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Oct 09 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas
Marvin H. Dukes, III, Circuit Court Judge

Ticket No. 2023-01-901-72065
Intermediate Appellate Case No. 2023-CP-07-01829

Appellate Case No. 2024-000929

BENJAMIN HAYS,

Appellant,

vs.

THE STATE,

Respondent.

MOTION TO HOLD TIME LIMITS IN ABEYANCE

The State, with the consent of Appellant, respectfully moves this Court to hold all time limits in the instant appeal in abeyance until the matter described below has been resolved to the satisfaction of the Court. The State would respectfully show unto this Court as follows.

1. The Initial Brief of Respondent and Designation of Matter in the above referenced appeal are due to be served and filed on October 9, 2024.
2. One of the arguments raised by Appellant in the current appeal (Argument I) relies in part on the fact that neither an audio recording nor a transcript of the September 26, 2023 trial was considered by the circuit court when hearing and ruling on the underlying appeal.
3. In her Return to the circuit court, the magistrate stated: "This is merely a summary of the trial testimony. I have submitted with this return a thumb drive which contains a recording of the trial and Plaintiff's exhibits 1 through 3 and Defendant's exhibits 3 and 4 for the appellate court's consideration."

4. A photocopy page attached to the magistrate's return shows a small gray rectangle which is labeled "USB FLASH DRIVE #1."
5. In his Appellate brief to the circuit court and at the hearing before that court, Appellant noted the record in this case does not include a transcript and that a transcript could not be produced because the actual recording of the trial was corrupted. (Tr.p.4-p.5). The State did not dispute this representation during the appeal. In a recent telephone call with the attorney for the Beaufort County Sheriff's Department, who represented the State at trial, undersigned counsel was advised that the circuit court judge, the Honorable Marvin H. Dukes, III, had advised the parties the audio recording sent by the magistrate was corrupted. Consequently, they proceeded with the appeal with only briefs, arguments, the magistrate's return, and the exhibits introduced during trial.
6. In gathering documents and materials for responding to the appeal and in an effort to be thorough, this Office contacted the Clerk's Office for Beaufort County Magistrate Nancy Sadler in order to determine if an audio recording of the trial might still be available. Surprisingly it was, and on October 4, 2024, a copy of the audio file was shared with the State. An employee with the Attorney General's Office listened to the approximately two-hour long recording and opined that, although of relatively poor quality, the recording seemed sufficiently audible for possible transcription.
7. The State subsequently shared the same audio file with Counsel for Appellant, William Hammett, who has now also had the opportunity to listen to the recording. Although not as confident the recording was sufficient for transcription, Mr. Hammett agreed a professional transcription service might have success in doing so.
8. At this time, since it is unclear whether a transcription service would be capable of producing a sufficient transcript for review, the parties wish to seek an opinion from such a service before determining how to proceed. The State is now making this inquiry with an individual who was formerly a court reporter and now offers transcription services. If transcription is possible, the parties are likely to seek a consent order remanding this matter to the circuit court for a new appellate hearing where that transcript could be part of the review.

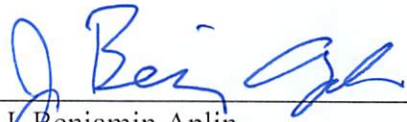
For the reasons above, I respectfully request that all time limits be held in abeyance until this audio recording is reviewed and possibly transcribed by a professional transcription service, and until this matter has been resolved to the satisfaction of the Court.

I have consulted with Mr. Hammett, counsel for appellant, and he consents to this motion to hold time limits in abeyance.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

By: 

J. Benjamin Aplin
S.C. Bar Number 8729

October 9, 2024

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PROOF OF SERVICE

I, Susan Spencer, certify I have served the within Motion to Hold Time Limits in Abeyance on Appellant by sending an electronic copy via email to William Sylvester Hammett, III to the address listed in AIS.

I further certify all parties required by Rule to be served have been served.
This 9th day of October, 2024.



SUSAN SPENCER

Legal Assistant

Office of the Attorney General