

**The South Carolina Court of Appeals**

**Appeal from the Administrative law Court**

**Hon. H.W. Funderburk, Jr.**

Case No. 2019-001410

**RECEIVED**

APR 01 2020

**SC Court of Appeals**

Gregory Pencille, #312332, Appellant

V.

South Carolina Department of Corrections, Respondent

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**[INITIAL] REPLY BRIEF/ MOTION TO STRIKE**

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Appellant requests that this court review its order from March 12, 2020. In which this order states, [Appellant has filed a “motion to amend and file ‘letter to clerk’ as motion for default judgement/ motion to compel response of previous filings.” The request for default judgement is denied.]

In this statement the court does not stipulate whether “motion to compel response of previous filings”, was granted or denied. As such by this court’s order, appellant moves to file **Motion to Strike** respondent’s Initial Brief and amended Designation of Matter (“DOM”). 1) Respondents brief for failing to file timely and for failing to show “good cause” for filing out of time. 2) Respondent’s amended DOM for failing to file by motion making the DOM filed out of time. Furthermore, the respondent amended her DOM without requesting by motion which is in violation of SCRAP 240(g) resulting in the abandonment of the motion or failing to file timely.

Appellant reargues “ Notice to Court” originally filed Nov. 27<sup>th</sup>, 2020. As evidence in support of Motion to Strike.

In the above entitled case the appellant addresses the court by way of motion that pursuant to Rule 208 (2) SCACR. Brief of Respondent, within (30) thirty days after service of appellants brief, respondent shall serve one copy of his brief on all parties to the appeal...

Appellants` Initial brief was served and filed with certificate of service October 16<sup>th</sup>, 2019. By affirmation of Respondent, respondent`s Initial brief was due to be served and filed on November 16<sup>th</sup>, 2019. Respondent`s request to file out of time states respondent failed to timely file “due to an oversight”. This in no form can be considered as (good cause) shown. The respondent is represented by a professional attorney and should be held to that professional standard. And as such, appellant states as follows:

“Pursuant to Rule 208 (a)(4), upon failure of respondent to timely file a brief, the appellate court [may take such action as it deems proper]. The South Carolina Courts have recognized the failure of a respondent to file a brief could justify a reversal. Turner v. Santee Cement Carriers, Inc., 272 S.C. 91, 96 282 S.E.2d 858.860 (1981); Robinson v. Hassiotis, 364 S.C. 92, 93n2 610 S.E.2d 858n2. (ct.app2005). noting the respondent had not filed a brief and this court may take such action as it deems proper, including reversal.

Furthermore, when respondent does not file a brief, this court has found it proper to address the issues presented by the appellant, Durham v. United Companies, fin. Corp., 326 S.C. 403, 404, 483 S.E.2d 786 (ct. app.1997); Wierszewski v. Tokarick, 308 S.C. 441, 444n2., 418S.E.2d557, 559n2. (ct. app1992). stating where the respondent failed to file a brief [it was proper to reverse on the points presented rather than to search the record for reasons to affirm].


As it is against court rules to address issues presented in respondents initial brief in this filing, appellant merely states respondents arguments are without merit.

Also, appellant recognizes to this court the redundancy as to which the respondent has argued through this cases progression. Facts remain that previous decisions to appellants substantive rights have been prejudiced by the findings, conclusions, and decisions in violation of S.C. code Ann § 1-23-610(B)(a-f). And under Equal Protection of the U.S. and State constitutions had appellant failed to timely file his initial brief [Pro-Se] this court would have dismissed his appeal.

Appellant does not understand this courts motive as to actions granted and/or denied in the March 12<sup>th</sup>, 2020 order. As to appellants layman understanding by granting respondent`s continued violations of court rules and denying appellants request for respondent to follow court rules prejudices appellants Due process and Fundamental Fairness Doctrines.

Therefore, appellant prays this court reverses the decision of the administrative law judge and requires the Dept. of Correction to recalculate Pencille's sentence from Nov. 5<sup>th</sup>, 2005 and remove added sentence conditions."

Date: March 30, 2020



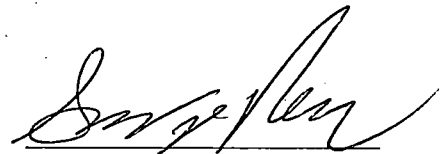
Gregory Pencille, #312332  
Appellant, Pro Se

Certificate of service

I hereby certify that Gregory Pencille on the 30 day of March, 2020. In Bennettsville S.C. Served Initial reply brief/ motion to strike on all parties by depositing the same in the U.S. mail, postage prepaid or in the institutions mailroom and addressed as follows;

Jenny A. Kitchings, clerk  
S.C. Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

S.C. General Counsel, SCDC  
P.O. Box 21787  
Columbia S.C. 29221



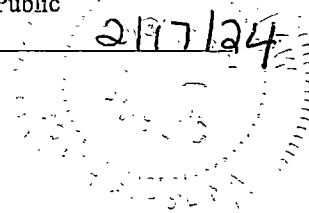
Gregory Pencille, #312332  
Evans CI F4A-275  
610 Hwy 9 West  
Bennettsville, S.C. 29512

Date: March 30, 2020

SWORN to and subscribed before me this 30<sup>th</sup>  
Day of March, 2020  
S. Clutter (L.S.)

Notary Public

My Commission Expires: 2/17/24



Gregory Perille 572332  
Evans CA F4A275  
610 Hwy 9 west  
Bennettsville, SC 29512



Jenny A. Kitchings, Clerk  
SC. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

