

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

Trial Court Case No. 12ALJ0400143AP

RECEIVED
OCT 11 2016
SC Court of Appeals

Thomas J. Torrence, #094651 Respondent,

v.

South Carolina Department of Corrections Appellant.

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

The Respondent, Thomas J. Torrence ("Torrence"), filed his Initial Brief and Designation of Matter in the above-captioned case on August 17, 2016. On September 26, 2016, the Appellant, South Carolina Department of Corrections ("SCDC"), moved this Court, pursuant to Rule 240, South Carolina Appellate Court Rules ("SCACR"), to strike the final three (3) of the five items Torrence identified for inclusion into the record in his Designation.

Torrence respectfully moves this Honorable Court to deny SCDC's September 26, 2016 Motion to Strike and include the matter Respondent designated in the Record on Appeal and include the matter additionally proposed by SCDC for the following reasons:

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SECRET

I. THE RELEVANCE OF ITEMS THREE, FOUR AND FIVE

A. ITEM THREE (3)

Item No. 3 is SCDC's "Return to [Torrence's] Motion to Dismiss the Instant Appeal."

Torrence submits this item is relevant to the instant appeal on three (3) points. First, SCDC filed a Notice of Appeal in this Court to the Administrative Law Court's ("ALC") January 30, 2014 Order in ALC Docket No. 12-ALJ-04-00143-AP, the same case and one of the two Orders SCDC appealed in the instant appeal. The action and the parties are the same.

Second, Item No. 3 corresponds with SCDC's March 10, 2014 Motion to Hold in Abeyance or Otherwise Stay Further Proceedings in this Matter,¹ in which Appellant [SCDC] specifically argues² *to the ALC* the basis for the March 10, 2014 Motion is SCDC's Notice of Appeal before this Court to that Order.

Third, Item No. 3 demonstrates that SCDC vacillates its position prior to and immediately following the January 30, 2014 ALC Order from the position it now argues in its Initial Brief before this Court.

B. ITEM FOUR (4)

Item No. 4 is Torrence's October 5, 2011 "Notice and Petition for Writ of Mandamus" before the South Carolina Supreme Court.

Torrence submits this item is relevant to the instant appeal on two points. First, Torrence filed a Step 1 Grievance on May 21, 2007 [ECI-980-10].³ Despite two attempts by Torrence, via correspondence, SCDC refused to process the grievance until 2010. SCDC responded twice that no action would be taken at that time. On October 5, 2011, Torrence filed a Petition for Writ of Mandamus in the South Carolina Supreme Court seeking to compel

¹ Appellant's Designation of Matter to be Included in the Record on Appeal

² The applicability of the July 26, 2012 ALC Order in *Ackerman et al., v. S.C. Dep't of Corrections*, Docket No. 07-ALJ-04-00444-AP et seq. vs. this Court's decision in *Ackerman et al., v. S.C. Dept's of Corrections*, 782 S.E.2d 757 (Ct. App. 2016).

³ The Grievance which is the nexus of the instant appeal.

SCDC to process the instant grievance. The correspondence and Inmate Request to Staff forms of Torrence argued in and attached to the Mandamus were referenced by the Honorable Deborah Brooks Durden in her January 30, 2014 order, and were part of the abbreviated Record on Appeal.

Second, South Carolina Administrative Law Court Rules of Procedures, Rules 58, 59 and 60 provide in part that the agency is "[t]o provide this Court a complete and full record of documents considered in the disposition of both Step 1 and Step 2 of the above-referenced agency grievance..." and "...[T]he inclusion of all materials submitted in the grievance process are necessary for this Court to base its decision..."

On May 1, 2012 and February 14, 2014, Torrence entered motions before the ALC for SCDC to Provide a Full Record. SCDC made a response dated April 21, 2014.

Further, in Torrence's March 11, 2014 correspondence to Judge Durden accompanying "Appellant's Motion to Deny Respondent's [SCDC's] Motion to Hold in Abeyance or Otherwise Stay Further Proceedings In The Instant Matter; Torrence specifically enclosed a copy of his Motion to Dismiss Respondent's Appeal as Premature "to keep you [Judge Durden] abreast of the procedural posture of this matter." Counsel for SCDC was also forwarded a copy of that March 11, 2014 correspondence.

Torrence submits that the October 5, 2011 Petition for Writ of Mandamus clearly sought the processing of the instant grievance here and thus, was SCDC's responsibility to incorporate that pleading into the record before the ALC other than that provided by Torrence in Step 1 and Step 2 and attachments thereto. The Petition in question, concerning the processing of Step 1, was filed and resolved in the time between Step 1 and Step 2.

C. ITEM FIVE (5)

Item No. 5 is Torrence's November 10, 2011 "Amended Reply to SCDC's Return to Torrence's Notice and Petition for Writ of Mandamus."

In addition to the relevance of this item to the instant appeal on the two points raised in relation to Item No. 4, Torrence submits that documentation from SCDC forestalling the resolution of Torrence's Step 1 Grievance is attached to and argued therein. As set forth above, SCDC did not include these pleadings in the record before the ALC.

In regards to Item No.'s four and five, SCDC raised and argued in Appellant's Initial Brief, footnotes 5 (p. 3) and 17 (p. 12) [see Respondent's Initial Brief, p. 7, footnote 15] the chronology of the pleadings [Torrence's Petition for Writ of Mandamus and Amended Reply to SCDC's Return] as being misconstrued by the ALC. SCDC may not reference and argue actions of Torrence in the grievance process and not include those items in the Record.

III. SCDC'S ADDITIONAL PROPOSED DESIGNATION

SCDC has suggested that, alternatively, should this Court deny the motion to strike Items four and five, SCDC proposes four (4) additional items.

Torrence hereby consents to the additional Designated Matter proposed by SCDC in their September 26, 2016 motion.

IV. CONCLUSION

Torrence suggests that this Honorable Court respectfully deny SCDC's Motion to Strike Item No.'s 3, 4 and 5 and consents to include the Items additionally proposed for Designation by SCDC.

Respectfully submitted,



Thomas J. Torrence

#094651

Lieber Correctional Institution

Post Office Box 205

Ridgeville, South Carolina 219472

RESPONDENT, Pro se

October 4, 2016

**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

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v.

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PROOF OF SERVICE

The undersigned *pro se* Respondent hereby certifies that he has served a copy of **RESPONDENT'S REPLY TO APPELLANT'S MOTION TO STRIKE** on counsel for Appellant by placing a copy in the United States Mail, first-class postage affixed thereto, this 4th day of October, 2016, addressed as follows:

Lake E. Summers, Esq.
Malone, Thompson, Summers & Ott LLC
339 Heyward Street, Suite 200
Columbia, South Carolina 29201



Thomas J. Torrence
#094651
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 219472

RESPONDENT, *Pro se*

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Thomas J. Torrence
094651
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Ridgeville, South Carolina 29472

October 3, 2016

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SC Court of Appeals

The Honorable Jenny Abbott Kitchens
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29472

Re: *Thomas J. Torrence # 094651, Respondent v. South Carolina
Department of Corrections, Appellant*
Appellant Case No. 2016-000285

Dear Ms. Kitchens:

Please find enclosed for filing in the above-referenced matter the original and six (6) copies of RESPONDENT'S REPLY TO APPELLANT'S MOTION TO STRIKE and a Certificate of Service.

Your assistance in this matter is sincerely appreciated.

With kindest regards, I remain.

Sincerely,



Thomas J. Torrence
RESPONDENT, pro se

Cc: Lake E. Summers, Esquire
Counsel for SCDC

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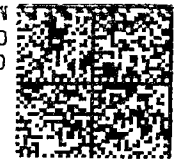
The Honorable Tenny Abbott Kitchings
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