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THE STATE OF SOUTH CAROLINA

In The Supreme Court

AUG 16 2017

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S.C. SUPREME COURT

Honorable H. W. Funderburk, Jr., Administrative Law Judge
Case No.: 2015-002255

Tommy J. BellamyPetitioner

vs.

Horry County AssessorRespondent

**RESPONDENT'S MOTION TO DISMISS
PETITIONER'S PETITION FOR WRIT OF CERTIORARI**

The Respondent, Horry County Assessor, respectfully moves the Court for an order dismissing Petitioner's Petition for Writ of Certiorari in this matter because the Court of Appeals correctly found that Petitioner failed to comply with the South Carolina Appellate Court Rules ("SCACR") in his Petition to this Court in that he failed to serve the Respondent Horry County Assessor with a copy of the Appendix and its required documents as noted under Rule 242(e), SCACR. The Appendix is required in order for Respondent to respond to Petitioner's Petition for Writ of Certiorari.

On July 17, 2017, Respondent's counsel received a hand-delivered copy of Petitioner's Petition for Writ of Certiorari; however, Petitioner failed to serve a copy of the Appendix on Respondent's counsel. South Carolina Appellate Court Rule 242(e)(2) states "If the matter was

dismissed by the Court of Appeals for procedural or other reasons, the Appendix shall include any documents relevant to the dismissal including any motion to dismiss and any return or reply that may have been filed.” This matter was dismissed for procedural reasons by the Court of Appeals on June 26, 2017, finding that Petitioner had repeatedly failed to cure deficiencies contained in the Record on Appeal. (Attachment A).

BACKGROUND

The *pro se* Petitioner filed his Notice of Appeal on November 3, 2015, with the South Carolina Court of Appeals. Respondent served the Petitioner with a copy of its Initial Brief and Designation of Matter on May 6, 2016. Respondent received the Petitioner’s Record on Appeal (“Record”) on May 17, 2016. After reviewing the Record, the Respondent determined that items were omitted from the Record and other items contained in the Record were incomplete.

On May 19, 2016, Respondent Horry County Assessor filed a motion for an extension of time to file its final brief, based on the fact that Petitioner failed to file a complete Record on Appeal. On June 7, 2016, Petitioner filed a Final Brief in which Petitioner attempted to revise his brief to include exhibits within its Final Brief. Petitioner failed to file a corrected Record on Appeal. On June 20, 2016, Respondent filed its first Motion to Dismiss with the Court of Appeals.

On July 27, 2016, Respondent’s counsel received a copy of Petitioner’s Amended Record on Appeal in which he again failed to include the previously omitted designated documents. On August 23, 2016, Petitioner filed a motion to substitute an exhibit and to approve the “amended record.” In Petitioner’s motion and his two letters to the Court filed August 23, 2016, and August 24, 2016, Petitioner asked the Court to make the actual substitution to the Record on Appeal and an amended Record on Appeal was not submitted.

On August 24, 2016, Respondent filed a motion requesting an extension of time to file its brief. In its motion, Respondent listed each of the documents at issue and provided an explanation of each item. On August 31, 2016, Petitioner filed his response in opposition to and a second motion to substitute an exhibit with the Court. With this Motion, Petitioner attached three documents listed in Respondent's Designation of Matter which he had failed to include in the Record on Appeal. Petitioner again requested that the Court of Appeals make the substitution and replace these documents in the actual Record on Appeal; Petitioner did not provide an Amended Record on Appeal.

On October 25, 2016, the Court of Appeals issued its Order granting Petitioner ten days in which to serve and file an amended record on appeal, and further stated that the amended record was to include "...all pages..." of two specific documents which were incomplete in the previous Amended Record on Appeal. Petitioner failed to serve and file a corrected amended record on appeal as ordered and the Court issued an Order dismissing the matter on November 29, 2016.

Petitioner then filed a letter with the Court of Appeals on December 8, 2016, requesting a rehearing. The Court's Order, filed February 9, 2017, instructed Petitioner to file a Second Amended Record on Appeal "that includes the correct and full matters designated by both parties."

Petitioner's Second Amended Record on Appeal, received on February 21, 2017, however, failed to include: (1) the three additional documents he attached to his Second Motion for Extension of Time filed with the Court on August 31, 2016; and, (2) complete copies of the two documents specifically named in the Court's Order filed October 25, 2016. Additionally, the Second Amended Record on Appeal was almost identical to the deficient Amended Record

on Appeal filed July 27, 2016, the only difference being the Certificate of Petitioner found on page 78 of both of the Records. The documents included in the Second Amended Record on Appeal were identical, page by page, to those documents included in the Amended Record on Appeal, and the ordered changes were not made. Respondent filed its second Motion to Dismiss on March 2, 2017.

The Court of Appeals issued an Order filed April 27, 2017, ordering Petitioner to serve and file a supplemental record on appeal which included the designated documents. On May 8, 2017, Petitioner served Respondent's counsel with a Supplemental Record on Appeal which still did not include the designated documents. Moreover, Petitioner included a document in the Supplemental Record on Appeal of unknown origin, signed by him, that is not a part of the Horry County Assessor's file, and was not listed in the Petitioner or the Respondent's Designations of Matter to be Included in the Record on Appeal. Respondent filed a third Motion to Dismiss on May 19, 2017.

SUMMARY

After granting the Petitioner multiple opportunities to correct the Record on Appeal, all of which were of little or no avail, the Court of Appeals issued its' Order of June 26, 2017, dismissing the case because Petitioner repeatedly failed to cure his deficiencies. On July 12, 2017, the Court of Appeals declined to act on the Petitioner's Motion to Rehear filed July 3, 2017, and noted in its letter to the Petitioner, that the Petitioner's Petition to Reinstate was denied by the Court on June 26, 2017. (Attachment B). Moreover, Respondent's counsel has filed three (3) Motions to Dismiss with the Court of Appeals, none of which have been included in an Appendix filed by Petitioner with this Honorable Court. (The title page of each Motion to Dismiss is included in Attachment C).

Petitioner failed to meet the requirements under Rule 242(e), SCACR, by failing to file an Appendix with this Court which should have included the following documents: the Motions to Dismiss and any Returns and Replies filed with the Court of Appeals; a copy of the Court of Appeals decision on which certiorari is sought; a copy of any petitions for rehearing or reinstatement filed in the Court of Appeals and the Court's ruling on same; and serving a copy of the Appendix upon Respondent's counsel. Significantly, since the filing date of November 3, 2015, the Court of Appeals issued eleven (11) deficiency letters to the Petitioner. (Attachment D), providing him with ample opportunities to correct his deficiencies. The Petitioner has repeatedly failed to provide the Court of Appeals with a Record containing the necessary documents designated by Respondent in accordance with the Court's Rules. Petitioner has further failed to provide an Appendix in the instant matter in accordance with Rule 242(e).

Based on the above, Respondent Horry County Assessor respectfully requests that this Honorable Court deny the Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,



Emma Ruth Brittain, Esquire
S.C. Bar No. 5298
THOMAS & BRITTAIN, P.A.
4712 Jenn Drive, Suite B
Post Office Box 1290
Myrtle Beach, South Carolina 29578
Telephone: (843) 692-2628
Facsimile: (843) 692-0928
E-mail: erbrittain@myrlaw.com
Attorneys for Respondent

August 16, 2017

THE STATE OF SOUTH CAROLINA

In The Supreme Court

RECEIVED

AUG 16 2017

APPEAL FROM THE ADMINISTRATIVE LAW COURT **S.C. SUPREME COURT**

Honorable H. W. Funderburk, Jr., Administrative Law Judge
Case No.: 2015-002255

Tommy J. BellamyPetitioner

vs.

Horry County AssessorRespondent

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss Petitioner's Petition for Writ of Certiorari by depositing a copy of it in the United States mail, postage prepaid, on August 16, 2017, addressed to the *pro se* Petitioner as follows:

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River, South Carolina 29566

And a copy served on:

Arrigo P. Carotti, Esquire
Horry County Attorney
Post Office Box 1236
Conway, South Carolina 29528

Kimberly W. Nobles

Kimberly W. Nobles

Thomas & Brittain, P.A.

Post Office Box 1290 (zip 29578)

4712 Jenn Drive, Suite B (zip 29577)

Myrtle Beach, South Carolina

Telephone: 843-692-2628

Fax: 843-692-0928

August 16, 2017

ATTACHMENT A

The South Carolina Court of Appeals

Tommy J. Bellamy, Appellant,

v.

Horry County Assessor, Respondent.

Appellate Case No. 2015-002255

ORDER

After careful consideration of the petition to reinstate, the Court finds Appellant has still failed to cure the deficiencies contained in the record on appeal. Accordingly, there is no basis for granting the petition to reinstate and the petition is denied.¹

Paul G. Short, Jr.

J.

H. Brent Lee

J.

U. Ke

J.

Columbia, South Carolina

cc:

Tommy J. Bellamy
Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire

FILED

June 26, 2017

¹ Because the petition to reinstate is denied, this court need not act on Respondent's "motion to dismiss the appeal and dismiss Appellant's petition to reinstate the appeal."

ATTACHMENT B



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
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www.sccourts.org

July 12, 2017

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Mr. Bellamy:

We decline to act on the appellant's motion to rehear filed July 3, 2017. The appellant's petition to reinstate was denied by this Court on June 26, 2017. Pursuant to Rule 221 (c) of the South Carolina Appellate Court Rules, we decline to act on the subsequently filed motion. The remittitur will be sent pursuant to Rule 221 (b), SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire

ATTACHMENT C

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

JUN 20 2016

Honorable H. W. Funderburk, Jr., Administrative Law Judge

SC Court of Appeals

Case No.: 2015-002255

Tommy J. BellamyAppellant

vs.

Horry County AssessorRespondent

MOTION TO DISMISS APPEAL FOR FAILURE TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES, OR IN THE ALTERNATIVE, TO REQUIRE APPELLANT TO CORRECT THE RECORD ON APPEAL BY INCLUDING ALL DESIGNATED MATTER

June 16, 2016

Emma Ruth Brittain, Esquire
S.C. Bar No. 5298
THOMAS & BRITTAİN, P.A.
1314 Professional Drive
Post Office Box 1290
Myrtle Beach, South Carolina 29578
Telephone: (843) 692-2628
Facsimile: (843) 692-0928
E-mail: erbrittain@myrlaw.com
Attorneys for Respondent

82665

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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MAR 02 2017

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable H. W. Funderburk, Jr., Administrative Law Judge
Case No.: 2015-002255

Tommy J. BellamyAppellant

vs.

Horry County AssessorRespondent

**MOTION TO DISMISS APPEAL FOR FAILURE TO COMPLY
WITH THE SOUTH CAROLINA APPELLATE COURT RULES**

Emma Ruth Brittain, Esquire
S.C. Bar No. 5298
THOMAS & BRITTAI, P.A.
1314 Professional Drive
Post Office Box 1290
Myrtle Beach, South Carolina 29578
Telephone: (843) 692-2628
Facsimile: (843) 692-0928
E-mail: erbrittain@myrlaw.com
Attorneys for Respondent

February 28, 2017

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

RECEIVED

MAY 19 2017

Honorable H. W. Funderburk, Jr., Administrative Law Judge
Case No.: 2015-002255

SC Court of Appeals

Tommy J. BellamyAppellant

vs.

Horry County AssessorRespondent

**MOTION TO DISMISS THE APPEAL AND DISMISS APPELLANT'S
PETITION TO REINSTATE THE APPEAL**

May 17, 2017

Emma Ruth Brittain, Esquire
S.C. Bar No. 5298
THOMAS & BRITTAIN, P.A.
1314 Professional Drive
Post Office Box 1290
Myrtle Beach, South Carolina 29578
Telephone: (843) 692-2628
Facsimile: (843) 692-0928
E-mail: erbrittain@myrlaw.com
Attorneys for Respondent

ATTACHMENT D



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 17, 2015

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Mr. Bellamy:

Upon reviewing your appellant's initial brief, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The document is improperly paginated. Specifically, each page must be numbered.

Additionally, a list of exhibits was attached to your initial brief. These documents are being returned to you. Your brief may only contain what is allowed in Rule 208(b), SCACR.

Very truly yours,

Handwritten signature of Jay A. Kitchings in black ink. The signature is cursive and stylized, with the first letters of the first and last names being capitalized and prominent.
CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 17, 2015

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Mr. Bellamy:

Upon reviewing your motion to file your appellant's initial brief and designation of matter out-of-time, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your motion will not be considered:

- The required filing fee has not been submitted. The correct filing fee is \$25.00.

Very truly yours,

A handwritten signature in black ink that reads "Jay A. Latcojs".

CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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January 14, 2016

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Mr. Bellamy:

Upon reviewing your appellant's initial brief, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The document has not been signed as required by Rule 267(b), SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire



The South Carolina Court of Appeals

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CLERK

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June 06, 2016

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Mr. Bellamy:

Upon reviewing your record on appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The document is not accompanied by the required certificate of counsel.
- The name, address, and phone number of all counsel must appear on the cover of the record on appeal, pursuant to Rule 267(a), SCACR. Specifically, Arrigo Paul Carotti and Emma Ruth Brittain were not listed as counsel of record for the respondent.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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June 14, 2016

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Counsel:

Upon reviewing your appellant's final brief, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The document is not accompanied by the required certificate of counsel.
- Pursuant to Rule 211 (b), SCACR, "The final brief(s) shall be identical to the brief(s) previously served under Rule 208." You must file a motion specifying where the changes are in your final brief.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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August 23, 2016

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Mr. Bellamy:

Upon reviewing your motion dated August 20, 2016, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The required filing fee has not been submitted. The correct filing fee is \$25.00.
- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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August 25, 2016

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Mr. Bellamy:

Upon reviewing your correspondence received August 24, 2016, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- Your check numbered 1085 for \$25.00 is enclosed. It was not made payable to the South Carolina Court of Appeals.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenny Abbott Kitchings".
CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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March 02, 2017

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Mr. Bellamy:

Upon reviewing your second amended record on appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or the appeal will be dismissed:

- The fourteen (14) copies included with the second amended record on appeal are not in compliance with Rule 210, SCACR. Specifically, only the Index, pages 1, 2, 78, 79, proof of service, and certificate of counsel were included within the copies. They are not identical to the unbound original copy.
- The fourteen (14) copies are not in compliance with Rule 267(d), and the letter of this Court dated May 9, 2016. Specifically, the copies were submitted unbound.
- Fourteen (14) amended copies must be submitted.

Very truly yours,


CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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March 08, 2017

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Mr. Bellamy:

Upon reviewing your return to the motion to dismiss, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or the Court will proceed without consideration of your document:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. Specifically, the proof of service included with the document indicates you served the amended record on appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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March 08, 2017

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Mr. Bellamy:

This is the Court's second request for these corrections. Upon reviewing your second amended record on appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or the appeal will be dismissed:

- The binding does not comply with Rule 267(d), SCACR, and the letter of this Court dated May 9, 2016.
- An original unbound, and fourteen (14) bound amended copies must be served and filed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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March 09, 2017

Tommy J. Bellamy
3684 Sea Mountain Highway
Little River SC 29566

Re: Tommy Bellamy v. Horry County Assessor
Appellate Case No. 2015-002255

Dear Mr. Bellamy:

Upon reviewing your appellant's final brief, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or the appeal will be dismissed:

- The binding does not comply with Rule 267(d), SCACR.
- An original unbound, and fourteen (14) bound amended copies must be served and filed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Arrigo Paul Carotti, Esquire
Emma Ruth Brittain, Esquire