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SEP 26 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2016-000285  
Administrative Law Court Docket No. 12-ALJ-04-00143-AP

Thomas J. Torrence, #094651 ..... Respondent,

v.

South Carolina Department of Corrections ..... Appellant.

**APPELLANT’S MOTION TO STRIKE ITEMS FROM THE RESPONDENT’S  
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL**

By a submission dated August 17, 2016, the Respondent, Thomas J. Torrence [“Torrence”], filed his Designation of Matter to be Included in the Record on Appeal for the above-captioned case. By his Designation of Matter, Torrence proposed a total of five (5) items for inclusion into the record.

However, the Respondent, the South Carolina Department of Corrections [“SCDC”], now respectfully moves, pursuant to South Carolina Appellate Court Rule [“SCACR”] 240, to strike the final three (3) of the five (5) items Torrence identified for inclusion into the record in his August 17, 2016 submission.

**I. PROVISIONS OF THE APPLICABLE APPELLATE COURT RULES**

SCACR 209 is entitled “Designation of Matter to be Included in the Record on Appeal,” and SCACR 209(b), which is entitled “Content,” provides as follows:

The Designation 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 [See Rule 210(c)].** A party shall not include any matter in his Designation which is not relevant to the appeal. [emphasis supplied].

SCACR is entitled "Record on Appeal," and SCACR 210(c), which is entitled "Content," reads as follows:

The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. **The Record shall not, however, include matter which was not presented to the lower court or tribunal.** Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses or other notation indicating when pages of the court reporter's transcript have been omitted. [emphasis supplied].

SCACR 210(h) is entitled "Review Limited to Record on Appeal," and it provides as follows:

Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.

## II. ARGUMENT

Torrence identified the following five (5) items for inclusion into the record in designation of matter dated August 17, 2016:

1. Torrence's "MOTION TO DENY [SCDC'S] MOTION TO HOLD IN ABEYANCE OR OTHERWISE STAY FURTHER PROCEEDINGS IN THIS MATTER" filed March 10, 2014.
2. SCDC's "MOTION BY [SCDC] TO ADDRESS ONLY ONE (1) ISSUE IN ITS BRIEF AND TO FILE ITS BRIEF NO LATER THAN JUNE 15, 2012" filed June 5, 2012.
3. SCDC's "RETURN TO [TORRENCE'S] MOTION TO DISMISS THE INSTANT APPEAL."
4. Torrence's "NOTICE AND PETITION FOR WRIT OF MANDAMUS" filed October 5, 2011, Supreme Court of South Carolina.
5. Torrence's "AMENDED REPLY TO [SCDC'S] RETURN TO [TORRENCE'S NOTICE AND PETITION FOR WRIT OF MANDAMUS]" filed November 10, 2011, Supreme Court of South Carolina.

Succinctly stated, none of the three (3) final items identified by Torrence constitute matter which was presented by the parties to the Administrative Law Court ["ALC"], "the lower court or tribunal" as contemplated by SCACR 210(c), as it considered Torrence's appeal of SCDC's denial of his administrative grievance.

Although not precisely identified as such by Torrence, SCDC respectfully submits that the third item identified by Torrence consists of the return it filed with this Court on April 4, 2014 to Torrence's submission dated March 10, 2014 and styled as "MOTION TO DISMISS APPEAL PURSUANT TO SOUTH CAROLINA CODE OF LAWS § 1-23-610(A)(1)."

SCDC filed a Notice of Appeal with this Court by which it sought review of the order issued January 30, 2014 by the ALC in the instant matter. After considering Torrence's March 10, 2014 motion and SCDC's April 4, 2016 return, this Court issued an order on April 17, 2014 which dismissed SCDC's appeal. By its April 17, 2014 order, this Court dismissed SCDC's appeal of the ALC's January 30, 2014 order, because the ALC's January 30, 2014 did not

constitute the its final decision. Importantly, neither Torrence's March 10, 2014 motion nor SCDC's April 4, 2014 return were presented to the ALC.

Likewise, neither the "NOTICE AND PETITION FOR WRIT OF MANDAMUS" filed October 5, 2011 with our Supreme Court by Torrence nor the "AMENDED REPLY TO [SCDC'S] RETURN TO [TORRENCE'S NOTICE AND PETITION FOR WRIT OF MANDAMUS]" filed November 10, 2011 with our Supreme Court by Torrence (the fourth and fifth items identified by Torrence in his August 17, 2016 designation of matter) were presented to the ALC.


Alternatively, should this Court deny its instant motion to strike the fourth and fifth items identified by Torrence in his August 17, 2016 designation of matter, SCDC respectfully proposes that the following four (4) additional items be included in the record on appeal:

- 1) SCDC's Return to Torrence's Petition for Writ of Mandamus filed by SCDC with the Clerk of the South Carolina Supreme Court on October 27, 2011;
- 2) Torrence's Reply to SCDC's Return to his Petition for Writ of Mandamus dated October 31, 2011;
- 3) Correspondence to SCDC's undersigned counsel and Torrence dated November 9, 2011 from the Clerk of the South Carolina Supreme Court; and
- 4) Order dismissing Torrence's Petition for Writ of Mandamus issued January 11, 2012 by the South Carolina Supreme Court.

### **III. CONCLUSION**

SCDC urges this Court to strike the third, fourth, and fifth items identified by Torrence in his August 17, 2016 designation of matter and exclude each of them from the record in accordance with SCACR 210(C).

**RESPECTFULLY SUBMITTED:**



September 26, 2016

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Counsel for Appellant

*Pro se* Respondent:

Thomas J. Torrence

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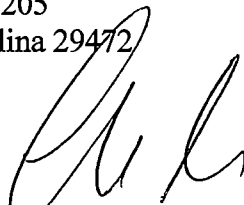
South Carolina Department of Corrections ..... Appellant.

**PROOF OF SERVICE**

I certify that I have served the **APPELLANT'S MOTION TO STRIKE ITEMS FROM THE RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** on the above named *pro se* Respondent by mailing a copy to him, first class postage pre-paid, at the following address:

Thomas J. Torrence  
#094651  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, South Carolina 29472

September 26, 2016

  
\_\_\_\_\_  
Lake E. Summers