STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable J. Cordell Maddox, Circuit Court Judge

RECEIVED
MAY 12 2017
SC Court of Appeals

Appellate Case No. 2016-000560

THE STATE,.....RESPONDENT

v.

SHAWN ALLEN MITCHELL,.....APPELLANT

RETURN TO APPELLANT'S MOTION TO STRIKE AND RESPONDENT'S MOTION TO SUPPLEMENT THE RECORD IN THE ALTERNATIVE

The Counsel for the Respondent requests that the Appellant's Motion to Strike be dismissed because the six documents designated by it are very relevant to the Respondent's defensive position. Pursuant to Rule 209(a) of the SC Appellate Court Rules (hereinafter, SCACR), "a party shall serve on all parties to the appeal a Designation of Matter to be included in the Record on Appeal which shall set forth with specificity those parts...or *other materials* which he proposes to include in the record on appeal." (Emphasis added.) "The Record on Appeal shall include *all* matter designated to be included by any party...," Gaither v. Gaither, 2010 WL 10079867. Rule 210(c), SCACR states that "a party shall not include any matter in his Designation which is not relevant to the appeal." As stated in the Respondent's Designation of Matter, the undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

In this matter, the Respondent's proposed Designation provides the relevant evidence to support its initial defensive argument and statement of the issues of appeal regarding the untimeliness of the Appellant's brief as stated in the Respondent's Initial Brief. Additionally, courts have infrequently granted a motion to strike defenses as they've been noted to be a drastic remedy. See National Credit Union Admin. v. First Union Capital Markets Corp., 189 F.R.D. 158, 162 (1999). Here, the Respondent's allegations in its defensive argument are directly related to the controversy of the matter at hand. Thus, the Appellant's motion should not be granted. Id. at 163.

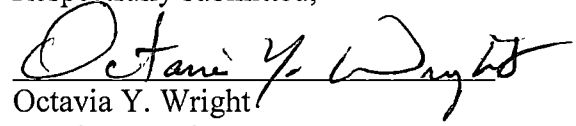
This Court has the discretion to affirm the lower court's ruling regardless of whether those reasons have been ruled on or presented to the lower court. In I'on, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419 (2000), the South Carolina Supreme Court stated: "Under the present rules, a respondent ... may raise on appeal any *additional* reasons the appellate court should affirm the lower court's ruling. It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review." (Emphasis added.)

In addition, the Respondent's defensive argument regarding the Appellant's untimeliness in filing his brief is one that was included in its statement of the issues on appeal. As noted in Rule 208(b)(1)(B), SCACR, "ordinarily, no point will be considered which is *not* set forth in the statement of issues on appeal." Id. at 420. In Brown v. Warden of Kershaw Correctional Institution, 2016 WL 5387969, the U.S. District Court of South Carolina stated "the appellate court may rely on any 'additional sustaining grounds' – either on its own initiative or by the respondent's submission – for affirming a trial court's decision." For these reasons, the Court should dismiss

the Appellant's Motion to Strike and fairly consider all of the Respondent's arguments accordingly.

In lieu of dismissing the Appellant's Motion, the Respondent respectfully requests this court to now consider its Motion to Supplement the Record in the Alternative pursuant to Rules 212, 210(h) and 208(b)(1)(C) and (2), SCACR. See also McClurkin v. Stevenson, 2009 WL 764964. The materials that the Respondent would like to add have already been designated with its initial brief and referenced in the Appellant's previous Motion to Strike. Since these additional materials are relevant to the Respondent's position as stated herein, it would be a fundamental miscarriage of justice to not consider them in this appeal.

Respectfully submitted,



Octavia Y. Wright
Legal Counsel
South Carolina Department of Probation,
Parole, and Pardon Services
P.O. Box 50666
Columbia, SC 29250
(803) 734-9220

May 11, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable J. Cordell Maddox, Circuit Court Judge

RECEIVED
MAY 12 2017
SC Court of Appeals

Appellate Case No. 2016-000560

THE STATE,.....RESPONDENT

v.

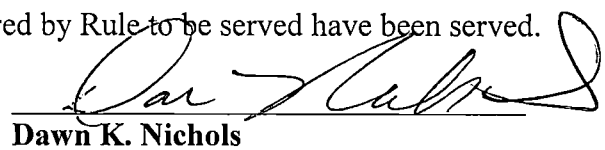
SHAWN ALLEN MITCHELL,.....APPELLANT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant, certify that I have served the within *Return to Appellant's Motion to Strike and Respondent's Motion to Supplement the Record on Appeal*, dated May 11, 2017, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, this 11th day of May, 2017, addressed to her attorney of record:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, S.C. 29211-1589

I further certify that all parties required by Rule to be served have been served.



Dawn K. Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250
(803) 734-9220

State of South Carolina
Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

RECEIVED
MAY 12 2017
SC Court of Appeals

May 11, 2017

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

RE: State v. Shawn Mitchell

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the *Return to Appellant's Motion to Strike and Respondent's Motion to Supplement the Record on Appeal*, dated May 11, 2017, along with proof of service in the above-referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Octavia Y. Wright
Legal Counsel

Enclosures

cc: LaNelle DuRant, Appellant Defender

State of South Carolina
Department of Probation, Parole, and Pardon Services
2221 DEVINE STREET, SUITE 600, POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250

RECEIVED
MAY 12 2017
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211