

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

OCT 01 2018

Administrative Law Judge S. Phillip Lenski

**SC Court of Appeals**

ALC Case No. 18-ALJ-04-0224-AP  
Appellate Case No. 2018-001307

Sanyika Askari, #236679.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

**MOTION TO STRIKE APPELLANT’S RECORD ON APPEAL AND TO  
REQUIRE APPELLANT TO FILE A CORRECTED RECORD ON APPEAL**

This matter is before the Court pursuant to Sanyika Askari’s appeal of Administrative Law Court Judge S. Phillip Lenski’s July 2, 2018 dismissal order.

On August 6, 2018 Appellant filed a Motion to Hold Appeal in Abeyance and a Motion to Proceed In Forma Pauperis. Respondent filed replies to both motions on September 17, 2018. These motions are still pending before the Court. On August 28, 2018 Appellant filed his Designation of Matter and Initial Brief. Respondent filed a Motion to Strike Appellant’s Designation of Matter and Initial Brief and to Require the Filing of a Designation of Matter and Initial Brief Conforming to South Carolina Appellate Court Rules 208, 209, and 210 on September 20, 2018. This motion is also still pending before the Court. Then on September 20, 2018, Appellant filed the Record on Appeal.

Appellant has included several documents in the Record on Appeal that were not presented to the Administrative Law Court in the underlying action. As such, Respondent requests that the Court strike the Record on Appeal as filed on September 20, 2018 and require Appellant to file a Corrected Record on Appeal.

South Carolina Appellant Court Rule 210(c) states that the Record on Appeal “shall not” include anything “which was not presented to the lower court or tribunal.” The Administrative Law Court filings in the case from which Appellant is appealing were limited to the following: Appellant’s Notice of Appeal with answered Step One and Two Grievances attached, Respondent’s Motion to Dismiss, Appellant’s Motion for Extension of Time, Appellant’s Motion to Hold Appeal in Abeyance, and the Court’s dismissal order. The Record required by Administrative Law Court Rule 58 was not filed because the Court dismissed the appeal before it was due.

Appellant included in the Record on Appeal 14 pages of documents that were not presented to the Administrative Law Court at all. Specifically, automated requests to staff (ARTSM) numbers 17-551352, 17-599670, 17-605528, 17-665972, 17-677901, and 18-00928659 (R.p. 4-9<sup>1</sup>), a letter from Appellant to Mrs. White dated May 2, 2018 (R.p. 21-24), an inmate correspondence memo to Appellant from W.W. Thomas dated May 11, 2018 (R.p. 25), a paper request to staff member (R.p. 26), a letter to the Office of General Counsel from Appellant dated June 13, 2018 (R.p. 27), and Appellant’s Notice of Appeal

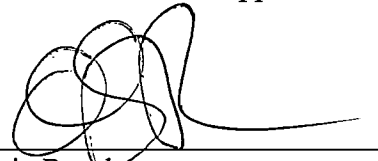
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<sup>1</sup> The Record on Appeal is not paginated as required by South Carolina Appellant Court Rule 210(c). However, Appellant did include an Index which gave page numbers for some of the documents in the Record on Appeal. The page numbers used in this motion are drawn or extrapolated from that index.

filed with this Court (R.p. 28). Additionally, the copy of Respondent's Motion to Dismiss filed with the Administrative Law Court on June 14, 2018 which Appellant included in the Record on Appeal has Appellant's personal notes and markings on it. (R.p. 15-19). Thus it is not a true copy of what was considered by the Administrative Law Court. Because these documents were not presented to the lower court or tribunal, they cannot be included in the Record on Appeal. SCACR 210(C).

**WHEREFORE**, Respondent prays that this Court strike the Record on Appeal and require Appellant to file a Corrected Record on Appeal, and for further relief as this Court may deem just and proper. In the alternative, Respondent requests that this Court strike from the Record on Appeal those documents which have been improperly included and provide the parties with guidance regarding pagination and citation to the Record on Appeal in their Final Briefs.

Additionally, there are currently three motions pending before the Court – including this one – regarding the content of the Record on Appeal. As such, Respondent respectfully requests that this Court extend the time for filing the Final Brief of Respondent until twenty days after these motions have been resolved and, if a Corrected Record on Appeal is required by the court, the Corrected Record on Appeal has been served upon Respondent.



Annie Rumlér  
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S.C. Department of Corrections  
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Columbia, South Carolina 29221  
(803) 896-1355

**ATTORNEY FOR RESPONDENT**

September 28, 2018

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 18-ALJ-04-0224-AP  
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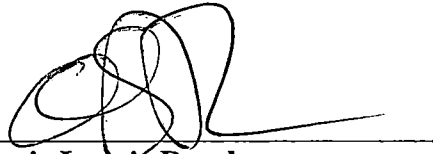
Sanyika Askari, #236679.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

**CERTIFICATE OF SERVICE**

I hereby certify that on today's date I served a copy of the foregoing Motion to Strike Appellant's Record on Appeal and to Require Appellant to File a Corrected Record on Appeal to Appellant by depositing a copy of same in the United States Mail, postage prepaid addressed as follows: Sanyika Askari a.k.a. Henry Fuller, #236679, Dorm-Room-Bunk: BWB-0043-A, Allendale Correctional Institution, P.O. Box 1151, Fairfax, SC 29827.



**Annie Laurie Rumler**  
Staff Attorney  
Office of General Counsel  
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September 28, 2018



HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

September 28, 2018

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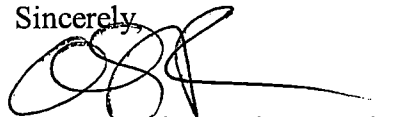
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Reference: App. Case No.: 2017-001484 (*Sanyika Askari*, #236679  
*v. South Carolina Department of Corrections*)

Dear Madam Clerk:

Enclosed, please find the original and six copies of Respondent's Motion to Strike Appellant's Record on Appeal and to Require Appellant to File a Corrected Record on Appeal. Thank you.

Sincerely,



Annie Laurie Rumler, Esquire

Enclosure

cc: Sanyika Askari, #236679



Office of General Counsel

P.O. Box 21787/4444 Broad River Road  
Columbia, South Carolina 29221-1787

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