

The Supreme Court of South Carolina

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CLERK OF COURT

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CHIEF DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
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July 16, 2013

Mr. Alan L. Burns, #143218
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472-0205

Re: The State v. Alan L. Burns
Appellate Case No. 2012-212760

RECEIVED
JUL 17 2013

SC Court of Appeals

Dear Mr. Burns:

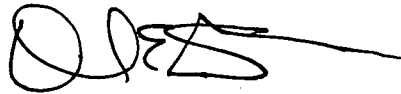
This responds to your letter to Chief Justice Toal regarding the above appeal. Please be advised that the Chief Justice cannot assist you with this appeal since it is pending before the South Carolina Court of Appeals.

Since you are represented by counsel in this appeal, I remind you that, except for a *pro se* motion to relieve counsel, you are not permitted to make any other *pro se* motion or other request for relief since you are represented by counsel in this matter. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989). However, since your letter appears, in part, to seek to have your current counsel relieved, I am forwarding a copy of your letter to the South Carolina Court of Appeals.

Finally, please remember that any correspondence that you send to either this Court or the South Carolina Court of Appeals must be provided to the counsel for the State. Neither this Court nor the South Carolina Court of Appeals can act on *ex parte* communications. I am providing a copy of your letter and attachments to

the counsel in this matter.

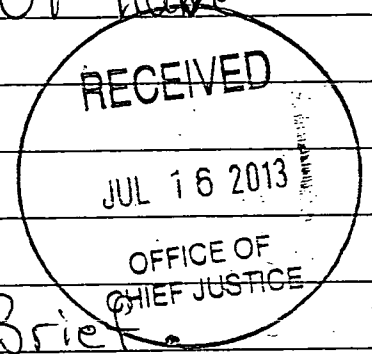
Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

cc: Salley Susan Barber Hackett, Esquire (with copy of letter and attachments)
John Benjamin Aplin, Esquire (with copy of letter and attachments)
✓ The Honorable Jenny Abbot Kitchings (with copy of letter and attachments)

Please Date Stamp One Copy Of the
Enclosed Documents. I do NOT Have
Additional Copies.



I Need The Copy For My Brief.

This Complaint Is In Reference To :

State vs. Burns , Appellate Court Case No. : 2012212760
Pending

RECEIVED

JUL 16 2013

S.C. SUPREME COURT

July 9, 2013

Alan L. Burns, #143218

Lieber C.I., Edisto B-02

P.O. Box 205

Ridgeville, S.C. 29472-0205

Honorable Jean Toal, Chief Justice
South Carolina Supreme Court

RECEIVED

RECEIVED

JUL 18 2013

OFFICE OF
CHIEF JUSTICE

JUL 16 2013

S.C. SUPREME COURT

Dear Ms. Toal :

This letter is being submitted as a Formal Complaint. I am being denied *Effective Assistance of Counsel*.

The first issue is this: I represented myself at criminal trial. The trial last a week. I was convicted and sentenced. I timely filed a notice of appeal. Ms. Susan Barber Hackett, of the Office of Appellate Defense, was appointed to represent me. Upon her appointment I informed her that I had had nine (9) pre-trial hearings and most were germane to my appeal. Request were made for all transcripts. To this day we have only receive six (6) transcripts. I immediately upon my receipt of the transcripts I thoroughly review them and discovered that three (3) were not recorded accurately. I contacted Ms. Hackett by letter and telephone, informed her of the inaccuracies and instructed her to give notice pursuant to Rule 607(I) SCACR, to challenge the accuracy and preserve the back up tape/audio disk.

I represented myself so I know what was said.

Rather than error on the side of caution and give notice just to be on the safe side, Ms. Hackett, wrote and informed me that

She had no basis to challenge. Apparently my word as her client was not good enough for her. She refused to give notice so that the back up tapes/audio disk could be preserved. Instead she wrote to Ms. Lorrel Proctor, or rather sent her an e-mail and a copy of the transcript and ask her what her opinion is as to the accuracy.

In the mean time, in an effort to ensure the time line for filing the notice was met and ~~to~~ to have the tape/disk preserved I drafted and filed and served the Attorney General and the court reporters. (They were three (3) different court reporters).

The Clerk of the Appeals Court immediately responded informing me that they did not act on hybrid representation and that no action will be taken on my filings.

However, one of the court reporters (Ms. Anne Bouley Meyer), being diligent, took the ~~last~~ initiative and reviewed the record, and discovered that I was correct, the transcript was not accurate. (Please see the enclosed cover letter from Ms. Meyer listing the changes).

The next issue is that Ms. Hackett, is refusing to raise issues appealable.

S.C. Code Ann. § 14-9-210, begins;

"The County Solicitor shall prepare and through the presiding judge of the Court of General Sessions

submit to the grand jury while in attendance upon the Court of General Sessions, Bills of Indictments. "

I wrote to Ms. Hackett and told her that I raised a challenge of the legality of the county grand jury prior to trial and requested all impanelment documents. That in response to my motion a pre-trial hearing was held the week before trial and that the solicitor stated in response to my challenge and request,

"Your Honor, I don't know what he's talking about. We don't present anything to the grand jury."

(Please see the enclosed pages from the motion hearing transcript). Ms. Hackett, says there is nothing wrong in that and that she will not be raising the issue.

Your Honor, a lawyer who is placing her client's best interest at the fore front, ~~and~~ whole heartedly looks for comments and actions of the lower court and state that contradicts the law. It is these types of comment she should be more than willing to argue in an effort to have her clients conviction overturned. That is serving the client's best interest.

This attorney (Ms. Susan B. Hackett is not representing my best interest, and it would better serve justice if she

was removed from my case. That I be appointed new counsel or in the very least be allowed to represent myself in this appeal.

Twice Ms. Hackett has gone totally against my best interest and my decision.

Rule 1.2 RPC, Rule 407 SCACR, states

"(a) Subject to paragraph (c) and (d), a lawyer [shall] abide by a [client's decision] concerning the objective of representation and, as required by Rule 1.4, [shall consult] with the client as to the means by which they are to be pursued." "

Your Honor, by this complaint I do not seek to sway the decision of the court in my appeal. I am asking you to consider the fact that Ms. Hackett has already cost me the ability of having two (2) hearing transcripts varified. She has openly stated that she will not raise and argue a truly appealable issue. Your Honor, I am entitled to adequate, competent legal representation.

Your Honor, Ms. Hackett has already demastated that she either can not or will not provide me with that level of representation I am entitled.

Your Honor, I ask that you please reconsider your stance on not allowing inmates who are represented by appointed Appellate

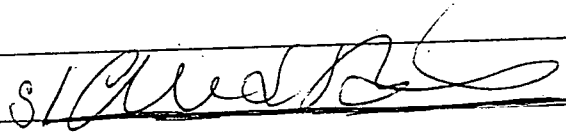
Defense Attorneys, from filing motions and pleading on their own behalf. The two (2) issues raised in this complaint are clear cut examples why inmates should.

Your Honor, I am the individual who will have to bear the result of this appeal. I should therefore have the right to raise any viable issues.

Your Honor, for the most part, the attorneys at the Office of Appellate Defense only seek to alleviate the burdensome case load within their office.

Your Honor, something has to be done about the way that office (Appellate Defense) handles appeals.

Your Honor, I ask that Ms. Hackett be removed from my case. She has already committed ineffective assistance of counsel.



Alan L. Burns, #143218

ALB/alb

Attachments 5 Pages

Susan Hackett

From: Susan Hackett
Sent: Friday, April 26, 2013 3:35 PM
To: 'lproctor@charlestoncounty.org'
Subject: State v. Alan Burns
Attachments: Transcript May 29, 2012.pdf

Attachment
22

Ms. Proctor,
I represent Alan Burns in his direct appeal. I understand that you were standby counsel. I am trying to get all of the transcripts. I have obtained a transcript from a May 29, 2012 hearing. Mr. Burns called me yesterday to say that he believes the transcript is incomplete. He believes the transcript lacks statements regarding his ability to obtain a handwriting sample from one of the victims. He informed me that the transcript makes reference to the sample, but that it is incomplete. As you now, I have to challenge a transcript within 30 days of receipt. I would greatly appreciate your help in this matter. Please review the transcript, which is attached. We accidentally scanned it double-sided so it appears to be 22 pages, but it is really only 10 pages. Please advise me as soon as possible regarding your opinion regarding the completeness of the transcript.

I greatly appreciate your help.

I will send Mr. Burns a copy of this communication.

Susan Barber Hackett
Office of Appellate Defense
1330 Lady Street, Suite 401
Columbia, S.C. 29201
803-734-1330

To all interested parties,

Upon receiving a challenge to the transcript produced in the matter of State v Alan Burns, I have made the following changes.

On the cover page I put the date of June 15, 2012 as I had put the erroneous date of July 15, 2012 on the original transcript.

I have included the disturbance which took place starting on Page 14 line 2, through 14 line 11.

This concludes any and all changes to the proceedings which have been transcribed in whole from start to finish.

Sincerely,



Anne Bouley Meyer

June 25, 2013

CC Desire Allen
SCCID

Copy of amended transcript sent to:
Alan Burns
and
SCCID



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 3, 2013

Attachment
19

Mr. Alan L. Burns, # 143218
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

Re: Your case
Our file no: 12-472

Dear Mr. Burns:

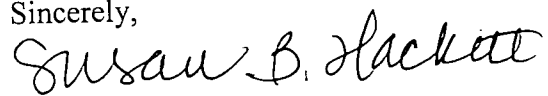
Thank you for your letter dated April 26, 2013. Before I turn to the matters addressed in your letter, I would like to update you regarding your request that I challenge the transcript from the May 29, 2012 hearing. Based upon my communications with Ms. Proctor and you, I have no basis to challenge the transcript.

Turning to your letter, you ask that before I submit anything to the court that I inform you of my intentions. I am not in a position to give you a draft of an initial brief prior to filing. In all likelihood, I will be unable to discuss with you exactly which issues will be briefed or the case law supporting the brief. I will review issues you present to me and consider those when deciding what to brief.

I have reviewed Evans v. State, and I will review it again as I prepare your brief. I have also reviewed the statutory provisions in your letter and will review those again as necessary. I have reviewed the transcript from August 1, 2012 referenced in your letter. The solicitor does not deny the existence of any grand jury empanelment documents during that hearing. The solicitor says she does not know what you are talking about and goes on to explain that the solicitor's offices not present anything to the grand jury. Police officers give testimony before the grand jury. I see nothing wrong with the solicitor's statements in this regard. There is a Supreme Court opinion encouraging solicitors not to appear before the grand jury. I have reviewed your indictments and I see nothing on the face of them to lead me to believe a grand jury was not empaneled or that a prosecutor signed as the grand jury foreperson.

Finally, you have asked that I date stamp your letter and return a copy to you for your files. Please find a copy enclosed.

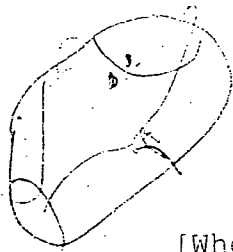
Sincerely,

A handwritten signature in cursive script that reads "Susan B. Hackett". The signature is written in black ink and is positioned directly below the word "Sincerely,".

Susan B. Hackett
Appellate Defender

Enclosure: Letter dated April 26, 2013

State v. Alan Burns
Emergency Hearing
August 1, 2012



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[Whereupon, Mr. Smith proffers documents to the Court]

THE COURT: Thank you, sir.

MR. SMITH: This has not been filed yet. Just received it the other day.

THE COURT: All right. Mr. Burns, if y'all will give me a minute to read this, I appreciate it.

[Whereupon, the Court reviews documents]

THE COURT: Okay. I'm still not sure that I understand the motions, but I'm happy to hear from you.

MR. BURNS: I would like to request any grand-jury documents and any -- the application that was sent to the grand jury -- petition that was sent to the grand jury, proposed indictments, I would like to listen to any witnesses that testified at the grand jury, and I would like to listen to the evidence that was presented to the grand jury.

The secrecy of grand jury, according to the Supreme Court in Evans v. State of South Carolina, 611 S.E.2d 510, states that the secrecy of the grand jury is removed once the grand jury renders its decision and indict.

THE COURT: Okay.

MR. BURNS: Therefore, the Supreme Court further states that a defendant have a right to review the

State v. Alan Burns
Emergency Hearing
August 1, 2012

1 documents to determine whether Laconde [phonetic]
2 challenged the legality of the state grand jury which
3 indicted him.

4 So I would like to request all those documents.

5 THE COURT: All right. Sir, you're up for trial
6 next week, aren't you?

7 MR. BURNS: Yes, ma'am, I am.

8 THE COURT: Okay.

9 Yes, ma'am. Happy to hear from you.

10 MS. HERRING-LASH: Your Honor, I don't know what
11 he's talking about. We don't present anything to the
12 grand jury. An officer goes in and gives testimony.
13 They send a representative for each department.

14 It sounds like -- and I -- I am not aware of the
15 case he's talking about -- but he's talking about
16 the state grand jury. I think the state grand jury has
17 a -- more of an investigative --

18 THE COURT: Uh-huh.

19 MS. HERRING-LASH: -- part of it than our just
20 regular grand jury.

21 THE COURT: Okay. Have y'all given him everything
22 that he's entitled to have in your Rule 5 response and
23 pursuant to Brady v. Maryland?

24 MS. HERRING-LASH: Yes, Your Honor.

25 THE COURT: Okay. Anything he's missing that he