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Aug 04 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
The Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANTHONY NICHOLAS ARGOE,

APPELLANT.

Appellate Case No. 2023-000223

**MOTION TO SUPPLEMENT THE RECORD BASED ON
CHANGE OF CIRCUMSTANCES**

Due to a change in circumstances, the State respectfully moves this Court to supplement the record pursuant to South Carolina Appellate Court Rule (SCACR) 212(a)&(b). Appellant in his Reply Brief filed December 30, 2024, has asserted facts that are incorrect, including that a hearing on his Motion to Reconsider the denial of his Motion to Represent Himself was not scheduled and was not cancelled or withdrawn by appellant. (Reply Brief of Appellant, pp. 1, 2 & 4). These assertions are even contrary to appellant's previous representation to this Court in his original Return to Respondent's Motion to Supplement the Record. This change of circumstances requires supplementation of the Record on Appeal in order that this Court has the correct record so that it may appropriately decide this case.

Background

Appellant was indicted by the Dorchester County grand jury for the offense of murder. (2019-GS-18-1519). Appellant's case was called to trial on February 6, 2023, before the Honorable Diane Goodstein, Circuit Court Judge, and a jury. Ashley D. Chisolm, Esquire, appointed counsel, represented appellant. David Osborne and Mark Hinds, Assistant Solicitors, prosecuted the case. On February 9, 2023, the jury found appellant guilty of murder. (R. p. 391 - Trial Tr. 663, 11. 12-15). No issues from the trial itself are raised on appeal. Judge Goodstein sentenced appellant to life in prison. (R. p. 397, Trial Tr. 669, 11. 6-11).

Appellant directly appealed to this Court raising 1 issue:

Whether the court [Judge Maite Murphy] erred by denying appellant's [pretrial] motion to represent himself pursuant to Faretta v. California, 422 U.S. 806 (1975) since the court's reasoning that self representation was not a "wise choice" and not likely to lead to a successful result were not legitimate reasons to force appellant to be represented by counsel where appellant knowingly and voluntarily wanted to waive his right to counsel and to represent himself?

(IBOA, p. 1). Respondent filed an Initial Brief of Respondent asserting the following:

Argoe waived and abandoned his right to self-representation by his subsequent conduct after the initial hearing before Judge Murphy.

(IBOR, p. 3). In its Brief, Respondent asserted appellant waived his right to self-representation by his vacillating on the issue and by his subsequent conduct, particularly cancelling a scheduled hearing before Judge Murphy to reconsider the denial of his motion to represent himself. United States v. Gillis, 773 F.2d 549, 559 (4th Cir. 1985); Brown v. Wainwright, 665 F.2d 607, 611 (5th Cir. 1982). (IBOR, pp. 3-11).

Relevant Procedural Background

Prior to trial, several pre-trial hearings were held on appellant's motion to relieve his appointed trial counsel, Ashley Chisholm,¹ and/or to proceed *prose*. On July 25, 2022, a hearing was held on appellant's motion to relieve his trial counsel, Mr. Chisholm. Appellant's main complaints against his counsel were that counsel would not subpoena bank records or provide him with discovery. Counsel Chisholm responded the bank records were irrelevant, and he provided discovery to appellant when he received it. The motion to relieve counsel was denied by the Honorable Diane Goodstein. (R. pp. 1-14 - July 25, 2022, Tr. 1-14, Designation of Matter).

On September 16, 2022, the Honorable Maite Murphy heard appellant's motion to represent himself or relieve counsel. At this hearing, appellant again complained that his appointed counsel had not provided discovery timely. Counsel Chisholm responded he provided discovery to appellant when he received it from the State. After a colloquy between appellant and Judge Murphy, and specific questions to appellant about his knowledge of the law, Judge Murphy stated she did not think it was in appellant's best interests or wise to represent himself and appellant might want to retain his own private counsel. Appellant indicated an interest in hiring his own attorney and stated he would look into the matter. Judge Murphy denied the motion to relieve counsel at the end of the hearing but she also held she believed appellant needed representation in this matter so he could retain private counsel, or Mr. Chisolm would represent him. (R. pp. 15-25 - Sept. 16, 2022, Tr. 1-11, Designation of Matter).

On January 19, 2023, appellant again made a motion to represent himself this time before

¹ From the record it is clear that appellant was represented by a different attorney before trial counsel Ashe Chisholm. (R. pp. 22-23 - Sept. 16, 2022, Tr. 8-9, Designation of Matter). Appellant did not move to relieve his first attorney. That attorney left employment voluntarily. (Id.).

Judge Goodstein. (R. pp. 26-37 - Jan. 19, 2023, Tr. 1-12, Designation of Matter). At the hearing, counsel stated that after consultation with appellant, appellant wanted to raise this issue again. Counsel stated he believed that in order to preserve this issue he needed to raise the issue again before trial. After hearing the procedural history of the case from counsel, including counsel's statement that Judge Murphy had denied appellant's motion to represent himself in September, and counsel's other comments, Judge Goodstein, citing S.C.R.Crim.P. Rule 4(b), found she could not hear this motion because any order she issued would be void. She decided to treat the motion as a motion to reconsider the denial of appellant's motion to represent himself by Judge Murphy and held only Judge Murphy could hear a motion to reconsider the denial of appellant's motion to represent himself. (Id.). At the conclusion of this hearing, all the parties at this January 19th hearing and Judge Goodstein agreed on the record that a hearing would take place the following week or as soon thereafter as possible before Judge Murphy on appellant's motion to reconsider the denial of the motion to represent himself. (Id.). Judge Goodstein stated on the record at the January 19th hearing that she would communicate with Judge Murphy and schedule an appropriate time for the motion to be heard. The other attorneys at this hearing, including defense counsel, agreed they would be available for the hearing in front of Judge Murphy. (Id.).

As the attached e-mails show, a hearing on appellant's motion to reconsider the denial of his motion to represent himself was scheduled before Judge Murphy for January 30, 2023, at 4:00 p.m. (Attachment No. 1 - e-mails between defense counsel and Judge Murphy through Judge Murphy's law clerk). Appellant then withdrew his motion to reconsider the denial of his motion to represent himself in the 2 weeks following the January 19, 2023, hearing before Judge Goodstein. (Attachment No. 1 - e-mails between defense counsel and Judge Murphy, through her law clerk, cancelling the scheduled hearing and Judge Murphy's acknowledgment of the same]). Further, **it is clear from the January 19, 2023, hearing transcript, by agreement of all of the parties, a**

hearing was going to take place before Judge Murphy the following week or shortly thereafter.

Counsel Chisolm's e-mail correspondence with Judge Murphy through her law clerk, attached, shows that **appellant withdrew his motion to reconsider the denial of his motion to represent himself on Thursday, January 26, 2023. The hearing was scheduled for January 30, 2023 at 4:00 p.m. (See Attachment 1).** Judge Murphy responded to trial counsel Chisolm's e-mail accordingly through her law clerk, and informed Mr. Chisolm to notify the appropriate Clerk of Court so the roster could be adjusted, and her law clerk would also do the same. (Attachment 1: e-mails between defense counsel Chisolm and Judge Murphy through her law clerk).

The next hearing occurred on February 3, 2023, before Judge Goodstein. (R. pp. 38-56 - Feb.3, 2003 Tr. 1-19, Designation of Matter). This was the Friday before trial. This hearing was regarding a motion by defense counsel himself to be relieved because appellant had allegedly physically threatened defense counsel during a meeting in preparation for trial. (Id.). At this hearing, counsel attempted to join in appellant's previous motion to represent himself, but counsel did not mention appellant had previously cancelled the motion to reconsider the denial of his motion to represent himself by Judge Murphy. Based on Respondent's reading of the record, Judge Goodstein heard and denied only counsel's motion to be relieved. (Id.).

The trial began on February 6, 2023, before Judge Goodstein with counsel Chisolm representing appellant. Prior to the trial beginning before the jury, appellant again moved to have Chisolm relieved. (R. pp. 66-70 - Trial Tr. 104-08). The appellant claimed Mr. Chisolm threatened him but claimed it occurred before the February 3, 2023, hearing. Appellant had no explanation why he did not notify Judge Goodstein of this at the February 3rd hearing. Judge Goodstein denied the motion. (R. pp. 66-70 - Trial Tr. 104-08). The trial then began before the jury, at the conclusion of which appellant was found guilty of murder. (R. pp. 57, 70, 391, 397 - Trial Tr. 1, 108, 663, 669).

Prior to filing its initial brief, on August 15, 2024, Respondent filed a Motion to Supplement the Record with the e-mails between trial counsel Chisolm and Judge Murphy showing the motion to reconsider the denial of appellant's motion to represent himself was scheduled for January 30, 2023, and then withdrawn or cancelled by appellant through counsel and confirmed by Judge Murphy's Office. Appellant opposed the Motion to Supplement the Record by way of an August 30, 2024, Return to the Motion to Supplement the Record. In the Return, **appellant admitted the motion for reconsideration of the denial of his motion to represent himself was scheduled for a hearing but then withdrawn or cancelled by counsel Chisolm, but not for the reasons Respondent argued.** Appellant submitted an affidavit of Mr. Chisolm alleging why he cancelled *the scheduled hearing*. The State filed a Reply to appellant's Return to the Motion to Supplement the Record on September 4, 2024. This Court then denied Respondent's Motion to Supplement the Record by Order on September 20, 2024. Respondent filed a Motion to Reconsider on October 3, 2024. This Court denied the Motion to Reconsider.

Subsequently on December 30, 2024, appellant filed his Reply Brief to the Initial Brief of Respondent. In that Reply Brief, appellant makes factual representations which are incorrect which constitute a change of circumstance requiring this Motion and supplementation of the Record on Appeal.

The Motion before this Court

The issue raised on appeal from appellant's conviction was the subject of a Motion to Reconsider which was scheduled for a hearing before the Honorable Maite Murphy, Circuit Court Judge, on January 30, 2023, at 4:00 p.m. but that Motion to Reconsider was knowingly, intelligently, and voluntarily withdrawn by appellant as demonstrated by the attached documents Respondent wishes to add to the Record, e-mails between trial counsel Chisolm and Judge Murphy and her

office. The voluntary withdrawal of the Motion to Reconsider is contained nowhere within the transcripts available of any pretrial hearings or the trial transcript; however, there is no question that the motion was made in the lower court but withdrawn before the actual scheduled hearing date and before the actual scheduled hearing on the motion could take place, and the court, Judge Murphy, acknowledged the withdrawal through her law clerk. (See Attachment No. 1; e-mails between trial counsel and Judge Murphy via her law clerk wherein trial counsel cancelled the scheduled January 30, 2023, 4:00 p.m. hearing on the Motion to Reconsider Judge Murphy's prior ruling; See also appellant's previous Return to Respondent's previous Motion to Supplement the Return and Attached Affidavit & Reply to Return).

Respondent previously filed a Motion to Supplement the Record in this case. This Court denied that Motion. In his previous Return to the Motion to Supplement the Record, appellant admitted that a hearing on the Motion to Reconsider the denial of his Motion to Represent Himself was scheduled before Judge Murphy and cancelled by appellant. In his Return, appellant disputed why he and his attorney cancelled the scheduled hearing before Judge Murphy on the Motion to Reconsider the denial of his Motion to Represent himself. Appellant even attached an affidavit from trial counsel alleging why he cancelled **the scheduled hearing**. (See previous Return to Motion to Supplement the Record & Reply to Return).

The Reply Brief

Now in his Reply Brief to Respondent's Initial Brief, filed December 30, 2024, appellant asserts: "No time for a motion to reconsider hearing before Judge Murphy was ever set,..." (**Reply Brief of Appellant, p. 2, ln. 17**). Again, on page 4 of appellant's Reply Brief, appellant asserts as follows: "As seen, a hearing on a motion to reconsider Judge Murphy's ruling that appellant could not represent himself after an insufficient Faretta colloquy was never set." (**Reply Brief of**

Appellant, p. 4, ll. 10-11). These assertions by appellant are simply not correct as shown by the attached e-mails between trial counsel and Judge Murphy and her Office and appellant's previous Return to the first Motion to Supplement the Record. (See also Respondent's Reply to the Return).

Appellant also asserted in his Reply Brief, "...the state incorrectly asserts that all parties 'including Argoe and defense counsel,' agreed a motion to reconsider hearing would be held before Judge Murphy and was scheduled, but that petitioner 'with the assistance of counsel failed to follow through.' " (Reply Brief p. 1, ll. 18-20)(partially quoting Respondent's Initial Brief). This assertion by appellant is also incorrect as shown by the transcript of the January 19, 2023, hearing before Judge Goodstein contained in the Designation of Matter on Appeal **and** the attached e-mails.

As the attached e-mails between trial counsel Chisolm and Judge Murphy and her office show, a hearing on the motion to reconsider Judge Murphy's prior ruling **was set for January 30, 2023 at 4:00 p.m., and cancelled by appellant through his trial counsel Chisolm.** (See also Respondent's previous Motion to Supplement the Record; Appellant's previous Return to Motion to Supplement the Record; Respondent's Reply to the Return; Respondent's Motion to Reconsider Motion to Supplement the Record).

In fact, appellant admitted in his prior Return to Respondent's Motion to Supplement the Record that the hearing on the motion to reconsider Judge Murphy's ruling was scheduled before Judge Murphy and cancelled by appellant through his counsel. (See previous Return to Motion to Supplement the Record & Respondent's Reply to the Return). Importantly, in that Return, appellant disputed the reason trial counsel cancelled **the scheduled hearing** and appellant submitted an Affidavit of counsel Chisolm regarding why he alleged **the scheduled hearing on the Motion to Reconsider before Judge Murphy was cancelled by appellant.** (Appellant's Return to prior Motion to Supplement the Record). This directly contradicts representations in appellant's Reply

Brief cited above.

Based on the change of circumstances, i.e. the incorrect assertions in appellant's Reply Brief, which are even contradicted by appellant's previous Return to Respondent's original Motion to Supplement the Record, Respondent, the State, respectfully moves this Honorable Court to supplement the record pursuant to SCACR, Rule 212(a)&(b) with the attached e-mails. The attached e-mails between trial counsel Chisolm and Judge Murphy and her law clerk show, appellant's motion to reconsider Judge Murphy's denial of his motion to represent himself was scheduled for January 30, 2023 at 4:00 p.m. and withdrawn by appellant after the January 19, 2023, hearing before Judge Goodstein, and the hearing before Judge Murphy that all parties agreed was going to occur did not occur because of appellant's withdrawal of the motion to reconsider the denial of the motion to represent himself. (Attachment No. 1; e-mails between counsel and Judge Murphy and her Office; See also appellant's previous Return to Motion to Supplement the Record admitting the e-mails are authentic; Respondent's Reply to the Return).

Because the sole issue raised on appeal is an alleged error of Judge Murphy in denying appellant's motion to represent himself, Respondent asserts waiver of the right to self-representation by vacillation and conduct after the September hearing, and appellant's incorrect representations in his Reply Brief, it is critical that this Court have the correct record in this matter and what occurred regarding the motion to reconsider that prior ruling. Given appellant's incorrect representations in his Reply Brief, it would be a grave injustice for this Court to consider this matter without knowing the entire record, and the correct record, including whether in fact the hearing was scheduled and withdrawn by appellant on his motion to reconsider the prior ruling.

Respondent attempted to consult with opposing counsel on this motion and could not reach opposing counsel. Respondent therefore believes that opposing counsel opposes any motion to supplement the record pursuant to Rule 212(a)&(b), SCACR.

It is clear these matters were before the lower court. Rule 212(a), SCACR. The e-mails constitute communication *with the court*. Rule 210(c), SCACR contemplates presentation as necessary when the matter is not otherwise available or known to the Court. The very next line following the "presentation" requirement allows, among other things, orders and other decisions to be included in the record. These items are clearly items "presented" to the judge, Judge Murphy, the judge that appellant alleges erred on this issue. Read carefully, the limitation to items "presented" is to ensure that the parties and the circuit court do not fall victim to sandbagging. It is a misuse of the Rule to allow an appellant to avoid his own actions before the circuit court, particularly an action that undermines his position on appeal.

The appellant cannot block from this Court material not just before the lower court *but from the Court* with a hope to establish error and prejudice based on an incomplete record. *See* Rule 210(h), SCACR (without supplementation, "the appellate court will not consider any fact which does not appear in the Record on Appeal"). Appellant cannot use his previous successful opposition to the Supplementation of the Record on Appeal and argue information that is incorrect in his Reply brief, in an attempt to defeat Respondent's arguments in its' brief. In his Reply Brief, appellant incorrectly argues no hearing was scheduled on the motion for reconsideration and appellant did not cancel or not go forward with the hearing and as a result appellant did not waive self-representation by vacillation or conduct. As shown, this is incorrect.

Therefore, due to this change in circumstance, Respondent moves this Court pursuant to Rule 212, SCACR, that it should grant the motion to supplement the record with the e-mails between defense counsel Chisolm and Judge Murphy regarding the scheduling and withdrawal of the scheduled motion to reconsider Judge Murphy's denial of appellant's motion to represent himself. (Attachment 1). Alternatively, this Court should require "a report of the ... hearing, or any matter

relative thereto, to be made by the trial judge... " and "[t]hese matters shall become part of the Record on Appeal" pursuant to Rule 212(a), SCACR. *See also* Rule 212(a), SCACR ("The appellate court may require copies of all or any part of the transcript of proceedings *or other matter* which was before the lower court... to be sent up for its inspection or consideration.")(emphasis added).

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Senior Assistant Attorney General
S.C. Bar No. 11973

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By: *s/ J. Anthony Mabry*
J. ANTHONY MABRY
ATTORNEYS FOR RESPONDENT

August 4, 2025.

ATTACHMENT NO. 1

Anthony Mabry

From: Ash Chisholm <ashc@1stcircuitpd.com>
Sent: Monday, August 12, 2024 4:10 PM
To: Anthony Mabry
Subject: Fw: Anthony Argoe Hearing Jan 30th

 You don't often get email from ashc@1stcircuitpd.com. [Learn why this is important](#)

From: Ash Chisholm
Sent: Thursday, January 26, 2023 9:13 AM
To: Murphy, Maite Law Clerk (Alan G. Lee) <mmurphy@cscourts.org>
Cc: David L. Osborne <DOsborne@dorchestercountysc.gov>
Subject: Anthony Argoe Hearing Jan 30th

Judge Murphy,

We are scheduled to appear before you in Orangeburg on January 30th at 4 pm. After speaking with my client, we are withdrawing our motion to reconsider your prior ruling on his motion to represent himself.

Ash

Anthony Mabry

From: Ash Chisholm <ashc@1stcircuitpd.com>
Sent: Wednesday, August 14, 2024 10:39 AM
To: Anthony Mabry
Cc: Dudek, Robert
Subject: Fw: Anthony Argoe Hearing Jan 30th

You don't often get email from ashc@1stcircuitpd.com. [Learn why this is important](#)
All,

This is the only correspondence I could find about this following my initial email withdrawing the motion to reconsider.

Ash

From: Murphy, Maite Law Clerk (Jewell Gearding) <mmurphy@sccourts.org>
Sent: Thursday, January 26, 2023 9:26 AM
To: Ash Chisholm <ashc@1stcircuitpd.com>
Cc: David L. Osborne <DOsborne@dorchestercountysc.gov>; Tonda Westbury <TWestbury@dorchestercountysc.gov>
Subject: RE: Anthony Argoe Hearing Jan 30th

Yes, I will reach out to Orangeburg as well.

From: Ash Chisholm <ashc@1stcircuitpd.com>
Sent: Thursday, January 26, 2023 9:24 AM
To: Murphy, Maite Law Clerk (Jewell Gearding) <mmurphy@sccourts.org>
Cc: David L. Osborne <DOsborne@dorchestercountysc.gov>; Tonda Westbury <TWestbury@dorchestercountysc.gov>
Subject: RE: Anthony Argoe Hearing Jan 30th

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

No I haven't. I'm CC'ing Tonda on here so hopefully that will sort it out. I'm guessing you mean our Dorchester Clerk for docket/record purposes?

Ash

From: Murphy, Maite Law Clerk (Jewell Gearding) <mmurphy@sccourts.org>
Sent: Thursday, January 26, 2023 9:21 AM
To: Ash Chisholm <ashc@1stcircuitpd.com>
Cc: David L. Osborne <DOsborne@dorchestercountysc.gov>
Subject: RE: Anthony Argoe Hearing Jan 30th

Good Morning,

Have you reached out to the clerk about this so they know what to do with the roster?

From: Ash Chisholm <ashc@1stcircuitpd.com>
Sent: Thursday, January 26, 2023 9:13 AM
To: Murphy, Maite Law Clerk (Jewell Gearding) <mmurphy1c@sccourts.org>
Cc: David L. Osborne <DOsborne@dorchestercountysc.gov>
Subject: Anthony Argoe Hearing Jan 30th

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***
Judge Murphy,

We are scheduled to appear before you in Orangeburg on January 30th at 4 pm. After speaking with my client, we are withdrawing our motion to reconsider your prior ruling on his motion to represent himself.

Ash

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THE STATE,

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v.

ANTHONY NICHOLAS ARGOE,

APPELLANT.

Appellate Case No. 2023-000223

\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I, **J. Anthony Mabry**, of counsel for the Respondent, hereby certify that pursuant to Rule 262(c)(3), SCACR and the Supreme Court Order of April 24, 2024, the Motion to Supplement the Record Based on Change of Circumstances, with attachments, has been forwarded to Appellant's counsel, Jordan Wayburn, Esq., via email today, August 4, 2025 to [jwayburn@sccid.sc.gov](mailto:jwayburn@sccid.sc.gov) and to his assistant at [cstock@sccid.sc.gov](mailto:cstock@sccid.sc.gov).

I further certify that all parties required by Rule to be served have been served.

This 4<sup>th</sup> day of August, 2025.

s/ J. Anthony Mabry  
J. Anthony Mabry  
Senior Assistant Attorney General  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211-1549  
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