

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County
The Honorable Frank R. Addy, Jr., Circuit Court Judge

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NOV 15 2019

SC Court of Appeals

THE STATE,

Respondent,

vs.

DAZZELLE SMITH,

Appellant.

Appellate Case No. 2018-000952

**MOTION TO VACATE THIS COURT'S
NOVEMBER 8, 2019 ORDER AND MOTION TO ACCEPT
STATE'S REPLY TO APPELLANT'S RETURN TO
STATE'S MOTION TO STRIKE**

This matter is before this Court by way of the State's June 26, 2019 motion to strike matter not before the trial judge. On November 8, 2019, this Court denied the State's motion. The State moves to vacate this Court's order because the State did not receive a copy of Appellant's return faxed to this Court on September 9, and therefore, the State was denied the opportunity to respond to Appellant's arguments by way of a reply to Appellant's return. The State has attached to this motion its proposed reply to Appellant Smith's return. The State respectfully requests this Court to vacate its November 8 order, accept the State's reply, and grant the State's motion to strike. Additionally, the State respectfully requests this Court to hold all timelines in abeyance pending a

ruling on the State's motions.

On August 2, 2019, this Court requested Appellant Smith to file a return to the State's June 26 motion to strike. On August 23, 2019, this Court sent a second request to Smith requesting a return within ten days and cautioned it would rule on the State's motion without a response from Smith if a return was not received.

The State received no further correspondence on the matter until November 8, 2019 when it received this Court's order denying the motion to strike. At this time, the State reviewed C-Track and discovered a largely illegible copy of a return that was apparently sent to this Court by facsimile on September 9, 2019. The certificate of service attached to Appellant's return reads that two copies of Appellant's return were mailed to undersigned counsel on September 5, 2019, four days before the motion was faxed to this Court. However, my mail log fails to reflect that the return was ever received. Undersigned counsel finally received a legible copy of the return attached to an e-mail from opposing counsel's office sent on November 13, 2019. Therefore, the State respectfully requests this Court to vacate its November 8 order, consider the State's reply attached to this motion, and grant the State's motion to strike.

II.

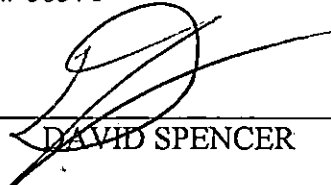
Respondent also moves to hold all time-lines in abeyance until this Court rules on the State's motion.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

BY:



DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 15, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Motion To Vacate This Court's November 8, 2019 Order And Motion To Accept State's Reply To Appellant's Return To State's Motion To Strike on Appellant by depositing one copy of the same in the United States mail, postage prepaid, addressed to each of his attorneys of record:

William G. Yarborough, III, Esquire
308 W. Stone Avenue
Greenville, SC 29609

Lauren C. Hobbis, Esquire
308 W. Stone Avenue
Greenville, SC 29609

I further certify that all parties required by Rule to be served have been served.
This 15th day of November, 2019.


Anne A. Mueller
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

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William G. Yarborough, III, Esquire
308 W. Stone Avenue
Greenville, SC 29609

Lauren C. Hobbis, Esquire
308 W. Stone Avenue
Greenville, SC 29609

RE: The State v. Dazzelle Smith
Appellate Case No: **2018-000952**

Dear Mr. Yarborough and Ms. Hobbis:

Enclosed please find two copies of the State's Motion To Vacate This Court's November 8, 2019 Order And Motion To Accept State's Reply To Appellant's Return To State's Motion To Strike in the above-referenced case.

Sincerely,

for David Spencer
Senior Assistant Attorney General
S.C. Bar No: 68571

DS/aam
Enclosures

~~cc: The Honorable Jenny A. Kitchings (with original and 6 copies)~~
Victim Advocacy Division