

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

JUL 14 2015

Appeal From Spartanburg County  
The Honorable Frank R. Addy, Jr., Circuit Court Judge  
Appellate Case No. 2014-002414

**SC Court of Appeals**

IN THE MATTER OF THE CARE AND TREATMENT OF  
JOHNNY GARRETT,

Appellant.

**MOTION TO STRIKE MATTER FROM APPELLANT'S  
DESIGNATION OF MATTER TO BE INCLUDED IN THE  
RECORD ON APPEAL AND TO HOLD APPEAL IN ABEYANCE**

Respondent hereby moves pursuant to Rule 209, SCACR, to strike No. 2 ("The Complete file as contained in the files of the Spartanburg County Clerk of Court Docket No.: 2008-CP-42-5822") from Appellant's Designation of Matter to be Included in the Record on Appeal as irrelevant and outside the circuit court record regarding the issue on appeal. This motion is based on the following:

1. Appellant was committed as a sexually violent predator in January 2010. This appeal arises from an annual review jury trial in October 2014, in which the jury found the State proved beyond a reasonable doubt Appellant's mental status and personality disorder had not so changed he was safe to be at large.

2. Rule 209(a), SCACR, requires the parties to file a Designation of Matter to be Included in the Record on Appeal, stating "with specificity, those parts of the transcript, pleadings, orders, exhibits, or other material which he proposes to include in the record on appeal." Rule 209(b)

provides “[a] party shall not include any matter in his Designation which is not relevant to the appeal.” No. 2 of Appellant’s Designation not only lacks the required specificity, it includes matter not relevant to the appeal.

3. The file maintained by the Spartanburg County Clerk’s Office is voluminous and contains documents spanning a seven year period (2008-2015), most of which are completely irrelevant to the pending appeal, and were not before the jury as evidence at the 2014 annual review trial. The irrelevancy of those documents is amply demonstrated by the fact Appellant only cites portions of the annual review trial transcript in his initial brief. Accordingly, “the complete file” is not appropriate for inclusion in the record on appeal in this case.

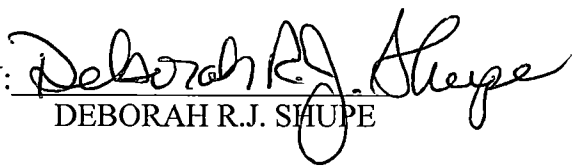
4. Even though Appellant does not cite to any specific documents in his initial brief, if the entire Clerk of Court’s file is included in the record, he may do so in a reply brief. Therefore, Respondent will have to anticipate potential issues, and will be forced to discuss some of the documents in its initial brief in order to demonstrate exactly how they are not relevant to the issue before the Court in this appeal. This will necessarily complicate an otherwise straightforward record and argument.

WHEREFORE, Respondent requests that this Court strike No. 2 from the Appellant’s Designation of Matter; that all filing deadlines be held in abeyance pending resolution of this Motion; 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

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ATTORNEYS FOR RESPONDENT

July 14, 2015

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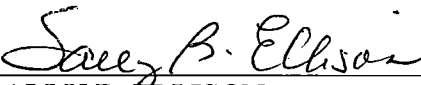
**PROOF OF SERVICE**

I, Sally B. Ellison, certify I served the Motion to Strike Matter from Appellant's Designation of Matter to be Included in the Record on Appeal and to Hold Appeal in Abeyance on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

Tommy A. Thomas, Esquire  
PO Box 88  
Irmo, SC 29063

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

This 14<sup>th</sup> day of July, 2015.

  
SALLY B. ELLISON  
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 14 2015

SC Court of Appeals

July 14, 2015

Tommy A. Thomas, Esquire  
PO Box 88  
Irmo, SC 29063

Re: In the Matter of the Care and Treatment of Johnny Garrett  
Appellate Case No. 2014-002414

Dear Mr. Thomas:

Enclosed are two copies of the Motion to Strike Matter from Appellant's Designation of Matter to be Included in the Record on Appeal and to Hold Appeal 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)

**Hand Delivery**

**S.C. COURT OF APPEALS**

**Please return extra copy to AG's Office**