

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Orangeburg County

L. Casey Manning, Circuit Court Judge

:

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NOV 19 2013

S.C. Supreme Court

SAMMIE LOUIS STOKES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000635

MOTION FOR A TRANSPORTATION ORDER FOR MISSING DOCUMENTS
OR, IN THE ALTERNATIVE, TO REMAND
FOR A RECONSTRUCTION HEARING

:

Undersigned counsel moves this Court to issue a transportation order, or, in the alternative, to remand this case to the Orangeburg County Court of Common Pleas for a reconstruction hearing, due to several exhibits and documents that have not been located by the Orangeburg Clerk of Court despite repeated attempts.

1. Counsel has attempted to collect all of the essential relevant documents for the Appendix in this case. Counsel has been in contact with PCR trial counsel Keir Weyble in an effort to ensure that all necessary documents have been ordered and obtained for the Appendix. On July

30, 2013 Mr. Weyble, in a return email confirmed that all of the necessary documents and exhibits were filed with the Orangeburg County Clerk of Court.

2. A written request – with attachments -- was made to the Orangeburg County Clerk of Court on September 18, 2013 by Jared Lamprey of the Appellate Division for the PCR documents that this office still had outstanding for the Appendix. The same request was made to the Attorney General's Office.

3. The Attorney General's Office responded by email to Mr. Lamprey on September 26, 2013 that the documents were not available. On September 30, 2013 the Orangeburg County Clerk of Court mailed what it described in an email to Mr. Lamprey as "a big envelope" of the requested documents and exhibits. That package was received by this office on October 3, 2013.

4. After all of the documents were reviewed, it was determined that two exhibits and approximately six other documents were still missing that are needed for the Appendix. Undersigned counsel then instructed Mr. Lamprey to travel to the Clerk of Court's Office in Orangeburg to obtain the remaining missing documents and two exhibits. The Clerk of Court's Office cooperated although it stated in an October 16, 2013 email that it thought the entire file had been copied and mailed to this office. As stated above, that was not the case.

5. On October 17, 2013 Mr. Lamprey traveled to the Orangeburg County Clerk of Court's Office to obtain the missing documents. He was given what was purported to be the *entire file* in this case to copy. Mr. Lamprey copied this file and returned it to our office.

6. After all of this material was reviewed, it was ascertained that this office still was missing the remaining requested documents. This office emailed the Clerk of Court in Orangeburg with a list of the remaining missing documents and two exhibits. This office also requested the Clerk's Office to check and ascertain whether another "box" of documents for this case file may exist.

(That email is attached as Exhibit A and the markings on it were made by the Clerk of Court's office).

Specifically, this office requested the following still missing documents:

Exhibits from PCR hearing: Plaintiff's #2 & #3 (Volumes 1 and 2, respectively, of Thomas Sims' pre-trial research documents)

Memorandum Clarifying Ground 9(d) and Motion to Supplement the Record with Affidavit of Sammie Stokes (filed in August, 2009)

Post Hearing Memorandum (filed in March, 2010)

Reply to Post Hearing Memorandum (filed in March, 2010)

Respondent's proposed order

Letter from Keir Weyble dated December 6, 2010 requesting oral argument

Applicant's Post Rule 59 Brief/Memorandum

7. On or about November 1, 2013 the Clerk's Office in Orangeburg left a voice message for Kimberly McCall of this office stating that "another box" of documents in this case had been located. On November 7, 2013 this office received copies of all of the documents in the "second previously missing box." Upon reviewing all of these documents it was ascertained that the enclosed documents were duplicates of what this office already in its possession, and not what was requested.

8. Undersigned counsel also emailed the court reporter, Hilda Jordan, to ascertain whether she had possibly retained certain exhibits and documents. The Clerk of Court had suggested that Plaintiff's exhibits 2 & 4 (the Thomas Sims' pre-trial research files) may still be in the possession of Ms. Jordan. Ms. Jordan emphatically stated that she had not retained possession of any exhibits and agreed to sign an affidavit attesting to that fact if necessary. Attached as Exhibit B is the portion of the transcript where Plaintiff's Exhibits 2 and 3 were introduced.

WHEREFORE, counsel for Petitioner Sammie Louis Stokes respectively moves this Court to issue a transportation order for the Orangeburg County of Court to deliver the above-mentioned documents to this Court for copying for the Appendix:

Exhibits from PCR hearing: Plaintiff's #2 and #3 (Volumes 1 and 2, respectively, of Thomas Sims' pre-trial research documents)

Memorandum Clarifying Ground 9(d) and Motion to Supplement the Record with Affidavit of Sammie Stokes (filed in August, 2009)

Post Hearing Memorandum (filed in March, 2010)

Reply to Post Hearing Memorandum (filed in March, 2010)

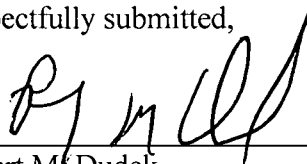
Respondent's proposed order

Letter from Keir Weyble dated December 6, 2010 requesting oral argument

Applicant's Post Rule 59 Brief/Memorandum

In the alternative counsel for Petitioner moves that this Court remand this case to the Orangeburg County Court of Common Pleas for a reconstruction rehearing. Counsel also respectfully requests that the time for filing the petition for writ of certiorari in this case be held in abeyance pending the disposition of this motion.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

November 19, 2013

Exhibit

A

Tammy Valentine

From: Kimberly McCall [kmccall@sccid.sc.gov]
Sent: Wednesday, October 30, 2013 2:48 PM
To: Tammy Valentine; Shante Zene
Cc: Robert M. Dudek; Keir Weyble
Subject: Sammie Louis Stokes
Attachments: Documents for Appendix as of 10.30.13.doc

Ms. Valentine or Ms. Zene:

Our office is representing Sammie Louis Stokes v. State (a capital case; 2001-CP-38-1240) in his PCR appeal to the Supreme Court. We are trying to obtain some remaining documents that are needed in his case for the Appendix to be filed with the Supreme Court as soon as possible. Jared Lamprey, of our office, visited your office and copied everything that was in a box in this case. He was informed this was the entire file. However, we are still missing some very important documents that we know from PCR trial counsel were filed. This has us wondering if perhaps there is another box in this case file that was over-looked? Given the importance of these documents, we are respectfully requesting that your office check again to see if the documents below were overlooked, are located in another box, or somewhere else in your office. Here are the specific documents we still must have for the Appendix:

- PCR exhibits: Plaintiff's #2 & #3 (Volumes 1 and 2, respectively, of Thomas Sims' pre-trial research documents).
- Memorandum Clarifying Ground 9(d) and Motion to Supplement the Record with Affidavit of Sammie Stokes (filed in August, 2009)
- Post Hearing Memorandum (filed in March, 2010)
- Reply to Post Hearing Memorandum (filed in March, 2010)
- Respondent's proposed order
- Letter from Keir Weyble dated December 6, 2010 requesting oral argument
- Applicant's Post Rule 59 Brief/Memorandum

Will you please let me know as soon as possible if you have these documents as filed copies are absolutely essential for the Appendix to be filed with the Supreme Court. I have attached a list of documents that your office has provided us for the appeal thus far. Thank you again for your assistance.

Kimberly McCall
South Carolina Commission on Indigent Defense
Appellate Division
1330 Lady Street, Suite 401
PO Box 11589
Columbia, SC 29201-1589
(803) 734-1330 - Telephone
(803) 734-1397 - Fax

(803) 734-1256

Look for Another Box!!

NOV - 7 2013

Exhibit

B

1 a compilation of documents and see if you can identify each
2 of those.

3 A Looks like my writing.

4 Q What else is in those documents?

5 A Some photograph cases --

6 Q Would it be fair to say that these are two volumes of
7 photo copies of legal cases that you printed out and made
8 notes on and bound as Volume 1 and Volume 2?

9 A I didn't bind them. I don't I -- I don't recall
10 binding them.

11 Q Do you remember labeling them Volume 1 and Volume 2?

12 A I don't remember, but apparently -- that's my writing
13 on those cases.

14 Q And this is -- specifically, if you look at Volume 2,
15 that's your writing in the first couple pages, two or three
16 pages?

17 A Yeah, sure.

18 Q So this does appear to be your research you conducted
19 prior to the trial, right?

20 A No question. Yeah.

21 MR. LOMINACK: Your Honor, we'd move to admit both
22 of these as separate exhibits, I think without objection.

23 THE COURT: Well, have you had a chance to look and
24 see what's all in it?

25 MR. ZELENKA: No, he provided it to me.

1 THE COURT: Okay.

2 MR. ZELENKA: I don't have any objection for that
3 limited purpose. I don't know what the relevance is to that
4 at this stage.

5 THE COURT: Neither do I. So it's admitted without
6 objection. Go ahead.

7 If we need to I'll give you both a chance later on --

8 MR. ZELENKA: If relevance becomes --

9 THE COURT: That's fine. Mr. Lominack, does this
10 represent some or all of Mr. Sims pre-trial notes,
11 preparation, cases for this trial or would you state it a
12 different way?

13 MR. LOMINACK: From our review of the file, these
14 represent the sum total of the legal research that was
15 conducted in preparation for the trial.

16 Plaintiff's No. 2, which is Applicant's Exhibit No. 2.
17 Plaintiff's No. 3, is Applicant's Exhibit No. 3.

18 THE COURT: I see Mr. Sims is shaking his head. I
19 would give him a chance to clarify.

20 MR. LOMINACK: That's fine.

21 (Plaintiff's Exhibit No. 2, Volume
22 1, was marked and entered.)

23 (Plaintiff's Exhibit No. 3, Volume
24 2, was marked and entered.)

25 BY MR. LOMINACK:

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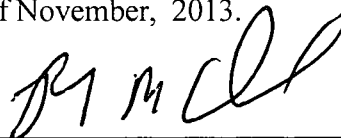
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000635

CERTIFICATE OF SERVICE

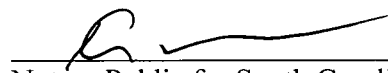
The undersigned attorney hereby certifies that a true copy of the Motion for a transportation order, or, in the alternative to remand for a reconstruction hearing in the above-referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of November, 2013.



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 19th day of November, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 21, 2023