

**RECEIVED**

**Oct 22 2021**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

On Petition for Writ of Certiorari to Anderson County

The Honorable Thomas W. Cooper, Jr., Trial Judge  
The Honorable Alexander S. Macaulay, First PCR Judge  
The Honorable Eugene C. Griffith, Jr., Second PCR Judge

Appellate Case No. 2020-001619

---

HERMAN BELTON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

---

**MOTION TO DISMISS**

---

The State (“Respondent”) hereby moves before this Court to dismiss the appeal or, in the alternative, to strike certain filings made by Herman Belton (“Petitioner”) and to compel Petitioner to supplement the appendix. In support of this motion, the undersigned shows the following:

1. Petitioner filed his petition for a writ of certiorari and appendix in this Court on February 4, 2021, though Respondent never received a copy or notice of either from Petitioner, learning of the filings only when notified of the filings by this Court on April 1, 2021.
2. The undersigned then moved to file a belated appeal on the basis that Respondent

was not afforded notice that the petition and appendix had been filed until, technically, it was too late to respond, and moved to dismiss the appeal or, in the alternative, to compel Petitioner to supplement the appendix with the transcript from a hearing held before the Honorable Eugene C. Griffith, Jr., and to file a belated appeal once Petitioner filed that supplemental appendix.

3. On May 5, 2021, this Court filed an order denying Respondent's motion to dismiss, but requiring Petitioner to order the aforementioned transcript within thirty days and allowing Respondent to file a belated return to the petition for a writ of certiorari within thirty days of Petitioner's filing of the supplemental appendix.
4. On September 22, 2021, Petitioner filed a copy of the aforementioned transcript with this Court; however, Petitioner's filing does not comply with the requirements of this Court's May 5, 2021, order or Rule 243(f)(3), SCACR.
5. The Appellate Court Rules "are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).
6. This Court has the authority to dismiss an appeal whenever a petitioner fails to comply with the requirements of the South Carolina Appellate Court Rules. Rule 260(a), SCACR.
7. Petitioner has not satisfied the obligations placed upon him by the Appellate Court Rules and by this Court's May 5, 2021, order. For this reason, Respondent moves to dismiss the appeal.

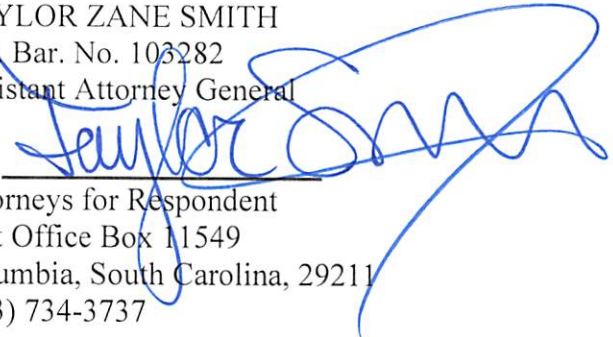
8. In the alternative, should this Court deny Respondent's motion to dismiss, the undersigned moves to strike the reply brief and initial brief filed by Petitioner.
9. Petitioner filed a reply brief with this Court on September 27, 2021, and has served Respondent with an initial brief that indicates that it was served on Respondent by mail October 18, 2021. Respondent assumes that this initial brief will soon be filed with this Court.
10. Petitioner's reply brief was improperly filed according to Rule 243(h), SCACR, because Respondent has not yet filed a return to Petitioner's petition for a writ of certiorari. Furthermore, Respondent's return to the petition is not yet due according to the terms of this Court's May 5, 2021, order as Petitioner has not yet satisfied his obligations under that order.
11. Petitioner's initial brief was not properly served (and will not be properly filed, when it is filed) according to Rule 243(j), SCACR, because the parties would be required to prepare briefs only if this Court grants Petitioner's petition for a writ of certiorari.
12. These two documents are not properly before this Court and should be stricken.
13. Additionally, should this Court deny Respondent's motion to dismiss, the undersigned moves to compel Petitioner to file a supplemental the appendix that meets the requirements of this Court's May 5, 2021, order and Rule 243(f)(3), SCACR.
14. The undersigned has not consulted with Petitioner about this motion because Petitioner is a pro se party and because the undersigned believes that such consultation would serve no useful purpose.

**WHEREFORE**, Respondent prays that this Court will dismiss the appeal; alternatively, should this Court deny that motion, Respondent prays that the Court would require Petitioner to file a supplemental appendix in accordance with the requirements that this Court has already placed on him and in accordance with the Appellate Court Rules and strike Petitioner's reply brief and initial brief. Respondent also requests that this Court hold all deadlines in abeyance until the Court has ruled upon this motion.

Respectfully submitted,

ALAN WILSON  
Attorney General

TAYLOR ZANE SMITH  
S.C. Bar. No. 103282  
Assistant Attorney General

By:   
Attorneys for Respondent  
Post Office Box 11549  
Columbia, South Carolina, 29211  
(803) 734-3737

October 22, 2021

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

Oct 22 2021

SC Court of Appeals

---

On Petition for Writ of Certiorari to Anderson County

The Honorable Thomas W. Cooper, Jr., Trial Judge  
The Honorable Alexander S. Macaulay, First PCR Judge  
The Honorable Eugene C. Griffith, Jr., Second PCR Judge

Appellate Case No. 2020-001619

---

Herman Belton,

Petitioner,

v.

State of South Carolina,

Respondent.

---

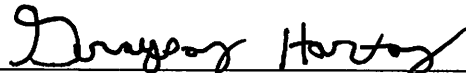
**CERTIFICATE OF SERVICE**

---

The undersigned hereby certifies that a true copy of Respondent's motion to dismiss has been served upon Petitioner by placing one copy in the United States Mail, addressed to:

**Herman Belton, #256396 (B3-0040-B)**  
**Goodman Correctional Institution**  
**4556 Broad River Road**  
**Columbia, SC 29210**

This 22<sup>nd</sup> day of October, 2021.

  
\_\_\_\_\_  
Grayson Horton  
Legal Assistant for Respondent



**RECEIVED**  
**Oct 22 2021**  
**SC Court of Appeals**

ALAN WILSON  
ATTORNEY GENERAL

October 22, 2021

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211  
(by email to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org))

**Re: Herman Belton, #256396 v. State of South Carolina**  
**Appellate Case No. 2020-001619**

Dear Ms. Kitchings:

Enclosed is the State's motion to dismiss, which I would like to file in your office in the above-referenced case.

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

s/Taylor Zane Smith  
Taylor Zane Smith  
S.C. Bar. No. 103282  
Assistant Attorney General

TZS/geh

cc: Herman Belton, #256396