

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

71146

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

RECEIVED

D. Craig Brown, Circuit Court Judge

JAN 31 2014

SC Court of Appeals

CASE NO. 2011-CP-21-2095

CARMICHAEL T. FLOWERSAppellant

vs.

WILLIAM K. BOONE, CAPTAIN J. BRONSON,
LEAH HARRIS, JOSEPH D. THOMPSON
AND ANN AND/OR JOHN DOERespondents

MOTION TO DISMISS

Respondents, by and through the undersigned attorney, hereby move that the instant Appeal be dismissed pursuant to SCACR, Rule 260.

On or about September 11, 2013, Appellant informed Respondents that he “decided not to order the transcript, pursuant to Rule 207 (SCACR)” and asked Respondents to agree to same (Exhibit A). Rather than awaiting for a response from Respondents, the Appellant instead chose to file his Initial Brief on or about the same date, without the transcript.

On or about September 16, 2013, Respondents informed Appellant that they were unable to consent because “without the requested transcript ... the Record on Appeal [would] not be complete” (Exhibit B). Respondent sent a copy of same to the Clerk of Court. In

response, Appellant requested the transcript (Exhibit C).

Without an Order from the Court and since the Clerk of Court improperly accepted, filed and/or did not return Appellant's Initial Brief, Respondents were required to file their Initial Brief within thirty (30) days after the Appellant's Initial Brief pursuant to Rule 208 SCACR, which they did on or about October 11, 2013, albeit without the transcript having been filed. Respondents asserted in their Brief and continue to assert that the record in this case is incomplete, judicial review is impossible, and the instant Appeal must be dismissed, due to Appellant's continued failure to comply with Rule 207 SCACR.

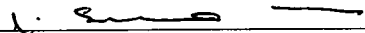
On or about October 22, 2013, the Clerk of Court contacted Respondents' office via telephone and asked if Respondents wanted to proceed without the transcript (Hargrove Aff. ¶ 3). Respondents' office again informed the Clerk of Court that it was Respondents' position that the transcript was necessary and the record was incomplete (Hargrove Aff. ¶ 4). Respondents' referred to their Brief and stated that the filing of the Brief in no way implied agreement that the record was complete and the appeal was ready to be heard (Hargrove Aff. ¶ 6). To the contrary, Respondents' Initial Brief even stated that the record was incomplete. The Clerk of Court's office then stated that they would return all briefs with letters stating that the briefs were premature because the transcript had not been received (Hargrove Aff. ¶ 7).

However, on October 28, 2013, the Clerk of Court forwarded a letter that stated that even though the transcript had not been received, both parties had filed their brief and "the Court can only presume that the transcript previously ordered by the appellant is no longer needed" (Exhibit D). Respondents immediately replied to their correspondence and stated

that the transcript remains “necessary for judicial review” and requested that they reconsider (Exhibit E). In response thereto, on or about November 20, 2013, the Clerk of Court instructed Respondent to direct all requests to the Court “in the form of a motion” (Exhibit F). The instant motion follows.

Pursuant to Rule 260 (a), SCACR, “whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal.” To date, Respondents have not received a copy of the transcript as required by Rule 207 SCACR. The record remains incomplete, judicial review is impossible, and the instant Appeal must be dismissed. Wherefore, Respondents move to dismiss the instant Appeal in its entirety.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: 
J. Scott Kozacki
S.C. Bar No. 64137
PO Box 1909
Florence, SC 29503-1909
(843) 662-3258 Telephone
Attorney for Respondents

January 29, 2014
Florence, South Carolina

SEPT. 11, 13

Mr. Carmichael T. Flowers
Agency # 335945, EVANS CI
110 HWY # 9 WEST, FB-141A
Bennettsville, SC. 29512

J. SCOTT KOZACKI, FSO.
P.O. Box 1909
Florence, S.C. 29503

RE: TRANSCRIPT / CASE NO. # 2013-000823

Mr. Kozacki,

I've decided NOT TO ORDER THE TRANSCRIPT, PURSUANT
TO RULE 207, (SCACR) I'M TO ASK IF YOU WOULD AGREE
TO THE SAME?

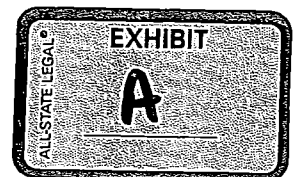
Carmichael Flowers

cc Appellate Court
cc S.C. Court Administration

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JAN 31 2014

SC Court of Appeals



Mark W. Buyck, Jr.
Hugh L. Willcox, Jr.
Wm. Reynolds Williams♦
Mark W. Buyck, III
E. Lloyd Willcox, II
John H. Muench † GA & KY
Tracy L. Wright
Jennifer Mullins † NC
J. Scott Kozacki
Walker H. Willcox

† Additionally Licensed
♦ Certified Mediator

LAW OFFICES
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Florence, South Carolina 29503-1909

ESTABLISHED 1895

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Fax (843) 662-1342

2050 Corporate Centre Dr
Suite 230
Myrtle Beach, SC 29577
Telephone (843) 650-6777
Fax (843) 650-6767

Reply To: Florence

September 16, 2013

Carmichael Flowers, Inmate No. 335945
Evans Correctional Institution
610 Highway # 9, West
Bennettsville, SC 29512

Re: Flowers v. William K. Boone, et al.
Appellate Case No: 2013-000823
Our File No: 10197.15448

COPY

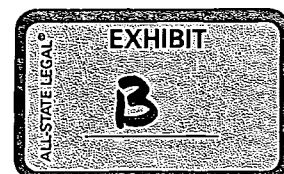
Dear Mr. Flowers:

Please be advised that I am in receipt of your most recent correspondence dated September 11, 2013. In response thereto, I am unable to agree to your request that you not be required to obtain and file the transcript of the underlying proceedings in the above-referenced case. Unfortunately, without the requested transcript in this case, the Record on Appeal will not be complete. As required, I request that you timely and properly provide the appellate court with the required transcript.

With kindest regards,

J. Scott Kozacki

cc: South Carolina Court of Appeals
c/o Clerk Jenny Abbott Kitchings
Post Office Box 11629
Columbia, SC 29211



SEPT. 19. 13

Mr. Carmichael T. FLOWERS
Agency # 335945 / EVANS C.I.
610 HWY # 9 WEST, FI-B-141A
Bennettsville, SC 29512

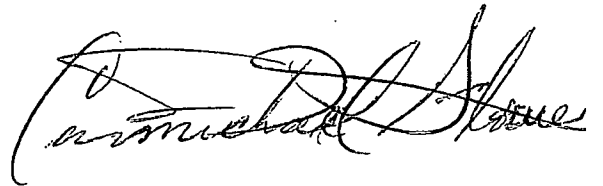
Ms. Crystal M. HOLMES
P.O. Box 611
Columbia, S.C. 29202

RE: CA NO# 2011-CP-21-2095

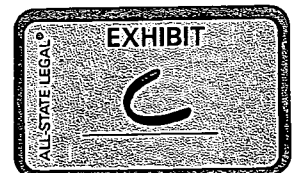
Ms. Holmes,

A HEARING WAS HELD in Florence County, IN THE COURT
OF Common Pleas ON MAR. 21. 13 IN THE ABOVE MATTER, please
provide me with the "minimal cost" for this transcript, thanks

With Kind Regards. . .



cc. J. SCOTT KOZACKI, ESD.
cc S.C. Court of Administration
cc Appellate Court





The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
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October 28, 2013

Carmichael Flowers, 335945
Evans Correctional Institution
610 Highway #9, West
Bennettsville SC 29512

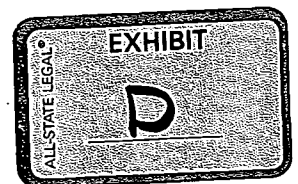
Mr. Jerome Scott Kozacki
PO Box 1909
Florence SC 29503

Re: Carmichael Flowers v. William K. Boone
Appellate Case No. 2013-000823

Dear Counsel and Mr. Flowers:

This will confirm receipt of the appellant's initial brief and designation of matter and the respondents' initial brief and designation of matter in the above pending appeal. In as much as both parties have served and filed their respective briefs and designations of matter, the Court can only presume that the transcript previously ordered by the appellant is no longer needed.

Therefore, appellant's initial brief and designation of matter are accepted as filed. The respondents' initial brief and designation of matter have been received. Counsel for the respondents is requested to serve and file an amended designation of matter removing the transcript of record within ten days of the date of this letter. If the appellant wishes to serve and file an appellant's initial reply brief, then it may be served and filed no more than ten days from the date of service of the



respondents' amended designation of matter. Otherwise, the record on appeal must be served and filed no more than thirty days from the date of service of the respondents' amended designation of matter.

All parties are reminded to use the correct caption on all future filings in this matter. The correct caption for this appeal is:

Carmichael T. Flowers, Appellant,

v.

William K. Boone, Captain J. Bronson, Leah Harris, Joseph D. Thompson and Ann and/or John Doe, Respondents.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Mark W. Buyck, Jr.
Hugh L. Willcox, Jr.
Wm. Reynolds Williams♦
Mark W. Buyck, III
E. Lloyd Willcox, II
John H. Muench † GA & KY
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October 29, 2013

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Fax (843) 650-6767

Reply To: Florence

V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: IRF Claim No. 76999; C/A No. 2011-CP-21-00000
Carmichael T. Flowers v. William K. Boone, et al
Our File 10197.15448

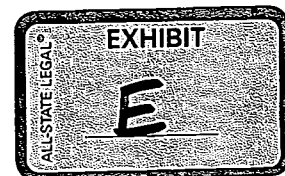
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Dear Ms. Allen:

Please be advised that I am today in receipt of your October 28, 2013 correspondence concerning the above-referenced matter. In response thereto, and as previously discussed with your office via telephone, any assumption that the transcript previously ordered by the Appellant is "no longer necessary" is incorrect.

Notably, as detailed in the Respondents' Initial Brief, the *pro se* Appellant has not yet filed a transcript of the underlying judicial proceeding, as required pursuant to Rule 207 SCACR. Rather, the Appellant instead chose to file his Initial Brief, without also filing the transcript. In response, Respondents were required to file their Initial Brief within thirty (30) days after the Appellant's Initial Brief pursuant to Rule 208 SCACR, which they did, albeit without the transcript having been filed. In fact, Respondents continue to assert that the record in this case is incomplete, judicial review is impossible, and the instant Appeal must be dismissed, due to Appellant's continued failure to comply with Rule 207 SCACR.

Additionally, you have requested that I now serve and file an Amended Designation of Matter removing the transcript of record within ten (10) days. However, as detailed above, the transcript remains "necessary for judicial review." Consequently, I respectfully request that you reconsider your request and that



the instant appeal be dismissed due to Appellant's continued failure to comply with the rules of appellate procedure.

Should you have any additional questions and/or comments, please do not hesitate to contact me directly.

With kindest regards,

J. Scott Kozacki
Email: skozacki@WillcoxLaw.com

jsk

Cc: Carmichael T. Flowers # 335945
Evans Correctional Institution
610 Highway # 9, West
Bennettsville, SC 29512



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 20, 2013

Mr. Jerome Scott Kozacki
PO Box 1909
Florence SC 29503

Re: Carmichael Flowers v. William K. Boone
Appellate Case No. 2013-000823

Dear Counsel:

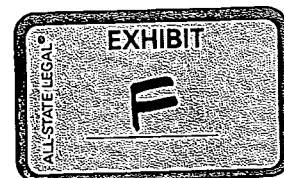
We have received your letter of October 29, 2013 regarding the ordering of the transcript in this matter. Please be reminded that any request made directly to this Court must be in the form of a motion and must be in compliance with Rule 240 of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Carmichael Flowers, 335945



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
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D. Craig Brown, Circuit Court Judge

CASE NO. 2011-CP-21-2095

CARMICHAEL T. FLOWERSAppellant

vs.

WILLIAM K. BOONE, CAPTAIN J. BRONSON,
LEAH HARRIS, JOSEPH D. THOMPSON
AND ANN AND/OR JOHN DOERespondents

AFFIDAVIT OF MELISA HARGROVE

Personally appeared before me the undersigned who being sworn deposes and states as follows:

1. I am over the age of 18 and familiar with the information contained in this affidavit.
2. During all relevant times, I was employed by the law firm of Willcox, Buyck & Williams, PA as a litigation paralegal for J. Scott Kozacki, Esq.
3. On or about October 22, 2013, I spoke with Elizabeth (last name unknown) of the Clerk of Court's Office for the SC Court of Appeals via telephone. The clerk asked if Mr. Kozacki wanted to proceed without the transcript.
4. I informed the clerk that Mr. Kozacki did not want to go forward without a complete record and that it was his position that the record was incomplete.
5. I further informed the clerk that without an Order from the Court, Mr. Kozacki believed he was required to file a response brief.

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SC Court of Appeals

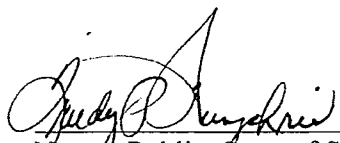
6. I also informed the clerk that Mr. Kozacki had even included language within his brief stating that Appellant's brief was improper because the transcript had not been received.
7. The clerk informed me that they would return all briefs with letters stating the briefs were premature because the transcript had not been received.
8. I understand that making any false statements within this affidavit may subject me to criminal liability.
9. I further attest that I am making these statements freely and voluntarily, without coercion or duress. I further state that I am not suffering from any mental conditions or taking any substances which would impair my ability to understand all matters set forth herein.

FURTHER AFFIANT SAYETH NOT.



Melisa Hargrove

Sworn to before me this 30th
day of JANUARY, 2014



Notary Public, State of South Carolina
My commission expires: 10/17/17

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

CASE NO. 2011-CP-21-2095

CARMICHAEL T. FLOWERSAppellant

vs.


WILLIAM K. BOONE, CAPTAIN J. BRONSON,
LEAH HARRIS, JOSEPH D. THOMPSON
AND ANN AND/OR JOHN DOERespondents

CERTIFICATE OF SERVICE

PERSONALLY appeared before me, Melisa Hargrove, who being duly sworn, deposes and says that she has served the **Respondents' Motion to Dismiss** on the Appellant, by depositing a copy of same in the United States Mail, postage prepaid, to:

Carmichael T. Flowers #335945
Evans Correctional Institution
610 Highway #9 West, FI-B-123A
Bennettsville, SC 29512

DATE OF MAILING: January 30, 2014

By: 
Melisa Hargrove, Paralegal to J. Scott Kozacki
WILLCOX; BUYCK & WILLIAMS, P.A.
PO Box 1909
Florence, SC 29503-1909
(843) 662-3258 Telephone

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Fax (843) 650-6767

Reply To: Florence

January 30, 2014

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: IRF Claim No. 76999; C/A No. 2011-CP-21-00000
Carmichael T. Flowers v. William K. Boone, et al
Our File 10197.15448

Dear Sir or Madame:

Kindly find enclosed the original and seven copies of the Respondents' Motion to Dismiss and Certificate of Service in connection with the above referenced matter along with a check for \$25.00 for the motion fee. Please return one copy to my attention in the self-addressed pre-stamped envelope.

Should you have any questions or concerns, please feel free to contact me at (843) 664-3350 or Scott at (843) 664-3364. I appreciate your assistance.

With kindest regards,



Melisa Hargrove
Paralegal to J. Scott Kozacki
Email: mhargrove@WillcoxLaw.com

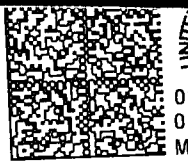
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Enclosures
Cc: Carmichael T. Flowers, Pro Se Appellant

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SC Court of Appeals

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JAN 31 2014

SC Court of Appeals

Willcox, Buyck &
Williams, P.A. Since 1895

Post Office Box 1909
Florence, SC 29503

To: The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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Columbia, SC 29211

10197.15448