

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**Jun 29 2020**

**SC Court of Appeals**

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Appeal from Cherokee County  
Honorable J. Derham Cole, Circuit Court Judge  
Appellate Case Tracking No. 2019-001778

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The State,

Respondent,

vs.

Shaun Rogers, Jr.,

Appellant.

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**MOTION TO STRIKE PORTIONS OF INITIAL BRIEF OF APPELLANT  
AND REQUIRE AMENDED INITIAL BRIEF OF APPELLANT**

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Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

Appellant served and filed his Initial Brief of Appellant on June 5, 2020. After review of the Brief, it appears to address convictions and sentences not covered by Appellant's Notice of Appeal and not properly before this Court. In his Notice of Appeal served on October 14, 2019, Appellant references only two convictions as the subject of the appeal. Additionally, sentencing sheets were provided for only two convictions—burglary on the first degree and attempted armed robbery. Both were filed with this Court on October 17, 2019, and are found in this Court's Appellate Case Management System at 2019-001778. However, in addition to the two convictions in the Notice of Appeal, Appellant's Initial Brief of Appellant references guilty pleas to voluntary manslaughter, possession of a weapon, attempted murder, and discharging a firearm

into a dwelling. (Initial Brief p.5).<sup>1</sup> He specifically notes he is challenging his convictions and pleas. (Initial Brief p.7). He specifically states: “These charges and pleas should be treated no differently than the ones on which the jury reached a verdict . . . .” (Initial Brief p.9). Finally, Appellant asks that both the jury convictions which were subject to the Notice of Appeal and the guilty pleas (which do not appear to have ever been appealed based on a review of this Court’s Appellate Case Management System) be overturned. (Initial Brief p.10).

## II.

A Notice of Appeal is required from any plea or trial in order for this Court to have jurisdiction over the convictions and sentences. See Rule 203(b)(2), SCACR (“After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed.”); see also, State v. Devore, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) (“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” (quoting USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008))). Appellant has never filed a Notice of Appeal from the convictions and sentences resulting from his guilty pleas. Further, he did not seek to amend the Notice of Appeal filed with the Court from his trial resulting in only two convictions.

Additionally, there is no indication Appellant entered a conditional guilty plea, which would otherwise be invalid in South Carolina. See Easter v. State, 355 S.C. 79, 81, 584 S.E.2d

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<sup>1</sup> Appellant’s Initial Brief of Appellant was filed with the Court on June 5 and can be found in the Appellate Case Management System under the same case number—2019-001778.

117, 119 (2003) (“To be valid, a guilty plea must be unconditional.”); State v. O’Leary, 302 S.C. 17, 18, 393 S.E.2d 186, 187 (1990) (“Guilty pleas are unconditional and, if an accused attempts to attach any condition, the trial Court must direct a plea of not guilty.”). According to Appellant’s own statement, he entered a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), which is distinct from a conditional plea. See State v. Legare, 935 N.W.2d 773, 776 (N.D. 2019) (recognizing a guilty plea entered pursuant to Alford is distinct from a conditional guilty plea).

Accordingly, the convictions and sentences resulting from Appellant’s unappealed guilty pleas pursuant to Alford should not be included in Appellant’s Initial Brief of Appellant and should not be considered on appeal. There should only be reference to the two convictions resulting from his jury trial—burglary in the first degree and attempted armed robbery. Any discussion of the remaining convictions and sentences is inappropriate and beyond the jurisdiction of this Court.

### III.

The State asks this Court to strike Appellant’s Initial Brief of Appellant and any discussion of his guilty pleas pursuant to Alford. Appellant should be solely allowed to address the convictions and sentences resulting from the jury trial which he appealed in his Notice of Appeal served October 14, 2019—burglary in the first degree and attempted armed robbery. This Court should require an Amended Initial Brief of Appellant with no references to the guilty pleas which occurred subsequent to Appellant’s trial.


WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, strike Appellant’s Initial Brief of Appellant; require Appellant to serve and file

an Amended Initial Brief of Appellant eliminating any reference to the unappealed convictions and sentences resulting from Appellant's guilty plea pursuant to Alford; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
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Senior Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

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**PROOF OF SERVICE**

I, Caroline Collins, certify that I have served the Motion to Strike on Appellant by email to Tommy A. Thomas, Esquire, at the email address provided by AIS.

I further certify that all parties required by Rule to be served have been served.

This 29<sup>th</sup> day of June, 2020.



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## Caroline Collins

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**From:** Caroline Collins  
**Sent:** Monday, June 29, 2020 12:38 PM  
**To:** 'thomaslaw@me.com'  
**Cc:** 'Jackie Miller'; William Blitch; Victim Services  
**Subject:** The State v. Shaun Rogers, Jr. (2019-001778)  
**Attachments:** ROGERS Shaun - Motion to Strike Portions of Initial brief of Appellant and Require Amended Initial Brief of Appellant - 2019-001778 (02314309xD2C78).PDF

**Follow Up Flag:** Worldox

Good Afternoon Mr. Thomas,

Attached please find a copy of the Motion to Strike Portions of the Initial Brief of Appellant and Require Amended Initial Brief of Appellant in The State v. Shaun Rogers, Jr. (2019-001778). This motion will be submitted to the Court of Appeals through the AIS system today.

If you will, please reply to confirm receipt of this email.

Thank you!

*Caroline Collins*

Administrative Coordinator  
South Carolina Attorney General's Office  
P: (803) 734-3723

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