

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-32-3208

Raymond Carter, Appellant,

v.

Donnie Myers, Solicitor, Lexington County; Tracey Carroll,
Assistant Solicitor, Lexington County; Brian Buck,
Irmo Police Department; Scott Franklin, Irmo Police Department;
Timothy E. Stephenson, South Carolina Law Enforcement (SLED);
George White, Ex father-in-law; Tammy Carter,
(AKA Tammy Scrogam), Ex wife; Barbara Keadle
(AKA Diane Hinkle) Investigator LDSS; Francis Ross, LDSS;
Paulette Jolly, Guardian ad Litem, in their official and individual capacities, Defendants,

Of whom, Donnie Myers, Solicitor, Lexington County;
Brian Buck, Irmo Police Department; Scott Franklin, Irmo Police
Department, are, Respondents.

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**MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE FINAL BRIEF OF APPELLANT
AND TO DISMISS APPELLANT'S APPEAL**

The Respondent Donald V. Myers has moved for an Order striking the Final Brief of Appellant for failure to comply with Rule 211(b), SCACR. The Respondent Myers also seeks the dismissal of this appeal based upon the Appellant's repeated violations of the South Carolina Appellate Court Rules throughout the history of this appeal.

On March 6, 2015, counsel for the Respondent Myers received what is purported to be the Final Brief of Appellant. That Final Brief has not as of March 22, 2015, been reflected in the South Carolina Appellate Case Management System as having been accepted and filed by the Court. Nonetheless, counsel for the Respondent Myers did receive a letter dated March 16, 2015, from the Clerk advising that the final briefs of all parties "will be presented to the Court for review." Based upon that letter, it is assumed that the Final Brief of Appellant has now been accepted by the Court although, as indicated, the filing of that brief is not as yet reflected in the Appellate Case Management System.

The Respondent Myers objects to the filing of the Final Brief of Appellant which clearly is not in compliance with Rule 211(b), SCACR. Moreover, the Final Brief of Appellant does not include a Certificate of Compliance as required by Rule 211(a), SCACR.

Rule 211(b) provides in clear and certain language that the "final brief(s) shall be identical to the brief(s) previously served under Rule 208" with the exceptions of citations to the Record on Appeal and the correction of "obvious typographical errors and misspellings which were contained in the initial brief." Rule 211(b), SCACR. Rule 211(b) further makes clear that "[n]o other changes may be made."

Even a cursory review of the Final Brief of Appellant, as served, shows that the Final Brief blatantly and repeatedly violates Rule 211(b), SCACR. The Final Brief cannot be characterized in any respect as "identical" to the Initial Brief filed on July 12, 2013. The changes go far beyond the correction of "obvious typographical errors and misspellings" as is permitted. By way of explanation, the Initial Brief of Appellant cited a single case and totaled nine pages. The Final Brief, in contrast, includes a "Table of Authorities" with seven cases and the brief itself totals 16 pages in length. As indicated, the Appellant did not merely make corrections of typographical errors, he re-wrote and provided substantial revisions and additions to *every*

section of his brief. The Statement of Case includes substantial additions. Particularly blatant is the Arguments section of the Final Brief, which now totals ten pages in length (as compared to five pages in the Initial Brief), includes substantial revisions and additions of the text, adds numerous citations to case law and even a federal statute, and cites to a purported guilty plea transcript that is not included in the record below or the Amended Record on Appeal.

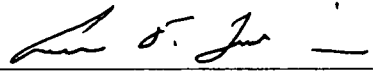
Suffice it to say, Rule 211(b) has been entirely ignored. The Appellant has, in essence, filed a new brief and not the same brief to which the Respondent Myers responded.

The Respondent Myers submits that the Appellant should not be given an additional opportunity to file a corrected brief which complies with Rule 211(b). The Appellant has continually and repeatedly violated the Appellate Court Rules throughout this appeal, which has necessitated the filing of numerous motions to seek the filing of a Record on Appeal and then corrections to the Record on Appeal. Now, the Appellant has again disregarded the Appellate Court Rules and simply filed a new brief as his "Final Brief" which blatantly ignores and violates the clear, concise requirements of Rule 211(b). The Respondent Myers has previously sought the dismissal of this appeal for the Appellant's clear failure to comply with the Appellate Court Rules. While the previous motion was denied, and the Appellant was given an additional opportunity to take corrective action, it is respectfully submitted that the Appellant deserves no further leniency from this Court. There can be no excuse or justification for the current violation of Rule 211(b). This appeal has already been pending for *more than two years*, and to this point, a proper Final Brief of Appellant has not yet been filed. This inordinate delay is the result of the repeated failures of the Appellant to comply with the Appellate Court Rules -- rules which frankly are not complicated.

In sum, the Respondent Myers requests that the Appellant's appeal be dismissed. In the alternative, the Respondent Myers requests that the Final Brief of Appellant be stricken for failing to even remotely comply with Rule 211(b).

Respectfully submitted,

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March 23, 2015