

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

RECEIVED

OCT 14 2016

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

Thomas J. Torrence, #094651 Respondent,

v.

South Carolina Department of Corrections Appellant.

**APPELLANT'S REPLY TO THE RESPONDENT'S RETURN TO ITS
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. On September 26, 2016, SCDC filed a motion, pursuant to South Carolina Appellate Court Rule ["SCACR"] 240, to strike the final three (3) of the five (5) items Torrence proposed for inclusion into the record in his August 17, 2016 submission.

By a filing served October 4, 2016, Torrence submitted his return in opposition to SCDC's motion to strike. SCDC now respectfully submits its instant reply to Torrence's return.

I. REPLY TO TORRENCE’S ARGUMENT CONCERNING THE THREE (3) ITEMS SCDC IDENTIFIED IN ITS MOTION TO STRIKE

A. THE THIRD ITEM PROPOSED BY TORRENCE

SCDC moved to strike the third of the five (5) items Torrence proposed for inclusion in his designation of matter. The third item consisted of the return SCDC filed with this Court on April 4, 2014 to Torrence’s March 10, 2014 “Motion to Dismiss Appeal pursuant to South Carolina Code of Laws § 1-23-610-(A)(1).”

In his return,¹ Torrence argued only that this item was “**relevant** to the instant appeal,” and he articulated three (3) reasons purportedly demonstrating its relevance.² [emphasis supplied]. However, Torrence never asserted in any of these reasons or anywhere else in his return that this item had been presented to the ALC.

SCDC, therefore, respectfully asserts Torrence conceded that the third item he proposed for inclusion in the record was not *presented* to the ALC as required under SCACR 210(c), and SCDC respectfully urges this Court to grant its motion and exclude this item from the record in the instant appeal.

B. THE FOURTH ITEM PROPOSED BY TORRENCE

SCDC moved to strike the fourth of the five (5) items Torrence proposed for inclusion in his designation of matter. The fourth item consisted of the “Notice and Petition for Writ of Mandamus” Torrence filed October 5, 2011 with the South Carolina Supreme Court.

¹ In his August 17, 2016 designation of matter, Torrence did not precisely identify the third item he proposed for inclusion into the record. In its September 26, 2016 motion, SCDC asserted that the third item consisted of its April 4, 2014 return to Torrence’s motion to dismiss. Torrence confirmed SCDC’s assertion in this section of his October 4, 2016 return to SCDC’s September 26, 2016 motion to strike.

² See Torrence’s Return dated October 4, 2016, p. 2.

In his return, Torrence argued only that this item was “**relevant** to the instant appeal on two points.”³ [emphasis supplied]. Torrence, however, never asserted in either of these points or anywhere else in his return that this item had been presented to the ALC.

Therefore, SCDC again respectfully asserts Torrence conceded that the fourth item he proposed for inclusion in the record was not *presented* to the ALC as required under SCACR 210(c), and SCDC respectfully urges this Court to grant its motion and exclude this item from the record in the instant appeal.

C. THE FIFTH ITEM PROPOSED BY TORRENCE

SCDC moved to strike the fifth and final of the five (5) items Torrence proposed for inclusion in his designation of matter. The fifth item consisted of the “Amended Reply to [SCDC’s] Return to [Torrence’s Notice and Petition for Writ of Mandamus]” filed by Torrence on November 10, 2011 with the South Carolina Supreme Court.

In his return, Torrence yet again argued only that this item was *relevant* to the instant appeal.⁴ Torrence, however, never asserted anywhere in his return that this item had been presented to the ALC.

Therefore, SCDC again respectfully asserts that Torrence conceded that the fifth item he proposed for inclusion in the record was not *presented* to the ALC as required under SCACR 210(c), and SCDC respectfully urges this Court to grant its motion and exclude this item from the record in the instant appeal.

³ See Torrence’s October 4, 2016 Return, pp. 2 – 3.

⁴ *Id.*, pp. 3 – 4.

II. INSTANCES IN WHICH TORRENCE MOVED THE ALC TO INCLUDE ITEMS INTO THE RECORD PRESENTED TO THE ALC

Concerning each of the three (3) items subject to its September 26, 2016 motion to strike, SCDC respectfully asserts that Torrence had more than ample opportunity to move the ALC to include them into the record presented to the ALC. Indeed, the following items SCDC proposed for inclusion in its May 12, 2016 designation of matter reflect instances in which Torrence moved the ALC to include materials into the record presented to the ALC:

Item # from SCDC's May 12, 2016 Designation of Matter	Description
12	Torrence's "MOTION TO PROVIDE/CORRECT A DEFINED AND ACCURATE RECORD" dated February 12, 2014.
17	Torrence's "REPLY TO [SCDC'S] RESPONSE IN OPPOSITION TO [HIS] 'RECORD MOTIONS'" and Supporting Exhibits dated April 29, 2014.
21	Torrence's "MOTION TO COMPEL DISCOVERY OF FINANCIAL RECORDS" and Supporting Documents dated November 3, 2014.
30	Torrence's "CLARIFICATION OF FINANCIAL RECORDS MOTION REQUEST No. 8" dated February 23, 2015.
36	Torrence's "MOTION FOR AN ORDER FOR [SCDC] TO COMPLY WITH THIS COURT'S JULY 10, 2014 ORDER FOR MATERIALS TO BE INCLUDED WITH [SCDC'S] BRIEF" dated July 13, 2015.

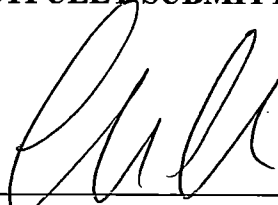
Given the above-provided examples, Torrence obviously did not avail himself of the opportunity to present to the ALC the final three (3) of the five (5) items he proposed for inclusion into the record in his August 17, 2016 designation of matter.

As Torrence did not avail himself of the opportunity to present the three (3) items subject to SCDC's September 26, 2016 motion to the ALC and as none of these items were actually presented to the ALC as required under SCACR 210(c), SCDC respectfully submits that this Court need not consider the alternative proposed by SCDC in its September 26, 2016 motion, namely to include four (4) additional items in the record on appeal for the instant case.

III. CONCLUSION

In light of the above-provided analysis and argument, as well as the analysis and argument it provided in its September 26, 2016 motion, SCDC again respectfully urges this Court to, in accordance with SCACR 210(c), 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 on appeal in the instant case.

RESPECTFULLY SUBMITTED:



October 14, 2016

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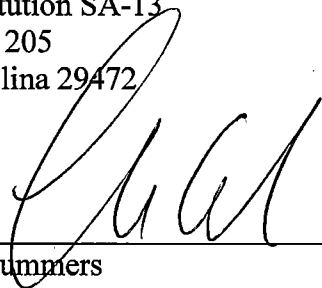
South Carolina Department of Corrections Appellant.

PROOF OF SERVICE

I certify that I have served the **APPELLANT'S REPLY TO THE RESPONDENT'S RETURN TO ITS 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 SA-13
Post Office Box 205
Ridgeville, South Carolina 29472

October 14, 2016



Lake E. Summers