

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No. 2016-000966

RECEIVED

APR 06 2017

SC Court of Appeals

THE STATE,

Respondent,

v.

ROBERT M. WATKINS,

Appellant.

**MOTION TO COMPEL FILING OF COMPLETE RECORD ON APPEAL**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

Appellant Robert Watkins was convicted of armed robbery and possession of a weapon after a jury trial held before the Honorable C. Victor Pyle, Jr. on October 23-25, 2002, in Greenville County. Judge Pyle sentenced Appellant to thirty years’ imprisonment for the armed robbery and five years’ imprisonment for possession of a weapon. Appellant filed a timely notice of appeal and, following the submission of a no-merits brief pursuant to Anders v. California, 386 U.S. 738 (1967), the Court of Appeals dismissed Appellant’s appeal and granted appellate counsel’s motion to be relieved. State v. Watkins, Op. No.2004-UP-406 (filed June 22, 2004).

Thereafter, Appellant filed an application for post-conviction relief on October 22, 2004. An evidentiary hearing was held on April 8, 2005, before the Honorable Larry R. Patterson. On

January 17, 2006, Judge Patterson issued an order denying and dismissing Appellant's application. Appellant appealed this order, and on appeal from the dismissal, the South Carolina Supreme Court reversed the post-conviction relief court and remanded Appellant's case for a new trial in the court of General Sessions. Watkins v. State. Memorandum Opinion No. 2008-MO-001 (filed January 14, 2008). The Court found trial counsel was ineffective in failing to properly argue that Appellant was entitled to a jury charge on alibi.

On September 22, 2008, Appellant proceeded to a re-trial before a jury in the Greenville County Court of General Sessions with Judge Patterson presiding. Appellant had been appointed counsel for pre-trial hearings and at the start of trial, but ultimately elected to proceed *pro se* with his appointed counsel acting as standby counsel. On September 24, 2008, the jury convicted Appellant as indicted. Judge Patterson sentenced Appellant to an aggregate thirty years' imprisonment. Appellant appeal his conviction and sentence. Following briefing, the Court of Appeals reversed Appellant's conviction, finding error in having the same judge preside over a post-conviction relief action and subsequent re-trial. The State petitioned for rehearing and then for certiorari to the Supreme Court. Following briefing and argument, the Supreme Court reversed the Court of Appeals and reinstated Appellant's convictions and sentence. State v. Watkins, 406 S.C. 360. 752 S.E.2d 261 (2013).

On June 10, 2014, Appellant filed a motion for a new trial based on after discovered evidence pursuant to Rule 29(b), SCRCrimP, alleging he was entitled to a new trial based on a forensics report indicating the scene was processed for latent fingerprints that he had recently discovered. The State filed its return to this motion on July 8, 2014, and Appellant then filed his response on July 17, 2014. On August 8, 2014, the Honorable Edward W. Miller, acting in his

capacity as Chief Administrative Judge for the Thirteenth Judicial Circuit, denied and dismissed the motion without a hearing.

On January 31, 2014, Appellant filed an application for post-conviction relief and filed an amendment to this application on July 11, 2014. The State filed its return on July 14, 2014. An evidentiary hearing was convened on April 22, 2015, in the Greenville County Court of Common Pleas with Judge Miller presiding. Following the evidentiary hearing, Judge Miller denied and dismissed the application on October 2, 2015. Appellant filed a notice of appeal challenging Judge Miller's denial of his post-conviction application. On April 20, 2016, Appellant's appellate counsel filed a petition for a writ of certiorari and accompanying appendices pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). Appellant filed a *pro se* response to counsel's Johnson petition on June 24, 2016. This petition was transferred to the Court of Appeals pursuant to Rule 243(l), SCACR, and is currently pending before the Court.

On October 7, 2015, Appellant filed a motion for a new trial, captioned "Motion for a New Trial Pursuant to § 17-23-110, Brady v. Maryland, 373 U.S. 83 (1963), and SCRCrimP Rule 29(b), After or Newly Discovered Evidence." In this motion, Appellant asserted the Greenville Police Department and prosecution withheld the incident dispatch detail report for his case, which he asserts is material and exculpatory because it disproves the State's timeline of events. On January 19, 2016, the State made its return to Appellant's motion, asserting the evidence Appellant presented was not material and did not meet the requirements requisite for the grant of a new trial. Appellant made a reply to the State's return on February 10, 2016. On April 26, 2016, Judge Miller denied and dismissed Appellant's motion.

## II.

On May 4, 2016, Appellant filed a notice of appeal to initiate an appeal challenging

Judge Miller's denial of his motion for a new trial. Subsequently, on August 3, 2016, Appellant filed and served his initial brief of appellant. However, Appellant did not file a designation of matter to be included in the record on appeal contemporaneously with the filing of his initial brief. Thereafter, on August 17, 2016, this Court sent Appellant a letter advising him of the deficiency with his appeal and indicating his appeal would be dismissed unless he corrected the deficiency within ten days. In response to this Court's letter, Appellant provided this Court with a designation of matter but failed to serve that document on the State. The State filed a motion to dismiss the appeal, which was denied after Appellant served the State with his designation of matter. The State filed and served its initial brief of respondent and designation of matter on January 27, 2017. On March 29, 2017, Appellant filed a record on appeal with this Court. This record was not served on the State. Additionally, this record is incomplete.

### III.

Pursuant to Rule 210(a), SCACR, an appellant in a criminal appeal is required to "serve a copy of the Record on Appeal on each party who has served a brief." Additionally, pursuant to Rule 210(c), SCACR, "[t]he 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."

### IV.

In the present case, Appellant failed to serve the State with a copy of the record on appeal pursuant to Rule 210(a), SCACR. Additionally, Appellant failed to include all items designated by both parties; specifically, Appellant neglected to include the trial transcript dated September 22-24, 2008. Furthermore, Appellant included non-designated material—a sworn affidavit in support of motion for a new trial—in the Record on Appeal. Importantly, as our Supreme Court

has stated, "the 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." Henning, 307 S.C. at 437, 415 S.E.2d at 794. Accordingly, the State moves for this Court to compel Appellant to file a corrected record on appeal that includes all matters properly designated and no additional items pursuant to Rule 210(c), SCACR. Furthermore, the State moves for this Court to compel to serve the State with a copy of the record on appeal pursuant to Rule 210(a), SCACR.

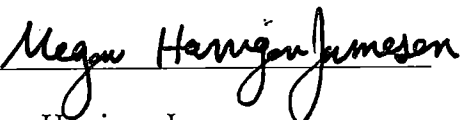
**WHEREFORE**, the State prays this Court will compel Appellant to file and serve a proper record on appeal in compliance with appellate court rules; hold this appeal in abeyance pending a ruling on the State's motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

MEGAN HARRIGAN JAMESON  
Assistant Attorney General

W. WALTER WILKINS  
Solicitor, Thirteenth Judicial Circuit

BY: 

Megan Harrigan Jameson  
S.C. Bar No. 100108

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

April 6, 2015

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

APR 06 2017

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2016-000966

THE STATE,

Respondent,

vs.

ROBERT MAX WATKINS,

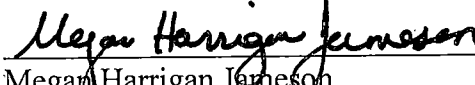
Appellant.

**PROOF OF SERVICE**

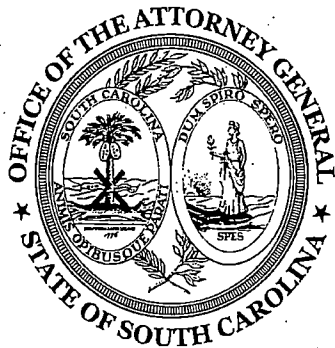
I, Megan Harrigan Jameson, certify that I have served the within Motion to Compel Filing of Complete Record on Appeal on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert Max Watkins, SCDC #24803  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, SC 29669

I further certify that all parties required by Rule to be served have been served.  
This 6th day of April, 2017.

  
Megan Harrigan Jameson  
Assistant Attorney General  
S.C. Bar No. 100108

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



ALAN WILSON  
ATTORNEY GENERAL

RECEIVED

APR 06 2017

SC Court of Appeals

April 6, 2017

Robert Max Watkins, SCDC #24803  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer, SC 29669

RE: State v. Robert Max Watkins – Appellate Case No. 2016-000966

Dear Mr. Watkins:

Enclosed please find two copies of the Motion to Compel Filing of Complete Record on Appeal in the above-referenced case.

Sincerely,

Megan Harrigan Jameson  
Assistant Attorney General  
S.C. Bar No. 100108

MHJ/kc

Enclosures

cc: The Honorable Jenny A. Kitchings (original and six enclosed)  
Victim Services