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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of General Sessions

The Honorable R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2019-000511

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

AARON MCKENZIE CAPERS,

APPELLANT.

PETITION FOR LEAVE OF COURT
TO SUBMIT AN AMENDED FINAL BRIEF OF APPELLANT IN LIGHT OF
TRANSCRIPTION ERROR
ACKNOWLEDGED BY AFFIDAVIT OF COURT REPORTER

The Amended Initial Brief of Appellant was filed in the South Carolina Court of Appeals on *June 20, 2022*. On *September 21, 2022*, Counsel for Appellant received a digital copy of an affidavit from the Court Reporter who prepared the trial transcript in this case. In that affidavit, she acknowledged that she made a “*transcription error*” on page 793 of the trial record in which she had erroneously quoted Deputy Solicitor Anne Williams as saying Appellant was *16* at the time of the crime. She indicated that she had listened to her tapes and confirmed that Deputy Solicitor Williams in fact said Appellant was *18* at the time the crime was committed. *R.p. 556*.

Undersigned counsel planned to correct references to Appellant being sixteen (16) at the time of the crimes found throughout the Initial Brief of Appellant as *typographical errors* which she believed could be properly corrected pursuant to Rule 211(b)(2), SCACR. It is Appellant's position that where the Court Reporter has confirmed under oath that she made this *transcription error*, appellate counsel should be able to correct inaccurate statements of fact found in the Appellant's Final Brief which were made as a result of the "*transcription error*" acknowledged by this court reporter *after* the Initial Brief of Appellant was filed.

This "*transcription*" error should qualify as an "*obvious typographical error*" under Rule 211 (b)(2). SCACR. It is now "*obvious*" in light of the court reporter's sworn affidavit. in which she attests to the fact that she has listened to her backup tapes and verified that she made a transcription error when she typed that Deputy Solicitor Williams when she transcribed this trial record to say Deputy Solicitor said Appellant was 16 at the times of the crime.

Counsel for Respondent has objected to Counsel for Appellant making these corrections under the authority of Rule 211 (b)(2), SCACR. Counsel for Appellant disagrees with Respondent's interpretation of Rule 211, since the rule does not limit the correction of typographical errors to those *made by Counsel* for the Appellant. Rule 211(b)(2), SCACR. As a practical matter, few lawyers type their own briefs. Therefore many, if not most, such typographic errors are made by a third parties. Due to opposing counsel's position on this issue, the references to Appellant being 16 at the time of the crime remain uncorrected in the Final Brief of Appellant filed on today's date. Throughout the Final Brief of Appellant submitted today footnotes have been used to make the reader aware that statements incorrectly

stating that Appellant was sixteen (16) at the time of the crime are inaccurate. Those footnotes direct the reader's attention to the Court Reporter's affidavit found at R.p. 556 for purposes of clarity. Counsel seeks leave of Court to submit an Amended Final Brief for the limited purpose of correcting inaccurate statements of fact in the Final Brief of Appellant resulting from information she did not have at the time her Initial Brief was drafted and filed on June 20, 2022. . It should be noted that Respondent's Initial Brief was filed on **December 9, 2022**, well after both parties received the affidavit documenting this transcription error provided by the court reporter on **September 21, 2022**. Counsel has moved forward with filing her Final Brief of Appellant in order to adhere to timeline set by this Honorable Court in its recent letter to counsel dated July 28, 2022. Counsel is filing a Petition to file the Final Brief of Appellant Out of Time on today's date as well. Counsel apologizes for what was an inadvertent error in calculating the due date for Appellant's Final Brief. This Honorable Court granted Counsel's request that the ROA be accepted for filing out of time by Order dated July 17, 2023. The due date for the Final Brief of Appellant was inadvertently calendared for twenty (20) days from the date of that Order.

CONCLUSION

Petitioner respectfully requests that he be permitted to submit an Amended Final Brief of Appellant for the limited purpose of changing any portions of the Final Brief of Appellant which reflect the transcription error acknowledged by the Court Reporter concerning Appellant's age at the time of the crime. Petitioner submits that this request is necessary and appropriate where Appellate Counsel was not notified of this error until September 21, 2022, approximately three (3) months after the Initial Brief of Appellant was filed on June 20, 2022. Counsel submits that she in good faith believed that references to the erroneous information contained in the transcript

of this trial record, and acknowledged under oath by the Court Reporter who transcribed it, could be corrected pursuant to Rule 211(b)(2), SCACR. She maintains her belief that changes needed in the Final Brief could have been properly made under Rule 211(b)(2); particularly where the transcription error (typographical error by the Court Reporter) was verified under oath by the Court reporter and where the rule itself does not limit such corrections to mistakes personally made by counsel of record in the appeal before this Honorable Court.

Respectfully submitted,

Tara D. Shurling

Attorney At Law
SC Bar No. 5099

Law Office of Tara Dawn Shurling, P.A.
3614 Landmark Drive
Suite A
Columbia, S.C. 20204

Office Phone (803)738-8622

Business Cell (803) 446-3614

Email tdshurling@aol.com

ATTORNEY FOR APPELLANT

This 1st day of August, 2023.

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Undersigned Counsel hereby certifies that a copy of her Petition to File an Amended Final Brief of Appellant has been digitally served on opposing counsel, Mark R. Farthing, Senior Deputy Attorney General, this 1st day of August, 2023, by sending the same to the email address listed below.

mfarthing@scag.gov

Tara D. Shurling

Attorney At Law
SC Bar No. 5099

Law Office of Tara Dawn Shurling, P.A.
3614 Landmark Drive
Suite A

Columbia, S.C. 20204

Office Phone (803)738-8622

Business Cell (803) 446-3614

Email tdshurling@aol.com

ATTORNEY FOR APPELLANT

This 1st day of August, 2023.