.C. 394, 4050 n.4, 848 S.E.2d 779, 785 n.4 (2020), and *Smalls v. State*, 422 S.C. 174, 182 n.3, 810 S.E.2d 836, 840 n.3 (2018), this Court in the September 30, 2024 order correctly decided the emails were communications never put on the record and therefore were not "presented" to the trial court as that word is used in Rule 210.

2. By letter dated November 15, 2024, the Court decided the matter *again* after the state improperly filed a motion to reconsider that decision. It wrote: "Pursuant to Rule 221(c), SCACR, the appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." The state's current motion to the same effect is little more than a motion to reconsider under a different name.
3. The purported "change in circumstances" based on Appellant's reply brief is disingenuous. If the claimed factual inaccuracies in the reply brief were so egregious, the state would have filed the current motion soon after Appellant filed that brief *in December of last year*. It did not. Instead, **the state waited eight months** to file this motion, during which time only one thing has changed: Appellant's prior counsel passed away. It seems that upon receiving notice of new counsel, the state has attempted to create an opportunity to re-litigate, again, that which has already been correctly decided.
4. That, in the state's view, the reply brief "asserted facts that are incorrect" has no bearing on whether these emails were properly before the trial court. The Rule permits *only* material presented to the lower court. Further, as the affidavit of trial counsel demonstrates, there is a legitimate dispute about what was intended by those emails. No more clarity of the record would come by their inclusion in the record.
5. These emails are of no significant importance to the issue before the Court. The state, *in its current motion* (p. 5), writes: "Prior to the trial beginning before the jury, appellant again moved to have Chisolm relieved." Any pre-trial conduct regarding a *motion to reconsider*—as opposed to an initial motion to proceed pro se—is of no moment.

6. Finally, in its current motion the state wrote, "Respondent attempted to consult with opposing counsel on this motion and could not reach opposing counsel." (Mot. p. 9). Counsel for Appellant received no contact about this case at all prior to receiving the motion. Given that the state served this motion via email, it could have contacted counsel in this manner and apparently chose not to do so.

Given the foregoing, counsel respectfully requests that this Court deny the state's second motion to supplement the record.

Respectfully submitted,



Jordan Wayburn
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

This 5th day of August, 2025.

ATTORNEY FOR APPELLANT

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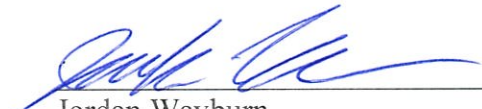
ANTHONY NICHOLAS ARGOE,

APPELLANT

APPELLATE CASE NO. 2023-000223

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Return in Opposition to Motion to Supplement the Record in the above-referenced case has been served upon J. Anthony Mabry, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Anthony Nicholas Argoe, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 5th day of August, 2025.



Jordan Wayburn
Appellate Defender

ATTORNEY FOR APPELLANT

From: [Stock, Chris](#)
To: ["amabry@scag.gov"](mailto:amabry@scag.gov); [Donna D'Alessio](#)
Cc: [Wayburn, Jordan](#)
Subject: 2023-000223 - The State v. Anthony Nicholas Argoe - Return in Opposition to Motion to Supplement the Record
Date: Tuesday, August 5, 2025 2:54:00 PM
Attachments: [2023-000223 - The State v. Anthony Nicholas Argoe - Return in Opposition to Motion to Supplement the Record.pdf](#)
[2023-000223 - The State v. Anthony Nicholas Argoe - Return in Opposition to Motion to Supplement the Record - AG Cover Letter.pdf](#)

Mr. Mabry,

Please find attached for service the Return in Opposition to Motion to Supplement the Record for Anthony Nicholas Argoe's appeal which will be filed with the Court of Appeals today.

If you have any questions, please let me know.

Thank you,

Chris Stock
Administrative Coordinator
Commission on Indigent Defense
Appellate Division
(803) 734-1330