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Feb 07 2022

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.

RESPONDENT’S RETURN TO PETITIONER’S MOTION FOR COSTS

The State (“Respondent”), in response to the motion for costs filed by Herman Belton (“Petitioner”), on February 1, 2022, and received by Respondent on February 2, 2022, would respectfully show as follows:

1. On April 7, 2021, Respondent moved for an order requiring Petitioner to supplement his appendix with the transcript of a hearing held in this matter before Judge Griffith on October 21, 2022, arguing that the South Carolina Appellate Court Rules required Petitioner to include the transcript.
2. On May 5, 2021, this Court filed an order that, among other things, granted Respondent’s motion.

3. On September 22, 2021, Petitioner filed a copy of the transcript, but his filing did not comply with the requirements of this Court's May 5, 2021, order and with Appellate Court Rule 243(f)(3).
4. Additionally, Petitioner made obvious alterations to the text of the filed transcript, which Respondent believes are attempts either to clarify arguments that Petitioner made before Judge Griffith that were ambiguous, to correct what Petitioner believes were transcription mistakes made by the court reporter, or to amend after the fact the arguments that Petitioner made before Judge Griffith. Regardless of Petitioner's purpose, the alterations are inappropriate and should be given no consideration by the Court.
5. Furthermore, Petitioner still has not complied with this Court's January 10, 2022, order, which requires Petitioner to amend, by February 9, 2022, the supplement to the appendix so as to include an index.
6. On February 1, 2022, Petitioner filed a motion for costs, citing Appellate Court Rule 207(a), arguing that Respondent's refusal to allow the appeal to move forward without Petitioner's inclusion of the transcript in the appendix, and this Court's May 5, 2021, order requiring Petitioner to include the transcript, have unnecessarily required him to incur an expense of \$137.50.
7. "Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below. If a party to the appeal unjustifiably refuses to agree to ordering less than the entire transcript, appellant may move to be awarded costs for having unnecessary portions transcribed" Rule 207(a)(1), SCACR.
8. Rule 207(a)(1) creates a presumption that Petitioner was required to order the

transcript. Respondent argued in its motion filed on April 7, 2021, that the Appellate Court Rules required Petitioner to order the transcript and include it in the appendix. This Court agreed with Respondent on that point in its order filed on May 5, 2021.

9. Respondent's refusal to allow the appeal to proceed without the transcript was in accordance with the requirements of the Appellate Court Rules and based upon the parties' and this Court's need of the transcript for the resolution of this appeal. Respondent's refusal to do as Petitioner desired, therefore, was justified.
10. This Court should deny Petitioner's motion.

WHEREFORE, Respondent prays that this Court will deny Petitioner's motion for costs and grant any further relief to Respondent that is appropriate.

Respectfully submitted,

ALAN WILSON
Attorney General

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

By: s/Taylor Zane Smith
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Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Respondent's return to Herman Belton's motion for costs 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 7th day of February, 2022.



William Corbett Jr.
Legal Assistant for Respondent

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SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

February 7, 2022

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)

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

Dear Ms. Kitchings:

Enclosed is the State's return to Herman Belton's motion of costs, 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
S.C. Bar. No. 103282
Assistant Attorney General

TZS/wjc

cc: Herman Belton, #256396