

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

OCT 12 2015

Appeal from Anderson County
The Honorable Eugene C. Griffith, Circuit Court Judge
Appellate Case No. 2015-001560

SC Court of Appeals

THE STATE,

Respondent,

v.

JOHN BRADLEY TURNER,

Appellant.

MOTION TO STRIKE APPELLANT'S APPENDIX AND DESIGNATION OF MATTER

Respondent hereby moves to strike Appellant's entire appendix, as well as the attached "Exhibit A," as improperly filed because neither party has yet submitted a Designation of Matter to be Included in the Record on Appeal (hereinafter "Designation of Matter").

I. Appellant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Appellant was indicted at the September 2002 term of the Anderson County Grand Jury for murder (2002-GS-04-2531). He pled guilty before the Honorable J.C. Nicholson, Jr., on February 3, 2003, and was sentenced to thirty (30) years imprisonment. Following three PCR proceedings (2003-CP-04-2715; 2007-CP-04-3661; 2009-CP-04-4709) and a federal habeas corpus petition (1:10-cv-2433-TMC), Appellant filed a petition for writ of mandamus in Anderson County on July 3, 2012, requesting the circuit court compel Judge Nicholson to issue an order "correcting" his term of imprisonment

to eighty-five (85) percent of his original sentence. A hearing was convened at the Anderson County Courthouse before the Honorable Eugene C. Griffith, Jr. In a written Order filed July 10, 2015, Judge Griffith denied Appellant's petition and dismissed the matter with prejudice. This Appeal follows.

II. Following his Notice of Appeal, Appellant filed an Appendix and attached exhibit alongside his initial brief in the present matter, which Respondent interprets to be a Record on Appeal. Respondent moves this Court to strike Appellant's Record on Appeal because neither party has yet submitted an appropriate Designation of Matter. Each party is required to submit a Designation of Matter at the same time as his initial brief. Rule 209(b), SCACR. The Designation of Matter sets forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which that party proposes to include in the Record on Appeal. Rule 209(a); SCACR. The Record on Appeal includes all matter designated to be included by any party that was presented to the lower court or tribunal. Rule 210, SCACR. Because Appellant's Appendix was filed alongside his initial brief, before Respondent had a chance to file its own initial brief or Designation of Matter, Respondent has had no input in determining which parts of the transcript, pleadings, orders, exhibits, or other materials should be included.

III. After filing his Appendix, Appellant also filed a group of documents captioned "Designation of Matter." Respondent submits such a filing does not properly constitute a Designation of Matter, and must similarly be stricken. A Designation of Matter "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." Rule 209(b), SCACR. It must also "set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or

other materials which he proposes to include in the record on appeal.” Respondent submits Appellant has failed to clearly identify what he desires to have included in the Record on Appeal, and to set forth with specificity that which he intends to include on the record on appeal. As a result, the packet of documents captioned “Designation of Matter” does not adequately meet the requirements of Rule 209.

[Signature block on following page]

IV. Accordingly, Respondent requests Appellant's Appendix and Designation of Matter be stricken, and that any subsequent Appendix or Record on Appeal and Designation of Matter be compliant with the South Carolina Rules Appellate Court Rules. Respondent also notes that because there has been no appropriate Designation of Matter, there is no current deadline for preparing and filing its Initial Brief of Respondent.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

PATRICK L. SCHMECKPEPER
Staff Attorney

BY: 

Office of the Attorney General
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Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 12 2015

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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY

The Honorable Eugene C. Griffith, Circuit Court Judge

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The State, Respondent,

v.

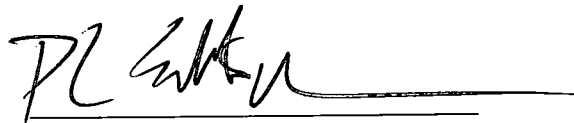
John Bradley Turner, Appellant.

CERTIFICATE OF SERVICE

I, Patrick Schmeckpeper, certify that I have today served the within **Motion To Strike Appellant's Appendix And Designation Of Matter** upon Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

William G. Yarborough, III , Esquire
522 North Church Street
Greenville, South Carolina
29601

I further certify that all parties required by Rule to be served have been served.
This 12th day of October, 2015.



Patrick Schmeckpeper
S.C. Bar # 102100
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ATTORNEY FOR RESPONDENT



ALAN WILSON
ATTORNEY GENERAL

October 12, 2015

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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. John Bradley Turner
Appellate Case No. 2015-001560

Dear Ms. Kitchings:

Attached is the original and six (6) copies of the **Motion To Strike Appellant's Appendix And Designation Of Matter** of the Respondent in the above referenced case for filing in your office.

Sincerely,

Patrick Schmeckpeper
Assistant Attorney General
SC Bar #102100

PS/lg

cc: William G. Yarborough, III, Esquire
Trisha Allen, Victim Services