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October 28, 2013

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OCT 28 2013

The Honorable Jenny Kitchings
Clerk of Court, S.C. Court of Appeals
1015 Sumter Street
Columbia, S.C. 29201

COURT OF APPEALS

Re: The State v. Jimmy Lee Duncan, Appellate Case No.: 2012-207966

Dear Ms. Kitchings:

I represent Jimmy Lee Duncan in the above-referenced action. By Order filed on June 12, 2013, this Court granted our motion to reconstruct the record of Mr. Duncan's trial. Specifically, the order provided "After careful consideration, Appellant's motion to remand for reconstruction of the record is granted."

On October 25, 2013, I appeared in Colleton County before the Honorable Thomas W. Cooper for the reconstruction hearing. Steven Knight, Esquire of the solicitor's office represented the state. At the conclusion of the hearing, Judge Cooper made two rulings. The first ruling was that if his jurisdiction was limited to reconstructing the record, then he found that he had complied with the Order. The second ruling was that if the Order included a requirement that he determine if the record could be reconstructed or if the record could not be reconstructed, then he found the record could be reconstructed to allow meaningful appellate review. In making his ruling, Judge Cooper relied upon Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) and State v. Ladson, 373 S.C. 320, 326, 644 S.E.2d 271, 274 (2007). Judge Cooper noted that in Ladson, the order for reconstruction simply ordered the court to reconstruct the record "with no option given to conclude that the record could not be reconstructed with the specificity to support meaningful appellate review." The Order in Mr. Duncan's case is similar to the Ladson order. Judge Cooper further noted that in Whitehead, the Supreme Court remanded the matter for a hearing to reconstruct the record with the explanation that the circuit court judge was to determine if the record could be reconstructed. Therefore, Judge Cooper made two alternate rulings.

Today, I have ordered a transcript from the reconstruction hearing. Please find enclosed a copy of my request to the court reporter. **Please continue to hold the timelines in abeyance pending receipt of the transcript.** I will notify this Court immediately upon its receipt.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Susan B. Hackett
Appellate Defender

SBH/

Enclosure: Transcript request

cc: Hon. Thomas W. Cooper (w/ encl.)
Salley Elliott, Esquire (w/ encl.)
Steven Knight, Esquire (w/ encl.)
Jimmy Lee Duncan (w/ encl.)