

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Appeal from Laurens County
Frank R. Addy, Circuit Court Judge

RECEIVED

SEP 22 2017

THE STATE,

S.C. SUPREME COURT
RESPONDENT,

V.

BENNIE RAY BROWN, JR.,

APPELLANT

APPELLATE CASE NO. 2016-001597

PETITION TO EXCEED FIFTY
PAGE LIMIT FOR AN INITIAL BRIEF OF APPELLANT
AND DESIGNATION OF MATTER

The undersigned counsel respectfully requests an order allowing her to file an initial brief of appellant and designation of matter in this case in excess of the fifty (50) page limit imposed by Rule 208(b)(5), SCACR. In support of this motion, counsel presents the following:

1. The initial brief of appellant and designation of matter in this case are due today, September 22, 2017.

2. Counsel has raised four significant issues, which require discussion of the factual background and relevant legal principles. In light of the legal significance of these issues, justice to the issues presented cannot be done in the fifty (50) pages authorized by Rule 208(b)(5), SCACR. The transcripts in this double homicide case span 2,352 pages. Initially, the state sought the death

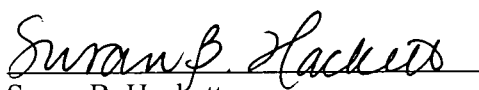
penalty, but the judge ultimately concluded Appellant was ineligible for capital punishment because he is intellectually disabled. There were multiple hearings regarding Appellant's intellectual disability. Although in a typical case the finding of intellectual disability would render the transcripts of the hearings concerning that subject of little importance to the non-capital trial, in this case, the intellectual disability hearing, exhibits, and findings are crucial to an issue on appeal regarding sentencing. In fact, it is this issue on appeal that was contained in the notice of appeal and justified the filing of the notice of appeal in this Court, rather than the Court of Appeals. Consequently, the multi-day hearings on the intellectual disability matter are critical to at least one appellate issue. Finally, the judge sentenced Appellant to two consecutive life sentences without the possibility of parole. The stakes for Appellant could not be higher.

3. Counsel respectfully moves that this Court to allow her to file an initial brief of appellant and designation of matter not in excess of sixty-five (65) pages. Counsel has made every effort for brevity.

4. Opposing counsel, Donald J. Zelenka, of the Office of the Attorney General, graciously does not oppose this request as indicated by his signature below.

WHEREFORE, undersigned counsel respectfully requests an order from this Court granting her the right to exceed the fifty (50) page limit of Rule 208(b)(5), SCACR. Counsel also requests that the order accept the initial brief of appellant and designation of matter in the case not in excess of sixty-five (65) pages as filed.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

Attorney for Appellant

I do not oppose this request.

per Myra Hanja Jameson
Donald J. Zelenka

September 22, 2017

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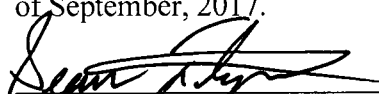
CERTIFICATE OF SERVICE

I certify that a true copy of the petition to file an initial brief of appellant in excess of the fifty page limit has been served on Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Bennie Ray Brown, Jr., #169625, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 22nd day of September, 2017.


Susan B. Hackett
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 22nd day
of September, 2017.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.