

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APR 02 2015

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Honorable D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2014-001853

THE STATE,

Respondent,

vs.

DONNA BOYD,

Appellant

**RETURN TO APPELLANT'S MOTION TO PERMIT REPRESENTATION AND
REQUEST TO SUBMIT AN AMENDED INITIAL BRIEF OF APPELLANT**

Respondent, by and through undersigned counsel, making return to Appellant's motion to permit representation on appeal and request to file an amended initial brief of appellant and designation of matter, would respectfully show unto this Court:

I.

Appellant was charged with filing a false police report in Greenville County. She proceeded to trial *pro se* before the Magistrate Judge Dean E. Ford, and a jury on June 25, 2014. She was convicted as charged and sentenced by Judge Ford. Appellant filed notice of appeal to the Greenville County Court of Common Pleas on July 7, 2014. A hearing regarding Appellant's appeal was convened on August 12, 2014. On August 14, 2014, the Honorable D. Garrison Hill issued an order dismissing Appellant's appeal for failure to prosecute.

II.

Appellant filed and served notice of appeal to this Court from Judge Hill's order of August 14, 2014. The Initial Brief of Appellant and Designation of Matter were filed and served by Appellant on November 26, 2014. Respondent filed and served its Initial Brief of Respondent and Designation of Matter on January 28, 2015. Respondent also moved this Court to strike portions of Appellant's designation of matter on the grounds the items were not presented to the lower court or were so vaguely described that Respondent could not determine whether they were presented to the lower court. By motion dated February 13, 2015, Appellant moved this Court for a ten (10) day extension of time to file and serve a reply brief. By order filed March 9, 2015, this Court granted Respondent's motion to strike the recording of the June 25, 2014 hearing, Complaint against Judge Dean Ford, Complaint against Mitchell Byrd, voicemails, and Rule 5 Discovery. This Court permitted Appellant to include "Attorney Correspondence" if she identified the correspondence with specificity. Appellant was directed to serve and file an amended designation within thirty (30) days of the order.

III.

In the motion now pending before this Court, Appellant first moves this Court to permit J. Falkner Wilkes, Esquire to represent her. Respondent takes no position regarding this portion of the motion and leaves the matter of Appellant's representation to this Court's discretion.

IV.

Appellant also moves this Court to allow her to file a completely new initial brief. Respondent **strenuously opposes** the request. Appellant offers no justification for requesting

the opportunity to second guess the positions taken and arguments presented in the initial brief she filed and served in November 2014 except that unidentified “important rights” are involved and she could benefit from counsel. She also claims that Respondent would not be prejudiced.

Respondent opposes Appellant’s request to re-write the brief she submitted on November 26, 2014. Rules 208(a)(1) & 209 (a), SCACR, provide in pertinent part that Appellant shall serve and file the initial brief of appellant and the appellant’s designation of matter within thirty (30) days of receiving the transcript. Appellant did so on November 26, 2014. The appellate court rules simply do not permit a party to reconsider his or her arguments and to resubmit an initial brief after having second thoughts about the issues presented and arguments raised. The appellate court rules provide for the submission of a final brief of appellant which must be identical to the initial brief except revisions to reflect references to the location of matter in the record on appeal and correction of typographical errors. See Rule 211, SCACR. Appellant continues to engage in the same type of conduct observed in the circuit court appeal as illustrated by the facts leading to the dismissal of that appeal. The rules of appellate procedure are not mere technicalities but are intended to provide an orderly mechanism for guiding appeals through the appellate process. Henning v. Kaye, 307 S.C. 436, 415 S E.2d 794 (1992).

Also, contrary to Appellant’s contention, permitting Appellant to file a new brief will prejudice Respondent. Respondent filed and served its initial brief and designation of matter in January 2015, after reviewing all material related to the appeal, conducting applicable research, and preparing the brief. If Appellant is permitted to substitute a new brief after second-guessing her positions, Respondent will be prejudiced by having to repeat the same process of reviewing all of the documents and material related to the appeal, conducting applicable research and

responding to the new brief months after completing its initial brief and at a time when final briefs should be submitted.

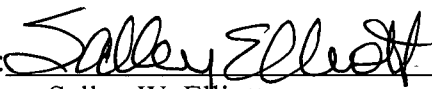
WHEREFORE, Respondent respectfully asks this Court to deny Appellant's request to file and serve a new initial brief of Appellant and leaves the matter of Appellant's representation to this Court's discretion.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

BY: 
Salley W. Elliott
S.C. Bar No: 1871

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

ATTORNEYS FOR RESPONDENT

April 2, 2015



ALAN WILSON
ATTORNEY GENERAL

April 2, 2015

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Donna Boyd
Appellate Case No. 2014-001853

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Return to Appellant's Motion to Permit Representation and Request to Submit an Amended Initial Brief of Appellant along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S C. Bar No: 1871

SWE/ab
Enclosures

cc: Jeff Wilkes, Esquire
Donna Boyd
Ms Trisha Allen

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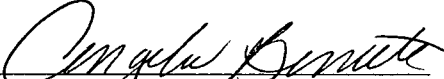
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Appellant's Motion to Permit Representation and Request to Submit an Amended Initial Brief of Appellant on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to Jeff Wilkes, Esquire, 114 Whitsett Street, Greenville, SC 29601 and Donna Boyd, P.O. Box 1168, Mauldin, South Carolina, 29662

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

This 2nd day of April, 2015


ANGELABENNETT
Administrative Assistant

Office of Attorney General
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Columbia, SC 29211
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