

STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUN 13 2018

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2016-002367

Cedric L. Woods#265789,.....Appellant.

v.

State of South Carolina,.....Respondent.

MOTION TO STRIKE

&

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE¹

The State files this motion to strike under Rule 240(a), SCACR, and asks this Court to either strike Mr. Woods' Reply Brief, or strike all references to case number 2016-CP-02-01406 that are contained within his Reply Brief.

¹ Under Rule 240(c)(1)-(3), a motion shall include a certificate of service, a memorandum with citation of authorities, and, "where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions." Although the Record on Appeal or Appendix has not been filed, the State does not think affidavits or other documents are necessary, because the motion and memorandum reference the Order on Appeal, the Notice of Appeal, and the Reply Brief, which Mr. Woods has already submitted to the court. If the court disagrees, the State will accordingly supplement the motion and memorandum.

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

The State received Mr. Woods' Reply Brief on June 11, 2018. The Reply Brief was due on May 10, 2018. Rule 208(a)(3), SCACR ("If a reply brief is prepared, appellant shall, within ten (10) days after service of respondent's brief, serve one copy of the reply brief on all parties to the appeal and file with the clerk of the appellate court one copy of the reply brief with proof of service."). Because Mr. Woods' filed his Reply Brief over a month after the deadline, that brief should be struck from the record.

In the alternative, all references to case number 2016-CP-02-01406 should be struck from Mr. Woods' Reply Brief. In his Reply Brief, Mr. Woods contends the State converted the lower court case from an action for declaratory judgment to an action for PCR. (Appellant's Reply Brief, pp. 4 and 7). To support this contention, he attaches an order from case number 2016-CP-02-01406, which is an order denying Mr. Woods' motion to alter or amend the dismissal of his application for PCR. (Appellant's Reply Brief, p. 8). This appellate case, however, stems from case number 2014-CP-02-00784. (Order on Appeal, Order of Judge Hood (October 14, 2016)); *see also* (Appellant's Notice of Appeal). The 2016 case is irrelevant. What is more, the 2016 case cannot be included in the Record on Appeal. Rule 210(c), SCACR ("The Record shall not...include matter which was not presented to the lower court or tribunal.").

CONCLUSION

Mr. Woods' Reply Brief was over a month late. Consequently, the court should order it struck in its entirety. In the alternative, the 2016 case has nothing to do with this appeal and cannot become part of the Record on Appeal. If the Reply Brief is not struck in its entirety, then this court should order Mr. Woods to strike all references to case number 2016-CP-02-01406.

Respectfully submitted,

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June 13, 2018

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PROOF OF SERVICE

I certify that I served the Appellant with copies of the Respondent's Motion to Strike and Memorandum in Support via U.S. mail. The copies were sent to the following address:

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Mailed June 13, 2018

By: Kevin Desmond Maroney
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