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Feb 16 2023

SC Court of Appeals

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM BERKELEY COUNTY
Court of General Sessions
The Honorable R. Markley Dennis, Jr., Circuit Court Judge**

Lower Court Cases No. 2018-GS-08-00532, 2018-GS-08-00531, 2018-GS-08-00528,
2018-GS-08-00529 and 2018-GS-08-00530

Appellate Case No. 2019-000511

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

AARON MCKENZIE CAPERS

APPELLANT.

**MOTION FOR A THIRD EXTENSION OF TIME
IN WHICH TO FILE RECORD ON APPEAL**

On February 8, 2023, Undersigned counsel sent correspondence to the Court requesting a second extension of time to file the Record on Appeal in this case. Counsel incorrectly referenced this request as a second request inasmuch as the two previous requests were each for only fifteen additional days. It was rather late at night and Counsel also inadvertently formatted her request in the form of a letter, rather than as a motion. Counsel apologizes for that oversight.

Opposing Counsel has been working with me to try and find Court's Exhibit No. 1 which was introduced during the January 6, 2020 Motion for Reconsideration of Sentence. Opposing Counsel, and his staff, were reminded by the Court Reporter that Court Exhibit No. 1, a packet of letters, was listed in the index to exhibits found in the transcript she prepared and it was likewise listed on her form report documenting all the exhibits that were introduced following that hearing. She apparently added that she did not physically file the exhibit in question because she did not have it in her possession due to the fact that Judge R. Markley, Jr., presiding circuit court judge had taken the matter under advisement. On or about February 8, 2023, I called Judge Dennis at his new office and left a message asking if he could direct me to whoever cleaned his office out when he recently retired in hopes that this missing exhibit might have been found and filed after his retirement. Judge Dennis graciously returned my call late that afternoon and advised me that he had not taken possession of this exhibit. He told me that it had been his practice not to ever take possession of exhibits in any case. He assured me that he would have either read the in Court or had someone make him a copy to review while he had the matter under advisement.

I next called the Office of the Berkeley and spoke with the supervisor who manages

exhibit filing and retention. She stated that they did not even have the form Court Reporters use to document what exhibits they took in and filed following a proceeding. She further advised me that her staff would not have accepted such a form from the Court Reporter unless all the exhibits found on that form were physically submitted for filing at the same time as the form.

Opposing Counsel has generously agreed not to object to this third extension request. We has agreed that if Trial Counsel can provide us either the original exhibit or copies, the State will consent to their belated introduction as long as the letters are accompanied by Trial Counsel's Affidavit attesting to the fact that the letter submitted are in fact the same letters introduced at hearing in question as Court's Exhibit No. 1. I have been trying for months to reach Trial Counsel, Sharon Capers, Appellant's mother, to address this and other matters with her. Fortunately, I finally was able to contact her on or about February 8, 2023. She advised that she was certain she did not have the original exhibit, but that she would search her file. I asked her to thoroughly search her file in case she has accidentally put the exhibit in her file boxes and did not even realize she had done so. She told me she was certain she had kept copies and would scan then and email them to me at once. As of today, I have not received the. I will contact her again. If I am unable to reach her, I will write the Court with a status report and perhaps request a court order to assist us in getting a copy of this exhibit from Trial Counsel. I apologize for not getting this motion to the court in proper format sooner. I had hoped to be able to report that we had been able to reconstruct this exhibit. Hopefully that will soon be true.

I am withdrawing my request to add the *Dolan Report* referenced in my Initial Brief since that report was not provided to Judge Dennis. Opposing Counsel and I have agreed on a method to cite to it in my Final Brief. I will appreciate this extension very much.

Respectfully submitted,

Tara D. Shurling

Tara Dawn Shurling

S.C. Bar No. 5099

Attorney and Counselor at Law

ATTORNEY FOR APPELLANT

This 15th day of February, 2023.

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THE STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE
OF
MOTION FOR A THIRD EXTENSION OF TIME
IN WHICH TO FILE RECORD ON APPEAL

Undersigned Counsel for Appellant in the above captioned direct appeal hereby certifies that she previously served a copy of her request for a third extension of time in which to prepare and serve the Record on Appeal in the above captioned Direct Appeal February 8, 2023. Unfortunately, Counsel formatted the request *as a letter*. On today's date, February 15, 2023, Counsel has served opposing counsel, Mark R. Farthing, Assistant Attorney General, with a copy of her *Motion* for a third extension of time in which to prepare and file the Record on Appeal in the above captioned matter. This Motion was served upon opposing counsel by way of an email sent to Attorney Farthing to the address listed below.

mfarthing@scag.gov

Respectfully submitted,

Tara D. Shurling

Tara Dawn Shurling

S.C. Bar No. 5099

Attorney and Counselor at Law

ATTORNEY FOR APPELLANT

This 15th day of February, 2023.