

RE: Order of dismissal for Appointment of Counsel

Dear Ms. Kitchings:

Please find enclosed a Petition for Rehearing for the Appointment of Counsel I am asking you to file with the court. Thanks

Antonio Gordon

9-25-2013

RECEIVED

SEP 26 2013

SC Court of Appeals

cc

State of South Carolina
In The Court of Appeals

Appeal From York County
John C. Hayes, III, Circuit Court Judge
Appellate Case No.: 2013-000975

State of South Carolina,

Respondent,

SEP 26 2013

v.

Antonio Gordon,

Appellant.

SC Court of Appeals

Petition for rehearing for the Appointment
of Counsel Pursuant to SCACR Rules
221(c) and 224(3)(i)(j)

This Court denied Appellant's motion for Appointment of Counsel on September 16, 2013. The Appellant hereby Petition this Court for rehearing Pursuant to SCACR Rules 221(c) and 224(3)(i)(j). The Appellant contends that extraordinary circumstances exist why this Honorable Court should reconsider its earlier decision and appoint Counsel. The Appellant will respectfully request this Honorable Court to use its discretion and appoint Counsel under § 17-3-360(c) and § 17-3-370.

The Appellant has filed an inmate Grievance on Evans Correctional Inst for failing to provide the Appellant access to the Court's by denying the Appellant the "right" to use the Law Library Computer, especially when the Appellant had a Court deadline issued by this Court on July 30, 2013, thus Prohibit Appellant from researching and citing the appropriate Law in his motion for Appointment of Counsel. This Create an extraordinary Circumstance and the Appellant will respectfully request this Honorable Court to reconsider its earlier decision and appoint Counsel under § 17-3-360(c) and § 17-3-370.

The Appellant asserts that from corresponding with Willie Eagleton (warden), here at Evans Correctional Inst, about not being allowed to use the Law Library Computer, See FN①, in his responses it appears that

inmates in (smu) will only be allowed access to the Law Library Computer "every other week for 30 to 40 minutes at a time" and if the inmate have a Court deadline he will be provided Prompt Access to the Law library Computer. See Attachment (c). This create an extraordinary circumstance and the Appellant will respectfully request this Honorable Court to reconsider it's earlier decision and Appoint Counsel under § 17-3-360 (c) and § 17-3-370.

The Appellant asserts that due to SCDC Policy and Procedure GA.01.13 Inmates Access to the Court's. Appellant will not be able to comply with SCACR Rules 210 (A) (b) and SCACR Rule 211 because SCDC "only give 100 sheets of paper" to indigent inmates confined in smu a month to handle legal obligation and SCDC does not copy hand written documents. See Attachment (b). This create an extraordinary circumstance and the Appellant will respectfully request this Honorable Court to reconsider it's earlier decision and Appoint Counsel under § 17-3-360 (c) and § 17-3-370.

Appellant contends due to his indigency status he will not be able to comply with Rules 207 and 209 and would request this court to order respondent to furnish the transcript if this court decide that Appellant will proceed pro se. However, the Appellant will request this Honorable Court to reconsider it's earlier decision and appoint Counsel under § 17-3-360 (c) and § 17-3-370. ~~Appellant will request this Honorable Court to reconsider it's earlier decision and appoint Counsel under § 17-3-360 (c) and § 17-3-370.~~
~~Appellant will request this Honorable Court to reconsider it's earlier decision and appoint Counsel under § 17-3-360 (c) and § 17-3-370.~~

The Appellant recognizes that the Court has the authority, but not the requirement under 17-3-360(c) and 17-3-370 to Appoint Counsel in Appeals from motions for new trial. However, the Appellant submitted to the Appellate Defense an affidavit of indigency under SCACR Rule 608, who declined

FNO SCDC does not use law books but use a legal computer. It's only one Law Library Computer in (smu) and there is 240 inmates confined in (smu) making it very difficult for Appellant to have Prompt Access to the Law Library Computer.

to accept representation of Appellant because their office does not represent defendant's on Appeal from Rule 29(b) SCCrIMP motions Pursuant to Policy. In the likelihood Appellant find this to be "untrue and false" because in The State v. Robert H. Koon, Appellate Case No. 2011-200608, unpublished opinion No. 2013-UP-216, the Appellate Defense represented Koon on Appeal from a Rule 29(b) SCCrIMP motion. The Appellant asserts that if the Appellate Defense decline to represent him ~~but represented~~ on Appeal from 29(b) SCCrIMP motion but represented other defendant's on Appeal from 29(b) SCCrIMP motion, and if the Court fail to appoint Counsel on Appellant's Appeal from a 29(b) SCCrIMP motion, the Court's and Appellate Defense will be denying the Appellant Equal Protection of the Law under the 14th Amendment U.S. Const and Applying Appellate Defense Policy of not representing indigent defendant's on Appeal from a 29(b) SCCrIMP motion in a discriminatory manner. See FN②. Therefore, due to the fundamental fairness exception, Appellant respectfully request this Honorable Court to reconsider it's earlier decision and appoint Counsel under § 17-3-360(c) and § 17-3-370.

Pursuant to § 17-3-360(c) and § 17-3-370, Ex Parte Brown, 711 S.E. 2d 899 (2011); Ex Parte Dibble, 319 S.E.2d 440 (1983), the Appellant respectfully request this Honorable Court to use it's discretion under the fundamental fairness and appoint Counsel to represent Appellant on his Appeal from his 29(b) motion. Appellant request that the time for filing the initial brief under SCACR Rule 208, and ordering of the transcript from the lower court be stayed during the pendency of this motion for rehearing.

Wherefore, due to the above extraordinary circumstances and the fundamental fairness and Appellant's indigency status, the Appellant respectfully ask this Court to appoint Counsel, fail to do so will effect dismissing Appellant's Appeal because he will not be able to comply with SCACR Rule 207 through 222.

Antonia Gordon

FN② The Appellate Defense did not decline representation of Appellant because Appellant was not found indigent under SCACR Rule 608. Representation was declined solely on the basis their office has a "Policy" of not representing defendant's on Appeal from a Rule 29(b) SCCrIMP motion. See Motion to be relieved as Counsel Page 2. Appellant assert he have been treated differently than other defendant's who file an Appeal from a Rule 29(b) SCCrIMP motion. Doe v. Sparks, 73 F.supp. 227 (1990) (Discrimination).

Motion to be Furnish transcript

Finally if this Court decide that the Appellant is to Proceed Pro se he is requesting to be furnish with a copy of the transcript under the U.S. A Const Amend 14. See Britt V. North Carolina, 92 S.Ct 431, Where the United States Supreme Court held, on an indigent defendant's claim of right to a free transcript, two factors that are relevant to determination of need are (1) Value of transcript to defendant in connection with Appeal or trial for which it is sought, and (2) availability or alternative device that would fulfill the same functions as a transcript. But See Mayer V. City of Chicago, 92 S.Ct 410, Where the Court held, Whether "Appeal" in state criminal trial is discretionary or as of "right" does "not" affect indigent's right to transcript, since indigents must have the same opportunities to invoke the discretion of the Court's as those who can afford the cost. U.S. A Const Amend 14.

Appellant assert that the transcript is verr value to the Appeal and have made every effort on his own behalf to obtain it but the Court reporter indicated they do not give out free transcripts to indigent defendant's. See Attachment (1) and (2). Wherefore, Appellant requesting to be furnish with the transcript. Britt V. North Carolina, SUPRA, Mayer V. City of Chicago, SUPRA.

Date: 9-24-2013

Antonio Morden

State of South Carolina
In the Court of Appeals

Appeal from York County Court of
General Sessions. John C. Hayes, III
Circuit Court Judge

Appellate Case No. 2013-000915

State of South Carolina

Respondent,

v.

Antonio Gordon,

Appellant.

Certificate of Service

The Pro Se, Appellant, Antonio Gordon, hereby certifies that one copy of Petition for rehearing for Appointment of Counsel, and motion to be furnish transcript in the above case has been served upon opposing counsel, Salley W. Elliot, Assistant Deputy Attorney General office of the Attorney General, P.O. Box 11549, Columbia, SC 29211 by depositing in the U.S. mail with proper postage, this 24 day of September, 2013.

Sworn to before me this 24th day
of September, 2013.

sl Antonio Gordon
Antonio Gordon 259798

Notary Cia J. Harper
Exp. Feb. 9th, 2020

**Wanda S. Nelson, CVR-M
Official Court Reporter
Post Office Box 749
York, SC 29745**

Attachment (1)

Date: September 3, 2013

**ACKNOWLEDGEMENT OF RECEIPT OF
LETTER REGARDING TRANSCRIPT OF RECORD**

TO: Antonio Gordon # 259798
Evans Correctional Institute
610 Hwy. 9 West
Bennettsville, South Carolina 29512

DATE OF HEARING: March 4, 2013

CAPTION: State of South Carolina v. Antonio Gordon

Case No.: 1998-GS-46-02847; 02849; 02850

This is to acknowledge that on August 30, 2013, I received your letter dated August 28, 2013, requesting the transcript of record in the above-referenced matter. I do not give out free transcripts.

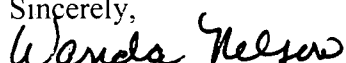
Rule 607 provides that the rate of \$3.25 shall be charged per page for a transcript. Based on the current rate, the estimated cost could/will be \$350.00. **Upon receipt of your money order, cashier's check, (NO PERSONAL CHECKS) in the amount of \$350.00 toward the deposit to prepare the transcript, I will be able to place your request in line for preparing.** If the transcript is less than the estimated pages, I will refund the difference to you upon delivery of the transcript. If the transcript is more than the estimated pages, the balance will be due prior to delivery of the transcript.

Under our rules, I have sixty days in which to complete the transcript, after receipt of the deposit. In addition, I am allowed to request from Court Administration thirty days extensions, if necessary, to complete the transcript. You will be notified if extensions are granted.

If you desire to cancel the request for the transcript, a cancellation request must be made in writing. You will be responsible for payment of any portion of the transcript that has been completed.

Should you have any questions regarding the above information, please contact me at the above address.

Thank you for your request in this matter.

Sincerely,

Wanda Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit

13. PHOTOCOPIES: *Inmates may not purchase photocopies of any materials contained in the law library regardless of his/her ability to pay.*

13.1 Inmates may request photocopies of legal materials and documents to support a pleading. All photocopying must relate to challenging or appealing the inmate's sentence or to challenging the conditions of his/her confinement. Legal materials and documents that may be copied to support a pleading include:

- Disciplinary reports/forms;
- Institutional or State Classification Committee reports/forms; and
- Letters, forms, reports, and other documents received from SCDC or other outside officials, or that have answers or other information from personnel within SCDC that have to do with the subject of the pleading, including forms, letters, or documents that have been notarized.

13.2 Materials and documents that ~~will NOT~~ be copied include:

- Drawings, pictures, or photographs;
- ~~Documents that have been solely originated, generated, written, typed, or created by an inmate (the inmate may copy this information by hand);~~
- Transcripts of school, college, or vocational training;
- Magazine or newspaper clippings (unless they specifically relate to the pleading); and
- Personal correspondence that is not related to the pleading;
- ~~Copies of SCDC Policies/Procedures; and~~
- Copies of case law.

Attachment (b)

(If the law librarian is unsure about whether or not a copy should be made, s/he should request assistance from the Office of General Counsel.) (3-4264)

13.3 No copies of blank legal forms will be made regardless of whether the inmate has funds in his/her E.H. Cooper account.

13.4 The inmate's E.H. Cooper Trust Fund will be debited (*a restitution will be created for indigent inmates*) in order to pay for photocopies. Indigent inmates will be permitted to make photocopies; however, their accounts will be debited to ensure reimbursement to the Agency once funds become available in their account. The cost per copy will be twenty-five cents except for medical records. See SCDC Policy/Procedure HS-18.07 and associated changes for information on copy costs for medical records. The cost per copy will be posted in a conspicuous location within each SCDC institution. (NOTE: Generally, an inmate may request an unlimited number of photocopies to support his/her legal *pleading* if s/he can pay for such copies and the types of documents may be photocopied per *paragraph 13.1, above*.) However, the Office of General

232

~~MB 216~~

~~MA 227~~

MB-116

(230)

ANTONIC GORDON

WARDEN

AUG 28 2013

ECI

Request to Staff member

To: Warden Willie Edgallon

Ilm Antonio Gordon 259798 SMI A 227 DATE 8-28-2013

Sir Pursuant to S. C. D. C. Policy and according to Ms. Hooks, Inmates can only receive 100 sheets of legal paper to handle Court business. However, Pursuant to SCACR, Rules 208 through 211, I must submit a total of "15" copies of my brief to the Appellate Court. However, this will be very hard of me because I am only issued "100" sheets of papers once a month and Pursuant to S. C. D. C. Policy Inmates are not allowed to have copies made of handwritten documents whether they are legal or not.

Sir, is there any way that Ms. Miller Law library can make these copies for me? My brief are 10 pages. Thanks!

Antonio Gordon

Attachment (b)

Ifm Gordon, in accordance to SCDC Policy GA-01.03 Access to Courts, para (13.2) Materials and documents that will not be copied include: Documents that have been solely originated, generated, written, typed, or created by an inmate (the inmate may copy this information by hand.)

Date:

Sign:

8-28-13

Warden Edgallon

Request to Staff member

To: Warden Willie L. Eagleton

I/m Antonio Gordon 259798 SMU # 227

9-12-13

SEP 12 2013

Sir You must not read my last request to staff because it was not consist on Lt. Wheeler not providing me the Law library but to the contrary that he only giving me 30 to 40 minutes "every other week" When I sign up every week and that according to Your own memorandum issued to both General Population and SMU Population Inmates will be provided 2 hour on the computer.

Its clear I submit a request to staff every week to use the Law Library Computer. I'm requesting to know whether Inmates in SMU that sign up to use the law library computer can use it every week or every other week, and for how long Sir.

I am asking this because back in July 30, 2013, I had a "Court deadline issued to me from the South Carolina ~~State~~ Court of Appeals", in which I had 10 days to respond. I submitted Lt. Wheeler a request to staff to use the Law Library Computer and was not allowed until my deadline was over and I could not respond with the appropriate Law sir.

Attachment (C)

I/m Gordon, please submit proof of deadline to ensure you have adequate time.

Date:

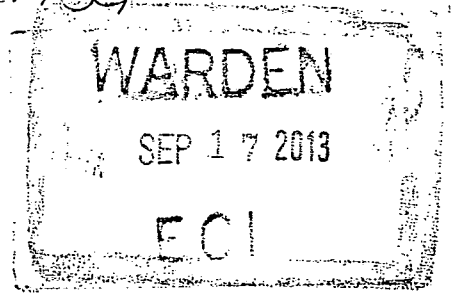
9.13.2013

Sign:

Antonio Gordon

Request to Staff member

To: Warden Willie Egalton
I/m Antonio Gordon 259798
9-17-13 SMU A 232



Sir, I don't know if you understanding what I'm asking you so I'ma send you one request at a time pertaining to each question I asked you. I am requesting to know the following:

- (1) How long do I/m's in (SMU) get to use the law library computer?
- (2) And how often do I/m in (SMU) get to use the law computer?

my last request to you wasn't about NO court deadline.

Attachment (c)

Jim Gordon, do you have a Court deadline. May not be your question but it's mine

Date:

9.18.2013

Sign:

Antonio Gordon