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**Jan 06 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Pickens County  
Honorable Perry H. Gravely, Circuit Court Judge

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The State of South Carolina,

Respondent,

vs.

Charles Brandon Rampey,

Appellant.

Appellate Case No. 2021-000184

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**MOTION TO STRIKE APPELLANT'S  
DESIGNATION OF MATTER AND BRIEF  
FOR FAILURE TO COMPLY WITH  
RULE 209(b) AND RULE 210(c), SCACR**

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Respondent now moves for this Court to strike Appellant's designation of matter and initial brief for presenting matters outside the record.

I.

Appellant appeals Judge Gravely's decision to not require the Department of Corrections to give credit for time served while Appellant was on ankle monitoring for another offense. A hearing on Appellant's motion was heard on January 21, 2021. Judge Gravely determined he did not have jurisdiction to take any action on Appellant's request because Judge Gravely determined he did not have jurisdiction under Tant v. South Carolina Department of Corrections, 408 S.C.

334, 759 S.E.2d 398 (2014) (finding trial judge did not have jurisdiction over the case to clarify the sentence). Except for the sentencing sheet, no exhibits were introduced during the hearing.

The underlying conviction is for criminal sexual conduct with a minor in the third degree, to which Appellant pled guilty before Judge Gravely on January 23, 2017.

## II.

Appellant designated several items and discusses them in his brief: (1) letters from opposing counsel's paralegal to SCDC and from SCDC counsel to the paralegal (items 8, 9, 14, and 15 in Appellant's designation); (2) SCDC Offender Management System Warrants (items 17 and 18); (3) items identified in the designation as Pickens County Sherriff's Office Report on various inmates (items 20-23); and (4) a letter from Eagle Eye Monitoring, which is likely the letter the trial court declined to allow Appellant to admit into the record during the hearing (item 7).

Because these designated items and the references to the items in the brief all are matter not presented to the trial court, they are not proper for inclusion in the record. Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal"); Rule 208 (b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders exhibits, or other materials which may be properly included in the Record on Appeal."); Williamsburg Rural Water & Sewer Co., Inc. v. Williamsburg County Water & Sewer Auth., 367 S.C. 566, 571, 627 S.E.2d 690, 693 (2006) ("Nothing in the appellate court rules permits a party to unilaterally add after-created evidence to the record."); Roche v. South Carolina Alcoholic Beverage Control Comm'n, 263 S.C. 451, 455, 211 S.E.2d 243, 244 (1975) ("[T]he purpose of appeal under our procedure is 'to determine if the lower court did something that it

should not have done, or omitted doing something it should have done.’ Accordingly, a trial judge will not be reversed for failing to act on a matter that was not submitted to him.” (citation omitted)); South Carolina State Highway Dep’t v. Meredith, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) (“[C]ounsel is prohibited from embodying in their briefs any fact which does not appear in the record.”); Tant v. Guess, 37 S.C. 489, 512-513, 16 S.E. 472, 480 (1892) (“[I]f the purpose was to ask this court to consider facts not presented to the Circuit Court, . . . then it is clear beyond dispute that we cannot consider such facts. For, as is said by Taney, C. J., in Russell v. Southard, 12 How., at page 159: ‘According to the practice of the Court of Chancery from its earliest history to the present time, *no paper not before the court below can be read on the hearing of an appeal.*’ This court has, in numerous cases, recognized and affirmed this doctrine.” (emphasis added)).

Since the initial brief and the designation of matter are not in compliance with the Appellate Court Rules, the initial brief and designation of matter should be struck, and Appellant should be required to amend both accordingly.

### III.

Respondent would additionally move for this Court to hold all timelines in abeyance pending this Court’s ruling on Respondent’s motion.

### IV.

WHEREFORE, Respondent prays that this Court strike Appellant’s Initial Brief and Designation of Matter, and require Appellant to submit a new Designation of Matter in compliance with Rules 209 and 210, SCACR, and amend the Initial Brief of Appellant accordingly. Further, Respondent requests this Court to hold all timelines in abeyance pending its ruling on this motion.

Respondent further requests for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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Attorney General

DAVID SPENCER  
Senior Assistant Attorney General  
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BY:



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ATTORNEYS FOR RESPONDENT

January 6, 2022

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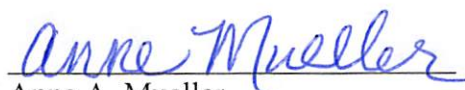
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**PROOF OF SERVICE**

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I, Anne Mueller, certify that I have served the Motion To Strike Appellant's Designation Of Matter and Brief For Failure To Comply With Rule 209(b) And Rule 210(c)SCACR on Appellant by electronic mail to Appellant's counsel of record, William G. Yarborough, III, Esquire and Lauren C. Hobbis, Esquire, to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.  
This 6<sup>th</sup> day of January, 2022.



Anne A. Mueller  
Legal Assistant

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