

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

APPEAL FROM GREENVILLE COUNTY  
D. Garrison Hill, Circuit Court Judge  
Appellate Case No. 2015-000066

OCT 16 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

vs.

FURMAN EUGENE TAYLOR,

APPELLANT.

**MOTION TO STRIKE MATTER FROM APPELLANT'S *PRO SE* DESIGNATION OF  
MATTER AND *PRO SE* BRIEF**

Respondent, by and through undersigned counsel, moving to strike portions of Appellant's *pro se* Designation of Matter and *pro se* brief, would respectfully show unto this Court:

**I.**

Appellant was convicted in Greenville County of burglary in the first degree and petit larceny after a jury trial held before the Honorable D. Garrison Hill on January 5 – 7, 2015. Appellant was sentenced to life imprisonment for burglary and thirty (30) days for petit larceny. Appellant filed and served notice of appeal. On July 1, 2015, Appellate Defender Robert M. Pachak submitted an Anders Brief of Appellant, Petition to be Relieved, and Record on Appeal. Appellant thereafter filed and served a *pro se* Designation of Matter and *pro se* Brief of

Appellant. Appellant attached the documents he listed in his Designation of Matter to his *pro se* designation. (See documents compiled in Appellant's Written Memorandum of Law).

## II.

In reviewing Appellant's *pro se* Designation of Matter, *pro se* brief, and attached documents, it appears that, with the exception of State's exhibits 14, State's Exhibit 15, and Rule 3, SCRCrimP, none of the items were presented to the lower court during the trial from which Appellant appeals. The documents, therefore, cannot properly be included in a *pro se* designation of matter and Record on Appeal or referred to in Appellant's *pro se* brief. With the exception of State's Exhibits 14 and 15 (DVDs) and Rule 3 (c), SCRCrimP, this Court must strike the designation of matter, the documents attached to the designation and/or brief, and all references to the documents in Appellant's *pro se* brief. Alternatively, this Court should refuse to consider the improperly designated items and any arguments referencing the items.

## III.

Rule 209, SCACR, provides that the "Designation of Matter to be Included in the Record on Appeal . . . shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which (a party) proposes to include in the record on appeal." Rule 209(a), SCACR. Rule 209, SCACR, also states that the "[d]esignation must clearly identify what the party desires to have included in the Record on Appeal" and 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. Rule 210(c), SCACR, prohibits including portions of transcripts, pleadings, orders, exhibits, materials or matter which were not presented to the lower court. This appeal arises from the circuit court and only the documents, transcripts, material or matter presented to the circuit court judge during the trial

resulting in the convictions on appeal may be included in Appellant's designation of matter and the record on appeal. See State v. White, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007) ("Morris' statement was not presented to the lower court and cannot properly be included in the Record on Appeal."); South Carolina State Highway Dep't v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) ("[C]ounsel is prohibited from embodying in their briefs any fact which does not appear in the record."); Morris v. Tidewater Land & Timber, Inc., 388 S.C. 317, 333, n. 16, 696 S.E.2d 599, 608 (Ct. App. 2010) ("Under our appellate court rules, we may not consider any fact that does not appear in the record."); see also Rule 210(h), SCACR ("[T]he appellate court will not consider any fact which does not appear in the Record on Appeal.") The circuit court was not presented with the numerous incident reports, testimony of various individuals from another trial, or Tandy Perry's statement. Because the documents were not presented during the trial from which this appeal arises, the documents may not be presented to this Court on appeal. Additionally, Appellant improperly presents the documents with his own highlighting and markings. Further, this Court should strike or refuse to consider the portions of Appellant's *pro se* brief which relies upon or references the improperly designated documents.

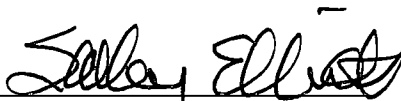
**WHEREFORE**, the State respectfully asks this Court to strike or to refuse to consider all of the items listed in Appellant's pro se Designation of Matter and attachments **except** Appellant's *pro se* designation No. 1 - Videos (State's Exhibits No. S-14 and S-15 [DVD]) and Appellant's *pro se* designation No. 14 (Rule 3(c), SCRCrimP), as well as any portions of Appellant's *pro se* brief referencing the improperly designated items.

Respectfully submitted,

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

W. WALTER WILKINS  
Solicitor, Thirteenth Judicial Circuit

BY:   
Salley W. Elliott  
S.C. Bar No: 1871

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Post Office Box 11549  
Columbia, SC 29211  
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ATTORNEYS FOR RESPONDENT

October 16, 2015.

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Appeal from Greenville County  
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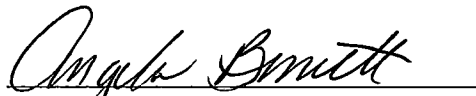
Appellant.

**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the within Motion to Strike by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire  
P. O. Box 11589  
Columbia, S.C. 29211-1580  
and  
Furman Eugene Taylor, 198161  
Perry Correctional Institution, Q4A  
Pelzer, S.C. 29669

I further certify that all parties required by Rule to be served have been served.  
This 16th day of October, 2015.



ANGELA BENNETT  
Administrative Assistant

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SC Court of Appeals

ALAN WILSON  
ATTORNEY GENERAL

October 16, 2015


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

Re: The State v. Furman Eugene Taylor  
Appellate Case No: 2014-000066

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion to Strike along with proof of service in the above-referenced case.

Sincerely,

  
for

Salley W. Elliott  
Senior Assistant Deputy Attorney General  
S.C. Bar No: 1871

SWE/ab  
Enclosures

cc: Robert M. Pachak, Esquire  
Furman Eugene Taylor, 198161  
Ms. Trisha Allen