

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
ROBERT E. HOOD, CIRCUIT COURT JUDGE

Case No. 2016-CP-40-6916
Appellate Case No. 2017-002577

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NOV 09 2018
SC Court of Appeals

Charles Eugene Carpenter,.....Appellant,

v:

South Carolina Department of Corrections and
The State of South Carolina, Respondents.

**RESPONSE TO THE STATE OF SOUTH CAROLINA'S
MOTION TO SUPPLEMENT RECORD ON APPEAL**

Appellant Charles E. Carpenter (hereafter "Appellant") submits the following argument in response to the motion to supplement the Record on Appeal filed by Respondent State of South Carolina ("Respondent State"). For the reasons set forth below, Appellant consents to certain relief requested, but further requests that the motion be denied in part, specifically as to a document recently "discovered" by Respondent State that was never produced or introduced at the trial court.

ARGUMENT

Partial Consent to Motion

Rule 210(c), SCACR provides that "The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of

Hmw

Rule 267.” Respondent State of South Carolina has sought permission¹ “to supplement the Record on Appeal” with four generally identified items that Respondent State acknowledges it failed to designate previously. Appellant consents in part to the relief requested. To wit, notwithstanding omission from prior designations, Appellant does not object to inclusion of the following items:

1. Indictments;
2. Sentencing sheets;
3. South Carolina Supreme Court Order dated November 15, 1989.

Appellant consents to their inclusion because at least portions of the sentencing sheets already appear in the ROA as agreed upon by the parties, and both the indictments and referenced 1989 order were filed in the lower court as exhibits to pleadings filed at various points prior to issuance of the final orders.²

Objection

Appellant’s partial objection and opposition to the requested relief is limited to the 1992 order referenced in the motion. Rule 210(c), SCACR clearly states “The Record shall not, however, include matter which was not presented to the lower court or tribunal.” The 1992 order was never considered by the lower court during the process ultimately leading to the issuance of the two final orders that are the subject to the above-captioned appeal. The final hearing transcript in this matter includes discussion regarding the 1989 order in detail, in addition to multiple other orders pre-dating the underlying case, but never any reference even generally to the 1992 order at

¹ Respondent cited Rule 210, SCACR in its motion, which governs the content and procedure for creating the Record on Appeal generally. However, a motion to supplement the Record would seem to be more appropriately treated as a motion pursuant to Rule 212, SCACR.

² Appellant communicated his consent as to inclusion of listed items 1 and 2 to Respondent State of South Carolina via email prior to receipt of this motion, although that communication appears to have been made after the motion had been completed and sent for filing by Respondent. During preparation of this response, item 4 (the 1989 order) was confirmed as previously having been filed as an attachment to a pleading from Respondent State.

issue with this motion. The 1992 order was never handed to the court at that or any other time, let alone entered as an exhibit or attached to any pleading filed of record. Carpenter nor his counsel have never seen this order before; while they have no reason to doubt its authenticity, the failure of the State to discover this order before now is concerning. It is clearly not appropriate on appeal. Had this matter been accepted by the Supreme Court in its original jurisdiction, the inclusion of this order might have been appropriate, with proper authentication. But not here. And not now. It is clear the trial judge never saw this, never considered this, nor did anyone else.

Thus, Appellant's opposition is not based on mere failure to designate materials per Rule 209, SCACR, but rather based upon the failure to present the referenced order at any point to the lower court as part of the proceedings below as required by Rule 210, SCACR.

In the motion, Respondent State summarily declares the 1992 order "necessary and useful to this Court's full and complete understanding of the issues involved in the appeal" but cites no authority for that articulated standard for exception to the familiar, fundamental, and definitive standard set forth in Rule 210, SCACR. Nor does the motion offer any explanation why such alleged necessity and usefulness did not prompt the materials to be presented to the lower court (or ever even referenced generally) for that court's consideration and understanding.

CONCLUSION

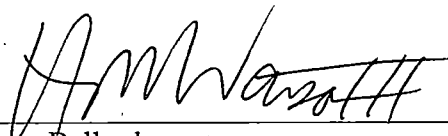
For the reasons set forth hereinabove, Appellant Carpenter respectfully:

- (a) Consents to the inclusion of the indictments, sentencing sheets, and South Carolina Supreme Court Order dated November 15, 1989 in a supplemental Record on Appeal for the above-captioned matter, but

(b) Objects to the inclusion of the 1992 order referenced in the motion as part of the Record on Appeal for the above-captioned matter pursuant to Rule 210, SCACR.

Appellant therefore respectfully requests an order from this court granting in part and denying in part the State's Motion to Supplement the Record on Appeal in the manner requested by Appellant herein.

Respectfully submitted,



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ATTORNEYS FOR APPELLANT

November 8, 2018

STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

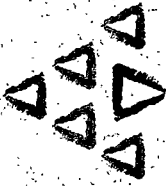
I, Beth Cogan, an employee with Ballard & Watson, do hereby certify that on November 8, 2018, I served a copy of the **Response to The State of South Carolina's Motion to Supplement Record on Appeal**, in the above-captioned case on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Clay Mitchell, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

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Beth Cogan, Paralegal

November 8, 2018



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Attorneys at Law
PERSISTENT. UNWAVERING.

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November 8, 2018

Via U.S. Mail

The Honorable Jenny Abbot Kitchings
Court of Appeals Clerk of Court
1220 Senaté Street
Columbia, South Carolina 29201

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Re: *Charles Eugene Carpenter v. South Carolina Department of Corrections, et al.*
Case No.: 2017-002577

Dear Ms. Kitchings:

Enclosed for filing please find seven copies of the Response to The State of South Carolina's Motion to Supplement Record on Appeal for the above-referenced matter. Please clock and return a stamped copy in the self-addressed, stamped envelope enclosed. Thank you for your time in this matter. If you have any questions, please do not hesitate to contact our office.

With warm personal regards, I am,

Sincerely yours,


Harvey M. Watson III
harvey@desaballard.com

cc: Via U.S. Mail
Damon Wlodarczyk, Esquire
Clay Mitchell, Esquire

BALLARD & WATSON, ATTORNEYS AT LAW
226 STATE STREET
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TO:

The Honorable Jenny Abbot Kitchings
Court of Appeals Clerk of Court
Post Office Box 11629
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