

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
The Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case No.: 2015-001004

RECEIVED
SEP 07 2016
SC Court of Appeals

Antonio Gordon, # 259798,

Appellant,

vs.

State of South Carolina,

Respondent.

**MOTION TO STRIKE
FINAL BRIEF AND REQUIRE THE FILING
OF A FINAL BRIEF CONFORMING TO
THE REQUIREMENTS OF RULE 211, SCACR**

Respondent ("the State") would respectfully show unto the Court as follows:

I.

In this matter, Appellant served and filed his Initial Brief of Appellant and his Designation of Matter on June 3, 2016. Due to deficiencies, Appellant served a corrected Initial Brief of Appellant and Designation of Matter on June 14, 2016. On July 22, 2016, the State served and filed its Initial Brief of Respondent and Designation of Matter. Thereafter, on August 16, 2016, Appellant served and filed his Final Brief of Appellant and the Record on Appeal.

II.

The Initial Brief of Appellant identified five issues in its Statement of the Grounds on appeal, was twenty-five pages long, and addressed all five issues. The Final Brief of Appellant ("FBOA") identified five issues in its Statement of the Grounds on appeal, but is only seventeen pages long and addresses four issues. Appellant's argument section includes additions and deletions from the Initial Brief of Respondent and includes added argument responsive to Respondent's Initial Brief of Respondent.

Appellant's argument sections entitled "Judge Couch Order Is Void" (FBOA pages 17-18), "The lower court committed error of law and abused its discretion when it found Appellant had previously raised his jurisdiction issue that the unconstitutionality of § 20-7-6605(1) deprived the York County Grand Jury and General Sessions of its jurisdiction to indict and accept his guilty plea in the initial filing and that it had been heard and ruled on, untimely and could have been raised in (PCR) 2008-CP-46-4951" (FBOA page 18-19), and "The lower court abused its discretion and committed error of law when it found appellant's *Austin* review must fail" (FBOA page 20) are all complete revisions of the same sections of Appellants Initial Brief of Appellant and include argument responsive to Respondent's Initial Brief of Respondent. Appellant's Final Brief of Respondent also fails to address the issue listed in his grounds for appeal and addressed on page 26 of the Initial Brief of Appellant titled, "The lower court abused it discretion and committed error of law when it found appellant had not file his rule 59(e) motion timely per 59(e)."

III.

The South Carolina Appellate Court Rules govern the form and content of appellate briefs. Pursuant to Rule 211(b), SCACR, a final brief "shall be identical" to an initial brief

previously served. Under our appellate court rules, only the following changes are permitted to be made to a final appellate brief: (1) references to transcript pages can be changed to refer to the corresponding page of the Record on Appeal; and (2) typographical mistakes or errors can be corrected. Rule 211(b)(1)-(2), SCACR. "No other changes may be made." Rule 211(b)(2), SCACR.

IV.

Appellant's Final Brief of Appellant Antonio Gordon contains numerous substantive changes from his Initial Brief of Appellant. Those changes do not simply involve the correction of typographical errors or changes to page references. Instead, the changes involve substantive alterations and additions to the arguments on the issues. Such changes are not permitted under our appellate court rules. Therefore, Appellant's Final Brief of Appellant does not conform to the requirements of Rule 211, SCACR. For that reason, the State asks this Court to strike the Final Brief of Appellant and require the filing of an amended final brief fully complying with the requirements of Rule 211, SCACR, and containing no substantive changes from the originally-filed initial brief. See, e.g., Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) ("[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.").

[Signature block on following page]

WHEREFORE, Respondent prays that this Court will strike the Final Brief of Appellant; require the filing of a Final Brief of Appellant conforming to the requirements of Rule 211, SCACR; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

September 7, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

SEP 07 2016

APPEAL FROM YORK COUNTY
The Honorable Daniel D. Hall, Circuit Court Judge

SC Court of Appeals

Appellate Case No.: 2015-001004

Antonio Gordon, # 259798,

Appellant,

vs.

State of South Carolina,

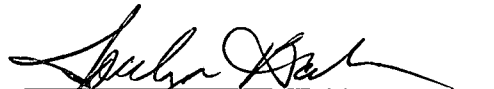
Respondent.

PROOF OF SERVICE

I, Jocelyn Baker, certify that I have served the within Motion to Strike Final Brief and Require the Filing of a Final Brief Conforming to the Requirements of Rule 211, SCACR on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to him at Kershaw Correctional Institution, 4848 Gold Mine Hwy, Kershaw, South Carolina, 29067-8069

I further certify that all parties required by Rule to be served have been served.

This 7th day of September, 2016.



JOCELYN BAKER
Legal Assistant for Respondent

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

RECEIVED
SEP 07 2016
SC Court of Appeals

September 7, 2016

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

Re: Antonio Gordon v. State of South Carolina
Appellate Case No. 2015-001004
Lower Court Case No. 2006-CP-46-0010

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Motion to Strike Final Brief and Require the Filing of a Final Brief Conforming to the Requirements of Rule 211, SCACR, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Justin J. Hunter
Assistant Attorney General
SC Bar No. 101254

JJH/jyb

Enclosures

cc: Antonio Gordon, # 259798
Ms. Trisha Allen, Victim Services (w/o enclosures)