

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County  
The Honorable Robert E. Hood, Circuit Court Judge  
Appellate Case No. 2014-001366  
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**RECEIVED**

JUL 07 2015  
SC Court of Appeals

THE STATE,

Respondent,

vs.

JOHN JULIUS SMITH,

Appellant.

\_\_\_\_\_  
**REPLY TO APPELLANT'S RETURN TO MOTION TO STRIKE PORTIONS OF  
APPELLANT'S INITIAL BRIEF AND DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL AND TO HOLD IN ABEYANCE**  
\_\_\_\_\_

Respondent submits the following in response to Appellant's Return to Respondent's Motion to Strike:

1. Appellant contends the statements regarding his post-conviction relief proceeding and an action filed in the South Carolina Supreme Court are necessary to give this Court a full understanding of the relevant procedural history of the case. Significantly, Appellant does not dispute that **none** of the documents and statements Respondent moved to strike were ever presented to the circuit court in connection with the Rule 29(b) motions, and therefore, the circuit court did not, and could not, consider them in ruling on the motions

2. Appellant is free to reference anything appearing in the *Pro Se* Motion, the Supplemental *Pro Se* Motion and the motion hearing transcript, in support of his arguments, but

under the Appellate Court Rules, he is **not** free to raise or designate issues and documents that were not before the circuit court. As stated in Respondent's Motion to Strike, Appellant's *Pro Se* Motion for a New Trial makes allegations regarding what occurred at the post-conviction relief hearing, and his counsel briefly referenced the post-conviction proceeding during the Rule 29(b) motions hearing, but he presented no evidence in support of those allegations/statements at the motions hearing.<sup>1</sup> While the overall history of Appellant's criminal case may be somewhat convoluted, the **relevant** portions of that history are very straightforward - the guilty plea, the *Pro Se* Motion, the Supplemental *Pro Se* Motion, the hearing on those motions and the circuit court's ruling thereon.

3. Appellant's Return indicates the irrelevant procedural matter was included in anticipation of a laches argument Respondent has not made. Frankly, the timeliness of Appellant's Rule 29(b) motions was not raised during the motions hearing, and the parties apparently accepted as true Appellant's claim he did not learn about the particular evidence at issue until his post-conviction relief hearing. If Respondent does raise something in its responsive brief making the otherwise irrelevant matter relevant, the appropriate way for Appellant to deal with it is to file a brief in reply and supplemental designation.

3. The mere fact the circuit court was aware of the Supreme Court March 10, 2014 Order requiring a hearing on the Rule 29(b) motions does **not** make the Order itself **relevant** to the merits of the Rule 29(b) motions. In ruling on the motions, the circuit court neither referenced nor relied on Appellant's post-conviction relief proceeding, or any action by the Supreme Court. Therefore, as stated in Respondent's Motion to Strike, those proceedings are extraneous matters serving only

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<sup>1</sup>Allowing discussion beyond what was stated in the Rule 29(b) motions and at the motions hearing regarding what purportedly occurred at the post-conviction relief hearing is particularly problematic because there is no transcript of the post-conviction relief hearing.

to confuse the **sole** issue presented on appeal - whether Appellant was entitled to a new trial based on after discovered evidence.<sup>2</sup>

4. Appellant argues the irrelevant matter regarding his post-conviction relief proceeding is necessary to address a procedural argument at the motions hearing, and “point out the inequity that would result were this Court to deny his appeal on this ground.” He further asserts the matter was necessary to explain why he filed under Rule 29(b), and point out the similarities between Rule 29(b) and provisions of the post-conviction statute, such that the holding in the post-conviction relief case of Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014), should apply to Rule 29(b) motions after guilty pleas. Again, Appellant is anticipating an argument Respondent has not made.

Why Appellant filed under Rule 29(b) is absolutely irrelevant to an analysis of the merits of his after-discovered evidence claim. Further, Appellant is free to discuss the similarities between Rule 29(b) and the post-conviction relief statute from a legal perspective, and argue Jamison should apply to Rule 29(b) motions after guilty pleas. Jamison was decided well after the motions hearing in this case, and its applicability to Rule 29(b) motions, or retroactive application if it applies, have not yet been addressed. Appellant’s speculation about the motivation for his post-conviction relief counsel’s advice to withdraw the post-conviction relief application, as well as appellate counsel’s opinions regarding what post-conviction relief counsel should have done instead, are simply gratuitous and irrelevant to those issues.

5. Contrary to Appellant’s claim the “ineffectiveness of PCR counsel” issue was “discussed at the Rule 29(b) motions hearing,” Appellant’s only reference to counsel was the

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<sup>2</sup>Apparently recognizing the Supreme Court Order was not before the circuit court for purposes of the Rule 29(b) motions, Appellant did not include it in his Designation of Matter.

statement counsel's advice to withdraw the post-conviction relief application and file a Rule 29(b) motion was "sort of a strange way of doing it." (Motion Hearing Transcript p. 11). Appellant **never** alleged his post-conviction relief counsel was ineffective, or even that his advice was wrong, and the issue certainly was not "**discussed**" in any way, shape or form. Not only do Appellant's ineffective assistance of post-conviction relief counsel assertions appear to be intended to confuse the relatively simple issue on appeal and garner sympathy for Appellant, they may also be designed to set the case up for some future action seeking relief. In any event, they are not related in any way to "equity" in this appeal.

5. While Appellant apparently believes motions seeking to require compliance with applicable court rules are "frivolous," Respondent submits the rules have meaning and should be respected. Rather than any attempt to delay this appeal, Respondent's Motion to Strike is premised on specific requirements of the Appellate Court Rules designed to limit the appellate court record, and avoid irrelevant, unpreserved issues serving only to confuse the issue on appeal.

WHEREFORE, Respondent requests that this Court grant the relief requested in Respondent's Motion to Strike Portions Of Appellant's Initial Brief and Designation Of Matter To Be Included In The Record On Appeal And To Hold In Abeyance; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

DEBORAH R.J. SHUPE  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 5098

BY: Deborah R.J. Shupe  
**DEBORAH R.J. SHUPE**

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ATTORNEYS FOR RESPONDENT

July 7, 2015

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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The Honorable Robert E. Hood, Circuit Court Judge  
Appellate Case No. 2014-001366

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THE STATE,

Respondent,

vs.

JOHN JULIUS SMITH,

Appellant.

**PROOF OF SERVICE**

I, Angela Bennett, certify I served the Reply to Appellant's Return to Motion to Strike Portions of Appellant's Initial Brief and Designation of Matter and to Hold in Abeyance on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

Laura R. Baer  
Assistant Appellate Defender  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

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

This 7<sup>th</sup> day of July, 2015.

  
ANGELA BENNETT  
Administrative Assistant

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



ALAN WILSON  
ATTORNEY GENERAL

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JUL 07 2015

SC Court of Appeals

July 7, 2015

Laura R. Baer  
Assistant Appellate Defender  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

Re: The State v. John Julius Smith  
Appellate Case No. 2014-001366

Dear Ms. Baer:

Enclosed are two copies of the Reply to Appellant's Return to Motion to Strike Portions of Appellant's Initial Brief and Designation of Matter and to Hold in Abeyance, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe  
Senior Assistant Deputy Attorney General

DRJS/sbe

Enclosures

cc: The Honorable Jenny A. Kitchings (original and 2 copies enclosed)  
Victim Services (with enclosure)



ALAN WILSON  
ATTORNEY GENERAL

# Hand Delivery

## S.C. Court of Appeals

**Please put the extra clocked-in copy in the Attorney General's Office box.**