

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Administrative Law Court
Deborah Durden, Administrative Law Judge
15-ALC-15-0009
Appellate Case No.: 2015-000689

THOMAS LOWERY,APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE
AND PARDON SERVICES,.....RESPONDENT

**MOTION OBJECTING TO APPELLANT'S
DESIGNATION OF MATTER**

Comes now, Tommy Evans, Jr., Assistant General Counsel for the South Carolina Department of Probation, Parole and Pardon Services (the Department), respectfully objects to Appellant's request to include the Parole Board members vote count, and the recommendation of the parole examiner.

The Respondent objects to the inclusion of the parole examiner recommendation as it is not relevant to this appeal, and is privileged, thereby exempt from disclosure. Pursuant to statute, all information and data obtained in the discharge of his official duty by a South Carolina probation agent is privileged information and may not be disclosed directly or indirectly to anyone other than the judge or others entitled to receive reports, unless ordered by the court or the director. S.C. Code

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Ann. § 24-21-290 (Supp. 2008). See also State v. Hook, 356 S.C. 421, 590 S.E.2d 25 (2003). Investigating parole cases referred by the director, keeping detailed records of his or her work, making reports in writing, and performing other duties as the director may require are part of the official duties of a probation agent, so it must be considered privileged. S.C. Code Ann. § 24-21-280 (Supp. 2007). The final recommendation of the parole examiner is also not relevant to this appeal, so it cannot be made part of the record. A party shall not include any matter in his Designation which is not relevant to the appeal. Rule 209 SCACR.

Finally, the requested items placed in the Appellants designation of matter should not be included due to the fact they were never presented to the lower Court. The record shall not include matters which was not presented to the lower court or tribunal. Rule 210 SCACR. The final vote count, nor the recommendation of the parole examiner was never presented to the lower court, so they cannot become part of the record on appeal.

Due to the above referenced reasons the Respondent requests this honorable court deny the Appellant's designation of matter.

Respectfully submitted,



Tommy Evans, Jr,
Assistant General Counsel
South Carolina Department of Probation,
Parole and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

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S.C. DEPARTMENT OF PROBATION, PAROLE
AND PARDON SERVICES, RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Administrative Assistant to counsel for Respondent, certify that I have served the within Motion Objecting to Appellant's Designation of Matter dated April 20, 2015, on Appellant this 20th day of April, 2015, by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Thomas Lowery, #83240
Kershaw Correctional Institution-HD235
4848 Goldmine Highway
Kershaw, S.C. 29067



Dawn Nichols
Executive Administrative Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29230

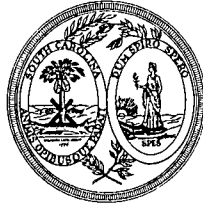
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SC Court of Appeals

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor



JERRY B. ADGER
Director

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April 20, 2015

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

Re: Thomas Lowery v SCDPPPS

Dear Ms. Kitchings:

Please find enclosed a *Motion Objecting to Appellant's Designation of Matter* dated April 20, 2015, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Tommy Evans, Jr." with a stylized flourish at the end.

Tommy Evans, Jr.
Assistant General Counsel
TE:dn

Enclosures

cc: Thomas Lowery

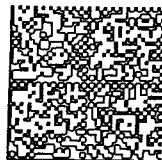
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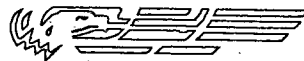
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The Honorable Jenny Kitchings
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