

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Williamsburg County
John C. Hayes, III, Circuit Court Judge
Appellate Case No. 2013-002391

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OCT 24 2014

SC Court of Appeals

THE STATE,

Respondent,

vs.

JUSTIN MCBRIDE,

Appellant.

**MOTION TO STRIKE INITIAL BRIEF
OF APPELLANT FOR ARGUING FACTS
OUTSIDE THE RECORD AND MOTION
TO HOLD DUE DATES IN ABEYANCE**

Respondent now moves for this Court to strike the Initial Brief of Appellant. Specifically, on page 8 of Appellant's initial brief, Appellant references a conversation between trial counsel and appellate counsel. Appellant also references his appellate counsel's review of docket records. Appellant does so to compensate for the fact that the matter he alleges in his brief was never presented by his trial counsel to the trial court.

I.

The facts asserted as referenced above are without any support in the record and clearly, Appellant is seeking to go outside the record to support his arguments. Under Rule 210(h), SCACR, facts not appearing in the record on appeal are not proper for this Court's consideration.

Under Rule 210(c), SCACR: “The record shall not, however, include matter **which was not presented to the lower court** or tribunal.” (Emphasis added).

II.

Respondent also moves to hold all time-lines in abeyance until this Court rules on the State’s motion.

III.

WHEREFORE, Respondent prays that this Court strike Appellant’s Initial Brief and further requests that all filing deadlines be held in abeyance pending resolution of this motion; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 24, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Williamsburg County
Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

vs.

JUSTIN MCBRIDE

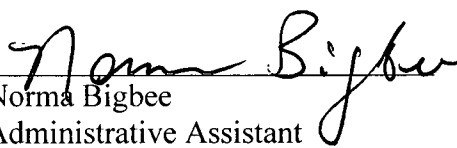
APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the Respondent's Motion To Strike Initial Brief Of Appellant For Arguing Facts Outside The Record And Motion To Hold Due Dates In Abeyance on Appellant's Attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to Adam Owensby, Esquire, P.O. Box 21043, Charleston, SC 29413, Andrew B. Greenlee, Esquire, P.O. Box 2047, Winter Park, Florida 32790-2047 and Wendy J. Keefer, Esquire, 1643B Savannah Hwy., Suite 226, Charleston, SC 29407.

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

This 24th day of October, 2014.


Norma Bigbee
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

October 24, 2014

VIA HAND DELIVERY

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

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OCT 24 2014

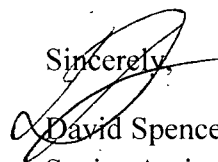
SC Court of Appeals

RE: State of South Carolina v. Justin McBride
Appellate Case No: 2013-002391

Dear Ms. Kitchings:

Enclosed please find the Original of the Respondent's Motion To Strike Initial Brief Of Appellant For Arguing Facts Outside The Record And Motion To Hold Due Dates In Abeyance in the above case.

Sincerely,


David Spencer
Senior Assistant Attorney General
Bar No: 68571

DS/nb

Enclosures

cc: Wendy J. Keefer, Esquire
Adam Owensby, Esquire
Andrew B. Greenlee, Esquire
Trisha Allen