

The South Carolina Court of Appeals

The State, Respondent,

v.

Arthur Moseley, a/k/a Shahid Majid, Appellant.

Appellate Case No. 2014-000199

ORDER

Respondent has filed a motion to seal its initial brief and designation of matter, along with the motion itself, arguing the filings contain sensitive information about Appellant, such as his mental health history. Appellant has consented to sealing these filings.

Although there is no provision in the South Carolina Appellate Court Rules for sealing records in the appellate court, we have the power to control our own records. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006). When determining whether a record should be sealed to the public, the court must consider the following factors:

(1) ensuring the parties' right to a fair trial or hearing; (2) the need for witness cooperation; (3) the reliance of the parties upon expectations of confidentiality of the proceeding; (4) the public or professional significance of the proceeding; (5) the perceived harm to the parties from disclosure; (6) why alternatives other than sealing the documents are not available to protect legitimate private interests; and (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

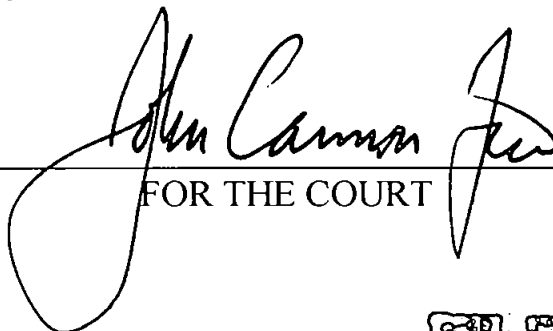
In addition, the court may consider (8) public interest in the proceeding; (9) the private or public status of the

litigants and case generally; (10) whether release would enhance the public's understanding of an important historical event; (11) whether the public already has access to information contained in the records; (12) whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors.

Id.

After careful consideration of the factors listed, we find Appellant's interest in privacy or secrecy does not outweigh the presumption of access to court records. We therefore deny Respondent's motion. *See id.* at 10, 630 S.E.2d at 469 ("Judicial proceedings and court records are presumptively open to the public . . ."); *id.* at 11, 630 S.E.2d at 470 ("A claim that a court file contains extremely personal, private, and confidential matters is generally insufficient to constitute a privacy interest warranting the sealing of the file." (quoting *Doe v. Heitler*, 26 P.3d 539, 544 (Colo. App. 2001))); *id.* ("Likewise, prospective injury to reputation, an inherent risk in almost every . . . lawsuit, is generally insufficient to overcome the strong presumption in favor of public access to court records."); *id.* at 12, 630 S.E.2d at 470 ("The burden is on the party who seeks to overcome the presumption of access to show that the interest in secrecy outweighs the presumption."). However, to address the parties' concerns, the clerk of court is directed to mark Respondent's briefs and designation of matter as non-public so they may not be accessed on the court's website.

Appellant has also filed a motion to substitute counsel, asserting his appellate counsel failed to file a reply brief and several motions with this court, obtain missing discovery documents, and contact the private investigator Appellant hired prior to his trial. After careful consideration, this motion is denied. *See State v. Boykin*, 324 S.C. 552, 555, 478 S.E.2d 689, 690 (Ct. App. 1996) ("The right of an accused to effective assistance of counsel . . . does not extend to the appointment of counsel of choice, or to special rapport or even a meaningful relationship with appointed counsel.").


FOR THE COURT

FILED
12/10/15

Columbia, South Carolina

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