

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2012-212760

RECEIVED
JUN 12 2013
SC Court of Appeals

STATE OF SOUTH CAROLINA,

Respondent,

v.

ALAN L. BURNS,

APPELLANT.

RETURN TO PRO SE MOTION REQUESTING BACKUP TAPE/AUDIO DISK

Respondent, by and through undersigned counsel, would respectfully show unto the Court:

1. Appellant was convicted of and sentenced for several counts of criminal sexual conduct with a minor, first degree, lewd act upon a minor, and criminal sexual conduct with a minor, second degree.
2. Appellant filed and served Notice of Appeal and is presently being represented by the South Carolina Office of Appellate Defense.
3. Appellant submitted a pro se motion requesting the backup tape and audio disk of the July 15, 2012 hearing he states was recorded by Court Reporter Anne Meyer. Appellant's proof of service indicated he served the motion on May 31, 2013; however, the motion was not received by

the undersigned until June 7, 2013. Appellant attaches a letter he forwarded the same date to the court reporter challenging the accuracy of the transcript she prepared and asking her to review the tape and disk of the proceeding. He also attaches a letter to the court services manager at Court Administration asking the court services manager for assistance in having the backup tape and audio disk "preserved and/or obtained for comparison."

4. Respondent submits that this Court should decline to accept the motion which is being submitted by Appellant pro se. On information and belief, Appellant is currently represented by the South Carolina Office of Appellate Defense. Receipt of the pro se document should be prohibited. See Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989)(stating there is no right to Ahybrid representation@, and the Clerk shall return Petitioner=s pro se document if represented by counsel).

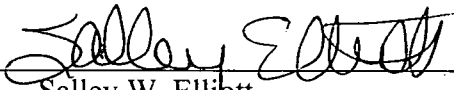
5. Alternatively, Respondent submits that Rule 607(i), SCACR, provides that the court reporter must retain the primary and backup tapes for proceedings which have been transcribed for a period of thirty (30) days after the original transcript is sent to the requesting party to allow any party to challenge the accuracy of the transcription. If a challenge is not made within 30 (thirty) days, the tapes may be reused or destroyed. Respondent has no information about when the transcript in question was received by counsel for Appellant or whether the primary and backup tapes have been retained by the court reporter. If the primary and backup tapes are available, Respondent has no objection to the recordings being retained by the court reporter **for filing with or use by this Court if such becomes necessary**; however, Respondent strenuously opposes the release of the original primary or backup tapes to the pro se Appellant. The rules do not provide for the release of these tapes to a pro se litigant and any release should be made only to this Court where the recordings can be listened to with supervision by this Court.

For the reasons stated above, Respondent requests that this Court refuse to consider the pro se motion as improperly submitted or, in the alternative, that it be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

BY: 
Salley W. Elliott
S.C. Bar No. 1871

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ATTORNEYS FOR RESPONDENT

June 12, 2013

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v.

ALAN L. BURNS,

Appellant.

PROOF OF SERVICE

I, Angela Bennett certify that I have served the Return to pro se motion requesting back up tape/audio disk on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Susan B. Hackett, Esquire, SC Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211 and Alan Burns, #143218, Lieber Correctional Inst. P.O Box 205, Ridgeville, South Carolina 29472.

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

This 12th day of June, 2013.



ANGELA BENNETT
Administrative Assistant



ALAN WILSON
ATTORNEY GENERAL

June 12, 2013

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RECEIVED
JUN 12 2013
SC Court of Appeals

Re: State v. Alan L. Burns
Appellate Case No. 2012-212769

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent's Return to pro se motion requesting back up tape/audio disk in the above-referenced case.

Sincerely,

Salley W. Elliott
Assistant Deputy Attorney General

SWE/
Enclosure

cc: Susan Hackett, Esquire
Alan L. Burns, 143218