

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM BARNWELL COUNTY

HONORABLE EDGAR W. DICKSON, CIRCUIT COURT JUDGE

TERRY DAVIS

RECEIVED

PETITIONER

NOV 2 - 2013

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

RESPONDENT

Appellate Case No: 2012-212078

MOTION TO REMAND TO RECONSTRUCTED RECORD

The petitioner, petition this court to grant motion TO REMAND TO RECONSTRUCTED RECORD, BASED on the Complete Absence of the transcript of October 5, 2010.

The undersigned respectfully show the Court:

1. Petitioner filed an application for post-conviction relief on January 18, 2011, Alleging that he was being held in custody UNLAWFULLY
2. An evidentiary Hearing into the matter was held on January 25, 2012 before the Honorable Edgar W. Dickson, Circuit Court Judge

3. Petitioner was represent at this hearing by Aimee J. Zmroczek, Esq.
The state was represented by Mary S. Williams, Esquire of the Attorney
General Office

RECEIVED

NOV 25 2013

S.C. SUPREME COURT

4. During the evidentiary hearing on January 25, 2012 Aimee J. Zmroczek
introduce the transcript of Record dated October 5, 2010 by Cheri L. Young
the Court Reporter of Record Exhibit A

5. It wasn't until after the hearing that Aimee J. Zmroczek gave petitioner
a copy of the transcript of Record by Court Reporter Cheri L. Young. The
petitioner notice that the transcript was full of inaccuracy, and Omissions
The witnesses testimony of Linda Glover and Terry Davis was redacted
in such a way that a different meaning is being conveyed. Additionally
the indictment's documents 2010GS-06-0023 which are listed on the
the trial transcript were never read or introduce at the trial of
October 5, 2010

6. The petitioner contact Court Reporter Lisa H. Davenport and she inform
me that she instructed Court Reporter Cheri L. Young to transcribe the
transcript. Court Reporter Lisa H. Davenport also inform me that she
check her records, and her records reflect that the transcript
has not been made of my trial as of April 18, 2012. Exhibit B

7. The petitioner contact Court Reporter Cheri L. Young and inquired when
did she transcribe the trial transcript on behalf of Lisa H. Davenport
Court Reporter Cheri L. Young stated that she was unassigned Exhibit C
May 25, 2012

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BARNWELL COUNTY

Honorable Edgar W. Dickson, Circuit Court Judge

TERRY DAVIS

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned, Terry Davis her by certifies that a true copy of the MOTION TO REMAND AND RECONSTRUCT RECORD in the above referenced case has been served upon DANIEL E. SHEARSON, Clerk of Court, P.O. Office Box 11330 Columbia, S.C. 29211, and DAVID A. SPENCER at the Kenneth Dennis Building 1000 Assembly Street, Room 519, Columbia S.C. 29201, the filing of this motion

November 20, 2013

x Terry Davis, 197349

Terry Davis 197349

T.R.C.I. 3A-24

84 Greenhouse Road

Trenton, S.C. 29847

The Supreme Court of South Carolina

Daniel E. Shearouse, Clerk of Court

Post Office Box 11330

Columbia, S.C. 29211

In re: Terry Davis V. STATE

Appellate Case No: 2012-212078

DEAR Mr. Shearouse:

I'm informing the court this is the last attempt to resolve this situation. I'm sending evidence, and I intend to bring some additionally evidence in the court if the court grant my motion to remand. To me this is the best way to handle the situation. This will be the last motion I file the next step I will be filing a law suit for violation of constitutional rights. When you grant my motion only then will I file a writ of certiorari. I'm entitle to A meaningful Appellate Review

Thank you,
Terry Davis

3. Petitioner was represent at this hearing by Aimee J. Zmroczek, Esq.
The state was represented by Mary S. Williams, Esquire of the Attorney
General Office

RECEIVED

NOV 25 2013

S.C. SUPREME COURT

4. During the evidentiary hearing on January 25, 2012 Aimee J. Zmroczek
introduce the transcript of Record dated October 5, 2010 by Cheri L. Young
the Court Reporter of Record Exhibit A
5. It wasn't until after the hearing that Aimee J. Zmroczek gave petitione
a copy of the transcript of Record by Court Reporter Cheri L. Young. The
petitioner notice that the transcript was full of inaccuracy, and Omission
The witnesses testimony of Linda Glover and Terry Davis was redacted
in such a way that a different meaning is being conveyed. Additionally
the indictment's documents 2010GS-06-0023 which are listed on the
the trial transcript were never read or introduce at the trial of
October 5, 2010
6. The petitioner contact Court Reporter Lisa H. Davenport and she inform
me that she instructed Court Reporter Cheri L. Young to transcribe the
transcript. Court Reporter Lisa H. Davenport also inform me that she
check her records, and her records reflect that the transcript
has not been made of my trial as of April 18, 2012. Exhibit B
7. The petitioner contact Court Reporter Cheri L. Young and inquired when
did she transcribe the trial transcript on behalf of Lisa H. Davenport
Court Reporter Cheri L. Young stated that she was unassigned Exhibit C
May 25, 2012

8. The transcript was properly admitted in evidence without proof that the entries there in was made by the court reporter was genuine. Dent v. Bryce 16 S.C. 1
9. The transcript of record is the source of Supreme Court information as to what occurred in trial of case below, and its very object is to inform Court authoritatively what of legal questions contested below and of facts pertaining there to. South Carolina State Highway Dept. v. Meredith 241 S.C. 306, 128 S.E. 179
10. South Carolina Jurisprudence recognizes the trial Court Authority to set the record of Appeal. In China v. Acrot 251 S.C. 329, 334, 162 S.E. 2d 278. Our Supreme Court held that where portion of the Court reporter not was lost, the trial judge properly considered affidavits from counsel and Court reporter in reconstructing the record
11. Whitehead v. State 352 S.C. 215, 574 S.E. 2d 200, Finding that when a transcript has been lost or destroyed, an Appellate court may remand to have the record reconstructed
12. The Administrative Procedure Act (APA) requires that in a contested case, all parties must be afforded the opportunity for a hearing S.C. Code Ann. 1-23-320(A). The APA additionally requires: Opportunity must be afforded all parties to respond and present evidence and arguments on all issues involved

13. Where portions of stenographic note are lost prior to transcription it is appropriate for the judge to accept affidavits of counsel and the court reporter to determine what transpired, however the reconstructed record must allow for a meaningful appellate review. Adams v. H.R. Allen Inc 377 S.C. 652, 726 S.E. 2d 19.
14. Creech v. South Carolina Wild life and Marine Resource Dept 328 S.C. 24, 491 S.E.2d (1997) Issue cannot be raised for the first time on appeal but, must have been raised to and rule upon by the trial judge to be present for appellate review
15. Constitutional Law where a right of appeal is granted an accused must be afforded due process and equal protection of the law in its exercise
Const Art I and 5, U.S. CA Amend 14
16. In re DW171 N.C. App 496, 615 S.E.2d 90, 99. (Finding a criminal defendant is entitled to a meaningful appellate review of the lower court proceeding and if this not possible from reconstructed record, a new trial is appropriate
15. WHEREFORE, petitioner respectfully request that this Court grant his motion to remand and reconstructed record on behalf of him and the complete absence of the transcript within 30 days of the filing of this motion

Respectfully Submitted
 x Terry Davis, 197349
 Terry Davis, 197349
 (prose petitioner)

November 26, 2013

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal From BARNWELL COUNTY

Honorable Edgar W. Dickson, Circuit Court Judge

TERRY DAVIS

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned, Terry DAVIS her by certifies that a true copy of the MOTION TO REMAND AND RECONSTRUCT RECORD in the above referenced case has been served upon DANIEL E. Shearouse, Clerk of Court, Post Office Box 11330 Columbia, S.C. 29211, and David A. Spence at the Robert Dennis Building 1000 Assembly Street, Room 519, Columbia S.C. 29201, the filing of this motion

November 20, 2013

x Terry Davis, 197349

Terry Davis 197349

T.R.C.I. 3A-24

84 GreenHouse Road

Trenton, S.C. 29847

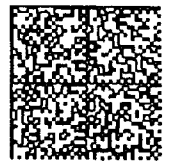
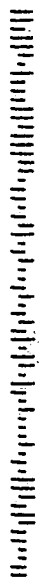
VERN DAVIS, 197349
R. CT 3A-24
84 Green House Road
Columbia, S.C. 29847

NOV 20 2013

The Supreme Court of South Carolina
Daniel E. Shearman, Clerk of Court
Post Office Box 11330
Columbia, S.C. 29211

LEGAL MAIL

29211+1330



UNITED STATES POSTAGE
PITNEY BOWES
02 1P
0003167713
NOV 20 2013
MAILED FROM ZIP CODE 29847
\$ 000.660

THE DEPARTMENT OF CORRECTIONS HAS NOT INVESTIGATED OR CELESTIAL INSTITUTION, S.C. DEPARTMENT OF CORRECTIONS.
SORED THIS ITEM. THEREFORE, THE CREATING AGENCY DOES NOT
ASSUME RESPONSIBILITY FOR ITS CONTENTS - TRENKON CORP.
ON CELESTIAL INSTITUTION, S.C. DEPARTMENT OF CORRECTIONS.