

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

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

FURMAN EUGENE TAYLOR,

APPELLANT,

Vs.

THE STATE,

RESPONDENT.

APPELLANTS' OBJECTION TO RESPONDENTS MOTION
TO STRIKE MATTER FROM APPELLANTS' PRO-SE
DESIGNATION OF MATTER AND PRO-SE BRIEF.

Appellant, proceeding pro-se hereby objects to respondents motion to strike matter from appellants' pro-se designation of matter and pro-se brief, would respectfully show this Court;

I

According to appellate Court Rule 207(b)(4), a brief must reference the record on appeal to support the facts alleged. "The record shall not, however, include matter which was not presented to the lower court or tribunal." Rule 210(c). State v. White, 372 S.C. 364, 387:642 SE 2d 607. (Ct. App. 2007).

In the instant case, the lower court was presented with the numerous documents the respondent moves to strike^①. Hence, facts do appear in the record of a previous trial in this case

^① Appellant will have this court take "Judicial Notice" of the fact that both the February, 2014, and January, 2015, trials arise from the same indictment for which a mistrial resulted under assistant Solicitor Mark Moyer, and a conviction after a subsequent trial under Matthew Wallace. Wallace informed the trial court that appellants' first trial resulted in a mistrial and that he was not the Solicitor in charge back when it was initially tried. (See transcript page 8, Lines 1-21)

Which gives this court the authority to consider any facts now raised in relations to the record on appeal. Rule 210(h) SCACR. ("The appellate court will not consider any facts which does not appear in the record on appeal.") Morris v. Tidewater Land & Timber Inc., 388 S.C. 317, 333 N.W.2d 696 SE2d 599 (Ct. App. 2012) (Under our appellate court rules, we may not consider any fact that does not appear in the record)

Unlike White, appellants' first trial resulted in a hung jury subsequently leading to the re-trial and conviction being appealed that is now before this court. Moreover, the record is silent as to what evidence presented to the lower court in the first trial that demonstrates the jury's reasons for not convicting appellant initially. Nor does the record explain or justify Assistant Solicitor Wallace's misconduct when he used testimony that is now known to be false, untrue, or that is prejudicial to the administration of justice which involved dishonesty, deceit, or misrepresentation of facts to obtain a conviction of appellant. (See Rule 407, Sec. 8.4 SCACR) (3)

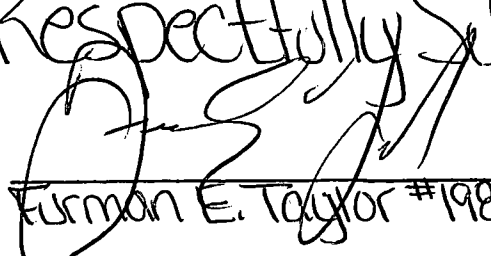
Appellant has attempted through reasonable diligence to present these facts and develop these newly/after discovered evidence by requesting leave of this court, but his motion for leave was not granted and merely time to submit his pro-se brief extended. (See order dated August 14, 2015). Appellant discovered these facts after appointed Counsel, Robert M. Pachak, wrote him and included both trial transcripts before submitting his Anders' brief claiming them to be relevant to appellants' case. (See letter dated May 28, 2015).

Thus, appellants' case is distinguishable from White and the States' erroneous interpretation of White and appellate Court Rule 209 through 210 will amount to an unreasonable application of law and procedure that would cause a fundamental miscarriage of justice if this court refuses to exercise its discretionary authority to either (1) allow appellant to supplement the record with the numerous documents complained of to be included in his designation of matter, or (2) grant appellant leave so that he may return to the lower court to

(4)

Correct and complete the record so that meaningful appellate review may be done both correctly and fairly as deemed by this court.

Wherefore, Appellant would ask this Court to deny the States' motion to strike, or to refuse to consider any of the items listed in appellants' pro-se designation of matter and attachments as well as any parts or portions of appellants' pro-se brief referencing these designated items so that a grave miscarriage of justice may be prevented.

Respectfully Submitted,

Furman E. Taylor #198161 / Pro-se

October 28, 2015
Pelzer, SC.

Certificate of Service

I, Furman E. Taylor, hereby certify that a
objection to respondents' motion to strike,
in appellate case No. 2015-000066, was this day,
postage pre-paid, placed in the United States
postmasters hands here at the Perry Correctional
Institution, located at; 430 Oaklawn Road, Pelzer,
S.C. 29669, and addressed to the following;

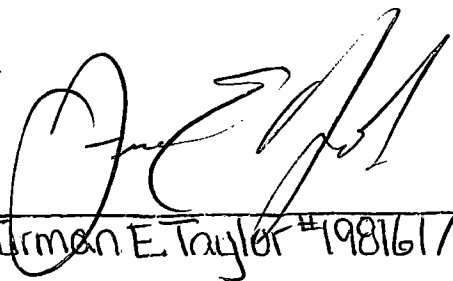
(1) Ms. Jenny A. Kitchings, Clerk
S.C. Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

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(2) Mr. Alan Wilson (esq.) Att. Gen.
Office of the Attorney General for S.C.
Post Office Box 11549
Columbia, S.C. 29211


Furman E. Taylor #198161/Pro-se

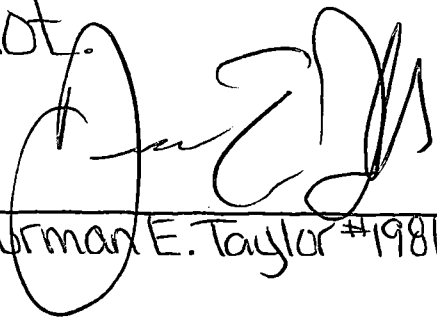
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(3) That this court's refusal to exercise its authority to grant leave or allow appellants' designation of matter and supplementation of the record on appeal will result in a manifest constitutional error or clearly wrong rule.

(4) Appellant has served respondent with a true copy of his objection and affidavit. Further Affiant saith not.


Furman E. Taylor #198161 / Pro-se

Sworn and Subscribed before me
this 29th day of October, 2015.


Tameca Conwell
Notary Public

My Commission Expires
September 25, 2023

my Commission expires:

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