

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

APR 27 2015

SC Court of Appeals

Letitia H. Verdin, Circuit Court Judge

Appellate Case Number: 2014-001150

The State,

Respondent,

v.

Walter Jacob Merka,

Appellant,

RESPONSE TO MOTION TO STRIKE INITIAL REPLY BRIEF

William G. Yarborough, III
522 North Church Street
Greenville, South Carolina 29601
(864) 331.1612
Attorney for Appellant

The Respondent has filed a motion to strike because the Appellant argues outside the record by stating that the victim asked the prosecutor to ask for an ATU sentence. This is not factually accurate and Appellant is sure that the respondent is mistaken because on page 22 of the Motion to Reconsider Hearing transcript, the prosecutor in this matter states on the record that he had a discussion with the victim that she thought ATU was a great idea for this defendant (pursuant to Rule 201 (h) SCACR, the Motion Hearing transcript is listed in the Appellant's Declaration of Matter as filed with the Initial Brief).

Based on the record from the motion to reconsider, the Appellant is not sure why the Respondent is disputing this statement now. The record is clear that there were discussions between the prosecutor and the victim in regards to sentencing.

The Appellant states pursuant to the rules of this court the Appellant has made the proper argument and feels the Respondent must be mistaken in his motion to dismiss or strike Appellant reply brief.

We respectfully request this matter be set for oral argument.

Respectfully Submitted,



William G. Yarborough, III, Esq.
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Greenville, South Carolina 29601
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Attorney for Appellant

Greenville, South Carolina

April 22, 2015

1 know. And that's why I said that to you. I didn't
2 want you to feel like it was something that you
3 did. But your concern about that is noted.

4 **MR. FRETWELL:** Judge, can I just address
5 that issue --

6 **THE COURT:** Sure.

7 **MR. FRETWELL:** -- while we're on that issue.
8 I want to correct the record. I think the way that
9 Mr. Yarborough preferenced his remarks was that --
10 something to the effect that I don't dispute what
11 he just said. I certainly do dispute that. It was
12 not my decision and has never been my understanding
13 that, uh, the victim in this case was in
14 contradiction to the state's recommendation.

15 Now the victim and I had a discussion about
16 this. We had that discussion on October the 28th
17 in which, uh, she specifically with respect to
18 sentencing talked about the fact that ATU was a
19 great idea for this individual because of his
20 alcohol use. She wanted no contact from the
21 defendant at that time. That was her -- that was
22 her desire.

23 I sent an email to Mr. Yarborough on November
24 1st, two or three days after that fact in which I
25 said, among other things, I agreed with the victim

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AFFIDAVIT OF SERVICE VIA US MAIL

I, Traci Trouton-Burr, certify on this date April 22, 2015, I served a Response to Motion to Strike Initial Reply Brief in this action, dated April 22, 2015 on Mr. David Spencer and Jennie Abbott Kitchings by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Jenny Abbott Kitchings
Clerk of Court, Court of Appeals of South Carolina
P.O. Box 11629
Columbia, SC 29211

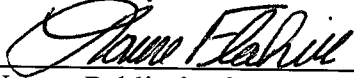
David Spencer
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

Respectfully submitted,



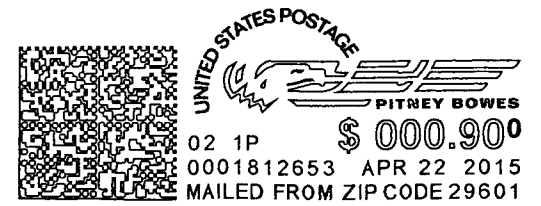
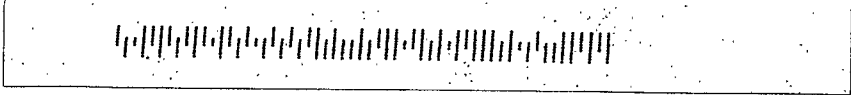
Traci Trouton-Burr
Paralegal to William G. Yarborough, Esquire

SWORN TO before this 22
Day of April, 2015



Notary Public for South Carolina

My Commission expires: 4/9/24



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