

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., *Administrative Law Judge*

ALC Case No. 18-ALJ-04-0438-AP
Appellate Case No. 2019-001291

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DEC 03 2019
SC Court of Appeals

Terry Bo Smith, #160785.....Appellant,

v.

South Carolina Department of Corrections.....Respondent

MOTION TO REQUIRE MODIFICATION OF THE RECORD ON APPEAL

This matter is before the Court pursuant to Terry Bo Smith's appeal of Administrative Law Court Judge H.W. Funderburk, Jr.'s July 22, 2019 dismissal order.

Appellant has failed to include in the Record on Appeal the Jail Time Report for SCDC Transfer from Spartanburg County dated March 3, 2004, a document which properly should have been included. South Carolina Appellant Court Rule 210(c) states, in relevant part, "The Record on Appeal shall include all matter designated to be included by any party[.] . . . The Record shall not, however, include matter which was not presented to the lower court or tribunal." This document was in the Record before the Administrative Law Court and is thus not excluded from the Record on Appeal by the quoted exclusionary language of South Carolina Appellant Court Rule 210(c). Additionally, item five of Respondent' Designation of Matter to be Included in the Record on Appeal specifically stated that this item should be included in the Record on

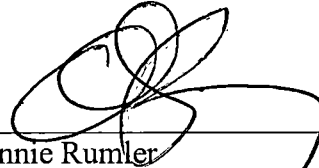
Appeal. Thus, Respondent respectfully requests that this Court require Appellant to file an addendum to or a corrected Record on Appeal which includes this document.

Additionally, Appellant has included in the Record on Appeal in this case documents which were not in the Record before the ALC in case 18-ALJ-04-0438-AP, the case from which he is here appealing. Specifically, Appellant included five filings from ALC case 18-ALJ-04-0050-AP: Appellant's Brief, Respondent's Brief, Appellant's Reply Brief, Appellant's Motion to Compel, and a filing titled "Motion to Join, and Motion to Compel, and Motion for Summary Judgment." (R. pp. 10-35, pp. 43-44, & pp. 47-52.) In addition to these documents from an ALC case which is not appealed here, Appellant included several other documents from various sources which were not before the ALC in case 18-ALJ-04-0438-AP. The answered Step One and Step Two Grievances for SCDC Grievance LEECI-0766-17 were included as were records related to Appellant's arrest in Canada for violation of Canadian law. (R. pp. 138-144.)

The Record on Appeal "shall not" include anything "which was not presented to the lower court or tribunal." SCACR, Rule 210(c). The above listed documents, contained in pp. 10-35, 43-44, 47-52, & 138-144 of the Record on Appeal filed by Appellant, were not presented to or considered by the Administrative Law Court in case 18-ALJ-04-0438-AP. Because they were not properly presented to the ALC, they cannot be included in the Record on Appeal in this case or considered by this Court. As such, Respondent requests that the Court strike all these documents and any references thereto from the Record on Appeal and all other filings including the Final Brief of Appellant.

WHEREFORE, Respondent prays that this Court require the above requests modifications to the Record on Appeal. Additionally, **Respondent requests that this**

Court grant an additional twenty (20) days after the service of the modified Record on Appeal for the service and filing of the Final Brief of Respondent and for further relief as this Court may deem just and proper.



Annie Rumler
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ATTORNEY FOR RESPONDENT

November 27, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

H.W. Funderburk, Jr., *Administrative Law Judge*

ALC Case No. 18-ALJ-04-0438-AP
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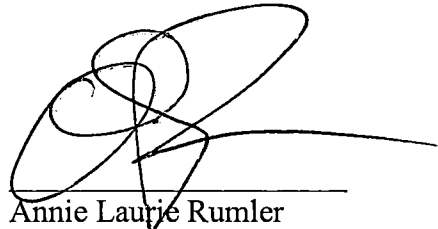
v.

South Carolina Department of Corrections.....Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion to Require Modification of the Record on Appeal to Appellant by depositing a copy of same in the United States Mail, postage prepaid, on November 27, 2019, addressed as follows:

Terry Bo Smith, #160785
Dorm-Room-Bunk: F4-1243-T
Lee Correctional Institution
900 Wisacky Highway
Bishopville, SC 29010



Annie Laurie Rumler
South Carolina Bar # 101851
Deputy General Counsel
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ATTORNEY FOR RESPONDENT



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

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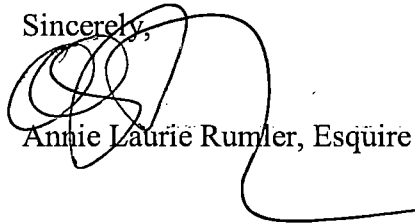
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Reference: App. Case No.: 2019-001291 (*Terry Bo Smith, #160785*
v. South Carolina Department of Corrections)

Dear Madam Clerk:

Enclosed, please find the original and seven copies of Respondent's Motion to Require Modification of the Record on Appeal. Please file the original in your office and return a clocked-in copy to me in the enclosed self-addressed envelope. Additionally, please note that this motion requests an extension of time to file the Final Brief of Respondent. Thank you.

Sincerely,



Annie Laurie Rumler, Esquire

Enclosure

cc: Terry Bo Smith, #160785



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
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