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THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

Civil Action No. 13-CP-40-0301

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JUN 04 2015

SC Court of Appeals

Basil W. Akbar, #065498,

Appellant,

v.

South Carolina Department of Corrections,  
Bill Byers, Martha Roof, Debrah Long,  
Lisia Johnson, Ann and John Doe,

Respondents.

**RESPONDENTS' RENEWED MOTION TO DISMISS APPEAL**

Respondents respectfully move this Court for an Order dismissing this appeal on the grounds that the Appellant has repeatedly failed to comply with the requirements of the South Carolina Rules of Appellate Procedure and with the Orders of this Court.

Under Rule 210(a), SCACR, "[w]ithin thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief. Proof of service of the Record shall be immediately filed with the clerk of the appellate court." As for the content of the Record on Appeal, under Rule 210(c), it "shall include **all** matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267.

PG

The Record shall not, however, include matter which was not presented to the lower court or tribunal.” (emphasis added). Rule 210 also sets forth guidelines for how the content of the Record on Appeal is to be arranged. Furthermore, under Rule 211, SCACR, the parties to an appeal have twenty (20) days after the service of the Record on Appeal in which to file and serve their final briefs.

Pursuant to Rule 260(a), SCACR, “[w]henver it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.”

Appellant filed his amended Notice of Appeal on or about December 23, 2013. On April 30, 2014, the undersigned counsel for Respondents received a document from Appellant entitled “Record on Appeal.” However, while the document was identified by the Appellant as the Record on Appeal, it clearly did not comply with Rules 210 or 267, SCACR, as the Record on Appeal submitted by the Appellant did not include all of the documents listed by the Respondents in their Designation of Matters to be Included in the Record on Appeal.<sup>1</sup> Also, the Appellant’s apparent Record on Appeal included documents that appeared to have not been presented to the circuit court.

On June 23, 2014, this Court issued an Order requiring Appellant to serve a Supplemental Record on Appeal within twenty days and correcting the deficiencies raised by Respondents. On or about June 30, 2014, Appellant filed a document which claimed that his previously filed Record on Appeal was compliant with the South Carolina Rules of Appellate Procedure.

On October 20, 2014, this Court issued a second Order stating that Appellant had failed to file a Supplemental Record on Appeal that included all matters designated by Respondents as

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<sup>1</sup> Respondents’ Designation of Matters was filed on April 4, 2014.

required by the South Carolina Appellate Court Rules. The Court, therefore, dismissed this appeal. Shortly thereafter, Appellant filed an Objection to this Order.<sup>2</sup> In his Objection, Appellant claims that his failure to comply with the Court's Orders and applicable rules were due to "excusable neglect."

On January 8, 2015, this Court issued an Order reinstating the appeal. However, the Court also noted that Appellant still had not included some of the documents in Respondents' Designation of Matters in his Supplemental Record on Appeal. Appellant was ordered to serve Respondents with **all matters** designated by Respondents that were "not included in the record on appeal that was filed with this court on April 30, 2014." Appellant was required to submit these documents in the form of a Supplemental Record on Appeal within thirty days, and in accordance with Rule 210, SCACR.<sup>3</sup> Thus, Appellant was required to serve this Supplemental Record on Appeal by February 7, 2015.

On or about January 16, 2015, Appellant served an alleged Supplemental Record on Appeal. *See* Exhibit A. However, this document is still deficient and clearly does not comply with this Court's January 8, 2015 Order. Specifically, the Supplemental Record on Appeal does not include all matters designated by Respondents that were not included in Appellant's April 30, 2014 Record on Appeal. Appellant included matters 1 and 11, but did not include any attachments to these documents. Furthermore, Appellant failed to include matters 2, 3, 4, 5, and 12 altogether in this Supplemental Record on Appeal.<sup>4</sup>

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<sup>2</sup> Appellant's Objection was essentially a Motion to Reinstate the appeal.

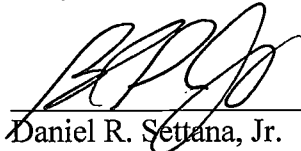
<sup>3</sup> In Appellant's Record on Appeal filed April 30, 2014, Appellant only included matters 6, 7, 8, 9, 10, 13, 14, and 15 from Respondents' Designation of Matters. Appellant did not include matters 1, 2, 3, 4, 5, 11, or 12. Therefore, Appellant was required to serve a Supplemental Record on Appeal with matters 1, 2, 3, 4, 5, 11, and 12 by February 7, 2015.

<sup>4</sup> Appellant included matters 5 and 12 with his Objection filed in October 2014. Appellant also mailed matters 2, 3, and 4 to the undersigned counsel on or about November 6, 2014. However,

Therefore, because the purported Supplemental Record on Appeal submitted by the Appellant does not comply with the South Carolina Appellate Court Rules or the strict requirements set forth in this Court's Order dated January 8, 2015, the document submitted by the Appellant is not a proper Supplemental Record on Appeal. Therefore, Respondents respectfully move this Court to dismiss this appeal for Appellant's repeated failure to comply with this Court's Orders and pursuant to Rule 260, SCACR. Alternatively, Respondents respectfully move this Court to determine whether the document received by the Respondents from the Appellant is a proper Supplemental Record on Appeal, which commences the twenty (20) day time period in which parties are to file final briefs.

Respondents further respectfully request that all time limits for filing final briefs be stayed pending the Court's decision with regard to this Motion, pursuant to Rule 240(b), SCACR.

Respectfully submitted,



Daniel R. Settana, Jr.  
Brandon P. Jones  
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1303 Blanding Street; P.O. Drawer 7217  
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(803) 256-4645  
Attorneys for Respondents

Columbia, South Carolina  
June 4, 2015

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none of these documents were included in the form of a Supplemental Record on Appeal as required by the Court's January 8, 2015 Order.

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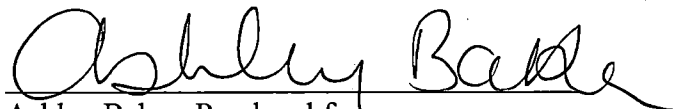
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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that on June 4, 2015, a copy of the foregoing **RESPONDENTS' RENEWED MOTION TO DISMISS APPEAL** was served on the Pro Se Appellant by mailing a copy of same in the United States Mail, via certified mail, return receipt requested, proper postage prepaid, addressed as follows:

Basil W. Akbar, #65498  
Lee Correctional Institution  
990 Wisacky Hwy.  
Bishopville, SC 29010



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SC Court of Appeals

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June 4, 2015

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: Basil Akbar v. SCDC, Bill Byers, Martha Roof, Debrah Long,  
Lisia Johnson, Ann and John Doe  
SC Appeal No.: 2013-002306  
Richland Co. Case No: 2013-CP-40-0301  
Claim No: 75046  
Our File No: 9-372

Dear Ms. Kitchings:

Please find enclosed for filing the original and eight (8) copies of *Respondents' Renewed Motion to Dismiss Appeal* in reference to the above-referenced matter. Please return two (2) clocked-in copies of this document to me via my courier.

Thank you for your assistance. Should you have any questions or concerns, do not hesitate to contact me.

With kindest regards, I am,

Very truly yours,

  
Brandon P. Jones

Enclosures

cc: Basil Akbar, #65498 (via Certified/Return Receipt Requested)

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**SC Court of Appeals**