

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge John D. McLeod

ALC Case No. 16-ALJ-04-0100-AP
Appellate Case No. 2016-001563

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DEC 02 2016

SC Court of Appeals

JUSTIN GRIFFIN, # 315057,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

MOTION TO STRIKE IMPROPER MATTER

On or about October 18, 2016, Appellant's Initial Brief was filed. On November 8, 2016, Respondent's Initial Brief was filed. On November 22, 2016, Appellant served a Reply to Respondent's Initial Brief. Attached to this Reply were two "sworn declarations," one signed by Appellant himself and one signed by another inmate named Brian Cappitelli, # 278302.¹ Both sworn declarations were dated November 17, 2016.

Rule 210(c), SCACR, provides that the Record on Appeal "shall not . . . include matter which was not presented to the lower court or tribunal." Clearly, neither of the

¹ As an aside, Appellant asserts that "there are several inmates here who are serving a no parole offense/sentence with more disciplinary infractions than the Appellant, whose max-out projection/date has not budged a single day." (Reply Brief of Appellant, p. 12). Appellant references the sworn declaration of Brian Cappitelli in support of this argument. (See *id.*) However, critically, although Inmate Cappitelli did indeed have several disciplinary infractions, unlike Appellant, he received sanctions *other than* loss of good time. (See <http://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=00278302>.) Accordingly, Appellant and Inmate Cappitelli are not in comparable positions and Appellant's assertion in that regard is without merit.

November 17, 2016 sworn declarations attached to Appellant's Reply were presented to or considered by the lower court, since the lower court's order was dated and filed June 20, 2016. Accordingly, pursuant to Rule 210(c) and relevant case law, the sworn declarations cannot be included in the Record on Appeal or referenced in the appellate briefs. See State v. White, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007) ("Morris' statement was not presented to the lower court and cannot properly be included in the Record on Appeal."); South Carolina State Highway Dep't v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) ("[C]ounsel is prohibited from embodying in their briefs any fact which does not appear in the record.").

Based on the foregoing, Respondent respectfully requests that Appellant's November 17, 2016 sworn declarations be stricken from the appellate record and that any references thereto in Appellant's briefs also be stricken.

WHEREFORE, Respondent prays that this Court will strike the improper matter from the appellate record; strike the references to the improper matter in Appellant's Reply brief and require the service and filing of an Amended Reply Brief omitting any reference to the improper matter; and for such other and further relief as this Court may deem just and proper.


CHRISTINA CATOE BIGELOW

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Post Office Box 21787
Columbia, South Carolina 29221
(803) 896-8508

ATTORNEY FOR RESPONDENT

December 2, 2016

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge John D. McLeod

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JUSTIN GRIFFIN, # 315057,

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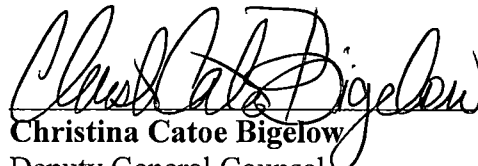
v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date, I mailed a copy of the **Motion to Strike Improper Matter** to Appellant, addressed as follows: Justin Griffin, # 315057, Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, South Carolina 29067.



Christina Catoe Bigelow
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December 2, 2016



South Carolina
Department of
Corrections

NIKKI R. HALEY, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

December 2, 2016

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

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SC Court of Appeals

RE: Justin Griffin, # 315057 v. South Carolina Department of Corrections
Appellate Case No. 2016-001563

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Respondent's **Motion to Strike Improper Matter** in the above captioned appeal, along with **Proof of Service** for the same.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Deputy General Counsel
South Carolina Department of Corrections

cc: Justin Griffin, # 315057
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, South Carolina 29067