

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM GREENVILLE COUNTY

SEP 21 2015

J. Cordell Maddox, Jr., Circuit Court Judge

SC Court of Appeals

Trial Court Case No. 2014-CP-23-5969  
Appellate Case No. 2015-000759

Billy Joe Cartrette, ..... Appellant,

v.

South Carolina Department of Corrections, ..... Respondent.

**THE RESPONDENT’S MOTION TO STRIKE ITEMS FROM THE APPELLANT’S  
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL**

By a submission dated July 21, 2015; the Appellant, Billy Joe Cartrette [“Cartrette”], filed his Designation of Matter to be Included in the Record on Appeal in the above-captioned appeal. By his Designation, Cartrette proposed 19 enumerated items for inclusion into the Record in this matter.

However, the Respondent, the South Carolina Department of Corrections [“the Department”], now respectfully moves, pursuant to South Carolina Appellate Court Rule [“SCACR”] 240, to strike 11 of the 19 enumerated items Cartrette proposed for inclusion in the Record within his July 21, 2015 submission.

**I. PROVISIONS OF THE APPLICABLE APPELLATE COURT RULES**

SCACR 209 is entitled “Designation of Matter to be Included in the Record on Appeal,” and SCACR 209(b), which is entitled “Content,” provides as follows:

The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation **may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)].** A party shall not include any matter in his Designation which is not relevant to the appeal. [emphasis supplied].

SCACR is entitled “Record on Appeal,” and SCACR 210(c), which is entitled “Content,” reads as follows:

The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. **The Record shall not, however, include matter which was not presented to the lower court or tribunal.** Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses or other notation indicating when pages of the court reporter's transcript have been omitted.

SCACR 210(h) is entitled “Review Limited to Record on Appeal,” and it provides as follows:

Except as provided by Rule 212<sup>1</sup> and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.

SCACR 208 is entitled “Initial Briefs,” and SCACR 208(b) is entitled “Content.” SCACR 208(b)(1) is entitled “Brief of Appellant,” and SCACR 208(b)(1)(C), which is entitled “Statement of the Case,” provides as follows:

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<sup>1</sup> SCACR 212 is entitled “Supplemental Record,” and, rather obviously, the Department respectfully submits that it is not applicable to the instant dispute between the parties.

The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain, as a minimum, the following information: the date of the commencement of the action or matter; the nature of the action or matter; the nature of the defense or of the response; the action of the court, jury, master, or administrative tribunal; the date(s) of trial or hearing; the mode of trial; the amount involved on appeal; the date and nature of the order, judgment or decision appealed from; the date of the service of the notice of appeal; **the date of and description of such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal;** and any changes made in the parties by death, substitution, or otherwise. Any matters stated or alleged in appellant's statement shall be binding on appellant. [emphasis supplied].

SCACR 208(b)(2) is entitled "Brief of Respondent," and it provides as follows:

The brief of respondent shall conform to the requirements of Rule 208(b)(1)(A)-(E), except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the issues or of the case by appellant. If a respondent does not include his own statement of the case, he shall be bound by the matters stated or alleged in appellant's statement of the case. If a respondent does include his own statement of the case, he shall be bound by the matters stated or alleged in his statement of the case. **Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c).** [emphasis supplied].

## II. THE DEPARTMENT'S ARGUMENT

The following table addresses each of the 11 enumerated items designated by Cartrette for inclusion in the Record, and the Department respectfully submits that it provides concise, accurate, and persuasive arguments to strike the following 11 items Cartrette proposed for inclusion in the Record to be considered by this Court:

Item # from the Appellant's Designation	Verbatim Description Provided by the Appellant	Grounds to Strike Item from the Appellant's Designation of Matter
4	1-20-15 Request(s) for Admissions	<p>The item described by Cartrette as "1-20-15 Request(s) for Admissions" consists of the "First Set of Request for Admission" dated January 20, 2015. The Department's undersigned counsel received them from Cartrette via United States Mail on January 26, 2015.</p> <p>For the sake of clarity, the ruling issued by the circuit court during the hearing conducted on February 13, 2015 to grant the Department's motion to dismiss Cartrette's "Complaint for Declaratory Judgment(s)" rendered as moot Cartrette's "1-20-15 Request(s) for Admissions."</p> <p>Cartrette did not file the "1-20-15 Request(s) for Admissions" with the Clerk of Court at any point in the litigation of his case before the circuit court. Cartrette did not include the "1-20-15 Request(s) for Admissions" as an exhibit in support of his Opposition to the Department's Motion to Dismiss the "Complaint for Declaratory Judgment(s)." Finally, Cartrette did not include the "1-20-15 Request(s) for Admissions" in the sole exhibit he submitted to the circuit court during the hearing conducted February 13, 2015.</p> <p>Thus, this item <b>"was not presented to the lower court or tribunal"</b> as required under SCACR 210(c), and the Department respectfully urges the Court to preclude Cartrette from including this item in the Record on Appeal.</p>

Item # from the Appellant's Designation	Verbatim Description Provided by the Appellant	Grounds to Strike Item from the Appellant's Designation of Matter
10	5-25-11 'Order'	<p>Upon information and belief, the item described by Cartrette as the "5-25-11 'Order'" consists of an order issued by our Supreme Court on May 25, 2011 by which it denied a "Petition for Writ of Certiorari" the Department's undersigned counsel filed on behalf of the Department in the matter styled as <u>S.C. Dep't of Corr. v. Isiah James, Jr.</u>, Trial Court Case No. 2006-CP-27-0130 &amp; 0176.</p> <p>Cartrette did not file the "5-25-11 'Order'" with the Clerk of Court at any point in the litigation of his case before the circuit court. Cartrette did not include the "5-25-11 'Order'" as an exhibit in support of his Opposition to the Department's Motion to Dismiss his "Complaint for Declaratory Judgment(s)." Finally, Cartrette did not include the "5-25-11 'Order'" in the sole exhibit he submitted to the circuit court during the hearing conducted February 13, 2015.</p> <p>Thus, this item <b>"was not presented to the lower court or tribunal"</b> as required under SCACR 210(c), and the Department respectfully urges the Court to preclude Cartrette from including this item in the Record on Appeal.</p>

Item # from the Appellant's Designation	Verbatim Description Provided by the Appellant	Grounds to Strike Item from the Appellant's Designation of Matter
11	Unpublished Opinion No. 2010-UP-251	<p>Upon information and belief, the item described by Cartrette as the "Unpublished Opinion No. 2010-UP-251" consists of the unpublished opinion issued by this Court on April 26, 2010 in the matter styled as <u>S.C. Dep't of Corr. v. Isiah James, Jr.</u></p> <p>Cartrette did not file the "Unpublished Opinion No. 2010-UP-251" with the Clerk of Court at any point in the litigation of his case before the circuit court. Cartrette did not include the "Unpublished Opinion No. 2010-UP-251" as an exhibit in support of his Opposition to the Department's Motion to Dismiss his "Complaint for Declaratory Judgment(s)." Finally, Cartrette did not include the "Unpublished Opinion No. 2010-UP-251" in the sole exhibit he submitted to the circuit court during the hearing conducted February 13, 2015.</p> <p>Thus, this item <b>"was not presented to the lower court or tribunal"</b> as required under SCACR 210(c), and the Department respectfully urges the Court to preclude Cartrette from including this item in the Record on Appeal.</p>

Item # from the Appellant's Designation	Verbatim Description Provided by the Appellant	Grounds to Strike Item from the Appellant's Designation of Matter
12	Wage Estimates 1999 – 2007	<p>Without a more precise description from Cartrette of the materials he identified as “Wage Estimates 1999 – 2007,” the Department, by and through its undersigned counsel, is unable to determine whether Cartrette filed them with the Clerk of Court at any point in the litigation of his case before the circuit court.</p> <p>Likewise, the Department is unable to determine whether Cartrette included the “Wage Estimates 1999 – 2007” as an exhibit in support of his Opposition to the Department’s Motion to Dismiss his “Complaint for Declaratory Judgment(s).”</p> <p>However, the Department, by and through its undersigned counsel, is able to confirm that Cartrette <u>did not include</u> these materials within the sole exhibit he submitted to the circuit court during the hearing conducted February 13, 2015.</p> <p>Above and beyond the uncertainty as to whether Cartrette presented them to the circuit court as required under SCACR 210(C), the Department respectfully submits that these materials are simply not relevant to the sole legitimate issue on appeal identified by Cartrette in his initial brief, namely whether the circuit court erred when it granted the Department’s motion to dismiss Cartrette’s “Complaint for Declaratory Judgment(s)”</p> <p>Therefore, the Department respectfully urges the Court to preclude Cartrette from including these materials in the Record on Appeal.</p>

Item # from the Appellant's Designation	Verbatim Description Provided by the Appellant	Grounds to Strike Item from the Appellant's Designation of Matter
13	Excerpts of 9-19-06 tr. – oral argument(s)	<p>Upon information and belief, the item described by Cartrette as the “Excerpts of 9-16-06 tr. – oral argument(s)” consists of the excerpts from the transcript of the hearing conducted by the circuit court on September 19, 2006 in the matter for which this Court ultimately issued an opinion on May 28, 2010. The aforementioned matter, to which Cartrette was a party, is styled as <u>S.C. Dep’t of Corr. v. Cartrette</u>, 694 S.E.2d 18 (S.C. Ct. App. 2010).</p> <p>Cartrette did not file the “Excerpts of 9-19-06 tr. – oral argument(s)” with the Clerk of Court at any point in the litigation of his case before the circuit court. Cartrette did not include the “Excerpts of 9-19-06 tr. – oral argument(s)” as an exhibit in support of his Opposition to the Department’s Motion to Dismiss his “Complaint for Declaratory Judgment(s).” Finally, Cartrette did not include the “Excerpts of 9-19-06 tr. – oral argument(s)” in the sole exhibit he submitted to the circuit court during the hearing conducted February 13, 2015.</p> <p>Thus, this item <b>“was not presented to the lower court or tribunal”</b> as required under SCACR 210(c), and the Department respectfully urges the Court to preclude Cartrette from including this item in the Record on Appeal.</p>

Item # from the Appellant's Designation	Verbatim Description Provided by the Appellant	Grounds to Strike Item from the Appellant's Designation of Matter
14	Wage Estimates 1999 – 2003 (Section Leader)	<p>Without a more precise description from Cartrette of the materials he identified as “Wage Estimates 1999 – 2003 (Section Leader),” the Department, by and through its undersigned counsel, is unable to determine whether Cartrette filed them with the Clerk of Court at any point in the litigation of his case before the circuit court.</p> <p>Likewise, the Department is unable to determine whether Cartrette included the “Wage Estimates 1999 – 2003 (Section Leader)” as an exhibit in support of his Opposition to the Department’s Motion to Dismiss his “Complaint for Declaratory Judgment(s).”</p> <p>However, the Department, by and through its undersigned counsel, is able to confirm that Cartrette <u>did not include</u> these materials within the sole exhibit he submitted to the circuit court during the hearing conducted February 13, 2015.</p> <p>Above and beyond the uncertainty as to whether Cartrette presented them to the circuit court as required under SCACR 210(C), the Department respectfully submits that these materials are simply not relevant to the sole legitimate issue on appeal identified by Cartrette in his initial brief, namely whether the circuit court erred when it granted the Department’s motion to dismiss Cartrette’s “Complaint for Declaratory Judgment(s)”</p> <p>Therefore, the Department respectfully urges the Court to preclude Cartrette from including these materials in the Record on Appeal.</p>

Item # from the Appellant's Designation	Verbatim Description Provided by the Appellant	Grounds to Strike Item from the Appellant's Designation of Matter
15	Wage Estimates 1999 – 2003	<p>Without a more precise description from Cartrette of the materials he identified as “Wage Estimates 1999 – 2003,” the Department, by and through its undersigned counsel, is unable to determine whether Cartrette filed them with the Clerk of Court at any point in the litigation of his case before the circuit court.</p> <p>Likewise, the Department is unable to determine whether Cartrette included the “Wage Estimates 1999 – 2003” as an exhibit in support of his Opposition to the Department’s Motion to Dismiss his “Complaint for Declaratory Judgment(s).”</p> <p>However, the Department, by and through its undersigned counsel, is able to confirm that Cartrette <u>did not include</u> these materials within the sole exhibit he submitted to the circuit court during the hearing conducted February 13, 2015.</p> <p>Above and beyond the uncertainty as to whether Cartrette presented them to the circuit court as required under SCACR 210(C), the Department respectfully submits that these materials are simply not relevant to the sole legitimate issue on appeal identified by Cartrette in his initial brief, namely whether the circuit court erred when it granted the Department’s motion to dismiss Cartrette’s “Complaint for Declaratory Judgment(s)”</p> <p>Therefore, the Department respectfully urges the Court to preclude Cartrette from including these materials in the Record on Appeal.</p>

Item # from the Appellant's Designation	Verbatim Description Provided by the Appellant	Grounds to Strike Item from the Appellant's Designation of Matter
16	Earning and Deduction Statement Payroll Date Oct. 2003	<p>Without a more precise description from Cartrette of the materials he identified as "Earning and Deduction Statement Payroll Date Oct. 2003," the Department, by and through its undersigned counsel, is unable to determine whether Cartrette filed them with the Clerk of Court at any point in the litigation of his case before the circuit court.</p> <p>Likewise, the Department is unable to determine whether Cartrette included the "Earning and Deduction Statement Payroll Date Oct. 2003" as an exhibit in support of his Opposition to the Department's Motion to Dismiss his "Complaint for Declaratory Judgment(s)."</p> <p>However, the Department, by and through its undersigned counsel, is able to confirm that Cartrette <u>did not include</u> these materials within the sole exhibit he submitted to the circuit court during the hearing conducted February 13, 2015.</p> <p>Above and beyond the uncertainty as to whether Cartrette presented them to the circuit court as required under SCACR 210(C), the Department respectfully submits that these materials are simply not relevant to the sole legitimate issue on appeal identified by Cartrette in his initial brief, namely whether the circuit court erred when it granted the Department's motion to dismiss Cartrette's "Complaint for Declaratory Judgment(s)"</p> <p>Therefore, the Department respectfully urges the Court to preclude Cartrette from including these materials in the Record on Appeal.</p>

Item # from the Appellant's Designation	Verbatim Description Provided by the Appellant	Grounds to Strike Item from the Appellant's Designation of Matter
17	Earning and Deduction Statement Payroll Date Mar. 2002	<p>Without a more precise description from Cartrette of the materials he identified as "Earning and Deduction Statement Payroll Date Mar. 2002," the Department, by and through its undersigned counsel, is unable to determine whether Cartrette filed them with the Clerk of Court at any point in the litigation of his case before the circuit court.</p> <p>Likewise, the Department is unable to determine whether Cartrette included the "Earning and Deduction Statement Payroll Date Mar. 2002" as an exhibit in support of his Opposition to the Department's Motion to Dismiss his "Complaint for Declaratory Judgment(s)."</p> <p>However, the Department, by and through its undersigned counsel, is able to confirm that Cartrette <u>did not include</u> these materials within the sole exhibit he submitted to the circuit court during the hearing conducted February 13, 2015.</p> <p>Above and beyond the uncertainty as to whether Cartrette presented them to the circuit court as required under SCACR 210(C), the Department respectfully submits that these materials are simply not relevant to the sole legitimate issue on appeal identified by Cartrette in his initial brief, namely whether the circuit court erred when it granted the Department's motion to dismiss Cartrette's "Complaint for Declaratory Judgment(s)"</p> <p>Therefore, the Department respectfully urges the Court to preclude Cartrette from including these materials in the Record on Appeal.</p>

Item # from the Appellant's Designation	Verbatim Description Provided by the Appellant	Grounds to Strike Item from the Appellant's Designation of Matter
18	Earning and Deduction Statement Payroll Date Feb. 1999	<p>Without a more precise description from Cartrette of the materials he identified as "Earning and Deduction Statement Payroll Date Feb. 1999," the Department, by and through its undersigned counsel, is unable to determine whether Cartrette filed them with the Clerk of Court at any point in the litigation of his case before the circuit court.</p> <p>Likewise, the Department is unable to determine whether Cartrette included the "Earning and Deduction Statement Payroll Date Feb. 1999" as an exhibit in support of his Opposition to the Department's Motion to Dismiss his "Complaint for Declaratory Judgment(s)."</p> <p>However, the Department, by and through its undersigned counsel, is able to confirm that Cartrette <u>did not include</u> these materials within the sole exhibit he submitted to the circuit court during the hearing conducted February 13, 2015.</p> <p>Above and beyond the uncertainty as to whether Cartrette presented them to the circuit court as required under SCACR 210(C), the Department respectfully submits that these materials are simply not relevant to the sole legitimate issue on appeal identified by Cartrette in his initial brief, namely whether the circuit court erred when it granted the Department's motion to dismiss Cartrette's "Complaint for Declaratory Judgment(s)"</p> <p>Therefore, the Department respectfully urges the Court to preclude Cartrette from including these materials in the Record on Appeal.</p>

Item # from the Appellant's Designation	Verbatim Description Provided by the Appellant	Grounds to Strike Item from the Appellant's Designation of Matter
19	Excerpt(s) of Contract	<p>Upon information and belief, the item described by Cartrette as the "Excerpts of Contract" consists of the excerpts from contract between the Department and the private industry sponsor, Kwalu Furniture, which participated in the prison industries project operated by the Department at Ridgeland Correctional Institution. <u>See S.C. Dep't of Corr. v. Cartrette</u>, 694 S.E.2d 18, 19 (S.C. Ct. App. 2010).</p> <p>Cartrette did not file the "Excerpt(s) of Contract" with the Clerk of Court at any point in the litigation of his case before the circuit court. Cartrette did not include the "Excerpt(s) of Contract" as an exhibit in support of his Opposition to the Department's Motion to Dismiss his "Complaint for Declaratory Judgment(s)." Finally, Cartrette did not include the "Excerpt(s) of Contract" in the sole exhibit he submitted to the circuit court during the hearing conducted February 13, 2015.</p> <p>Thus, this item <b>"was not presented to the lower court or tribunal"</b> as required under SCACR 210(c), and the Department respectfully urges the Court to preclude Cartrette from including this item in the Record on Appeal.</p>

For the reasons articulated in the above-provided table, the Department respectfully submits that this Court should strike the following 11 enumerated items Cartrette proposed for inclusion in the Record in his submission dated July 21, 2015:<sup>2</sup> #4, #10, #11, #12, #13, #14, #15, #16, #17, #18, and #19.

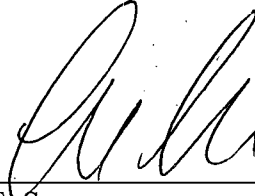
Succinctly stated, none of these 11 items Cartrette proposed for inclusion in the Record before are eligible for inclusion.

Under SCACR 210(c), the Record before this Court “shall not ... include matter which was not presented to the lower court or tribunal.” Moreover, the Department respectfully submits neither the provisions of SCACR 208(b)(1)(C) nor the provisions of SCACR 208(b)(2) provide Cartrette any justification by which any of the 11 above-discussed items may be legitimately included in the Record.

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<sup>2</sup> For the sake of clarity, the Department agrees, as reflected in its Designation of Matter, that the following eight (8) enumerated items from Cartrette’s Designation of Matter dated July 21, 2015 should be included in the Record considered by this Court: #1, #2, #3, #5, #6, #7, #8, and #9. The parties presented all eight (8) of these items to the circuit court for its consideration of the Department’s motion to dismiss Cartrette’s “Complaint for Declaratory Judgment(s).”

**RESPECTFULLY SUBMITTED,**



September 21, 2015

Lake E. Summers

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THE STATE OF SOUTH CAROLINA  
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APPEAL FROM GREENVILLE COUNTY

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Billy Joe Cartrette, ..... Appellant,

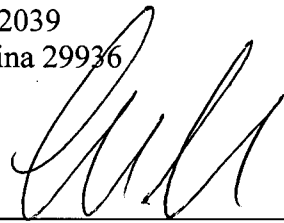
v.

South Carolina Department of Corrections, ..... Respondent.

PROOF OF SERVICE

I certify that I have served **THE RESPONDENT'S MOTION TO STRIKE ITEMS FROM THE APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** on the above named *pro se* Appellant by mailing a copy to him, first class postage pre-paid, at the following address:

Billy Joe Cartrette, #122434  
RCI, CA-52, POB 2039  
Ridgeland, South Carolina 29936



September 21, 2015

\_\_\_\_\_  
Lake E. Summers