



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 3, 2013

RECEIVED

DEC - 3 2013

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

Re: The State v. Curtis J. Simms (expedited appeal – **time sensitive motion**)

Dear Mr. Shearouse:

Enclosed please find an original and six copies of the motion for expedited transcripts in the above-referenced case. This motion is **time sensitive** since this case is on an expedited briefing schedule, and the brief of petitioner is presently due Friday, December 6, 2013. As seen in the attached motion, opposing counsel, Salley W. Elliott, does not oppose the relief requested in the motion.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/kam

Enclosure

cc: Salley W. Elliott, Esquire
Curtis James Simms, #354242

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

RECEIVED

DEC - 3 2013

S.C. Supreme Court

CURTIS JAMES SIMMS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2013-001219

MOTION FOR EXPEDITED TRANSCRIPTS

Petitioner seeks an order from this Court expediting transcripts of the January 28, 2013 and January 29, 2013 pre-trial hearings or portions of the trial transcripts in this case, and, if necessary for delivery of the trial transcript.

1. On February 9, 2011, a Richland County grand jury indicted petitioner for involuntary manslaughter and breach of peace of a high and aggravated nature (“BPHAN”). According to the indictments, the charges stemmed from a fight after a football game in Columbia, South Carolina on October 9, 2010.

2. Petitioner was tried before the Honorable Diane Goodstein and a jury from January 28, 2013 until February 5, 2013. Petitioner was represented by Johnny Gasser and Gregory Harris. Luck Campbell, Joanna McDuffie, and Meghan Walker represented the State. The jury acquitted

petitioner of involuntary manslaughter, but found him guilty of BPHAN. App. 101. On February 5, 2013, Judge Goodstein sentenced petitioner to ten years' imprisonment suspended upon the service of five years' imprisonment and three years' probation. App. 110.

3. Subsequently on February 15, 2013, petitioner filed a motion to set aside sentence or in the alternative to reduce sentence. App. 1-19. A hearing on the motion was held on March 12, 2013. App. 20. Judge Goodstein modified the sentence to ten years' imprisonment suspended upon the service of three years' imprisonment and three years' probation pursuant to her order dated April 25, 2013. App. 101-104. However, Judge Goodstein refused to reduce the sentence to thirty days' imprisonment as requested by petitioner. App. 105.

4. Petitioner filed a notice of intent to appeal in the Court of Appeals. This office ordered the trial transcript from court reporter Crystal Holmes on July 3, 2013. This office was subsequently notified in a letter dated that Brenda Sigwald would be transcribing the trial transcript. See Exhibit A (letter from Brenda Sigwald).

5. Petitioner filed the petition for writ of habeas corpus in this Court's original jurisdiction on August 1, 2013, and an accompanying Appendix. The Appendix included the March 12, 2013 post-trial transcript pertaining to the sentencing issue. That transcript was transcribed by court reporter Pamela Faucette, and was received by this office on July 22, 2013. On September 3, 2013, the state filed a return to the petition for writ of habeas corpus. Petitioner filed the reply to the return to the petition for writ of habeas corpus on September 13, 2013.

6. On November 20, 2013, this Court issued an order denying the petition for writ of habeas corpus. However, this Court certified the appeal from the Court of Appeals to this Court pursuant to Rule 204 (b), SCACR. The order also included an expedited briefing schedule.

7. In this order it stated that “transcript of petitioner’s trial is scheduled to be mailed by the court reporter [Brenda Sigwald] on Monday, November 25, 2013.” In an email to Ms. Sigwald on November 21, 2013 this office offered to arrange to have an administrative assistant pick up the transcript due to upcoming holiday, and its possible effect on the mail. It was agreed thereafter that Ms. Sigwald would email the transcript, and sent a “hard copy” through the United States Postal Service. Ms. Sigwald notified our office in a subsequent email that the trial transcript was mailed to our office on that date by her husband since she was ill. However, as of the writing of this motion the transcript has still not arrived, and Ms. Sigwald noted in a subsequent email that “I have no idea where it is. He [her husband] did not ask for tracking.” The brief of petitioner pursuant to this Court’s order is due Friday, December 6, 2013.

8. Appellate Defender David Alexander in the interim provided Ms. Sigwald with his business email and personal gmail account in an effort to electronically obtain the trial transcript. Several volumes of the trial transcript have been received electronically in the last day and a half, and as of the afternoon of the filing of this motion the undersigned attorneys are attempting to ascertain whether a complete, paginated copy has not been received by email. Volume I from Ms. Sigwald begins with a witness at an undetermined point after jury selection and opening statements. Ms. Sigwald informed David Alexander of this office this afternoon that she would put a “hard copy” of the transcript in the mail as soon as it finished printing.

9. Ms. Sigwald informed David Alexander yesterday, December 2, 2013 that she did not take the January 28, 2013 portion of the trial or the January 29, 2013 portion of the trial. She informed Mr. Alexander that Daphne Helms took the January 28, 2013 hearing, and that Ronda Cummings took the January 29, 2013 hearing. Our office then notified Desiree Allen of Court

Administration of the problem. This office also immediately ordered these transcripts from Ms. Helms and Ms. Cummings.

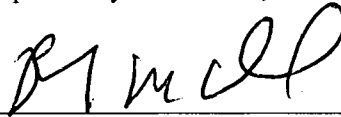
10. Counsel spoke with Daphne Helms this morning where she is taking General Sessions proceedings in Darlington, South Carolina. Ms. Helms notified our office that with a request for an expedited transcript – which was sent to her this date – that she hoped to have the transcript of the January 28, 2013 proceeding to our office by Monday, December 9, 2013.

11. Counsel also spoke with Ms. Allen again today, and Ms. Allen graciously stated she will make every effort to have Ms. Cummings transcribe the January 29, 2013 trial proceeding by Monday, December 9, 2013 if at all possible. Undersigned counsel has spoken with opposing counsel, Salley Elliott, and understands she does not object to this motion, but requests that the time for filing the brief of respondent be adjusted accordingly.

WHEREFORE, petitioner requests, given the present briefing schedule, an order expediting the transcribing of the pre-trial or partial trial transcript held on January 28, 2013 and expediting the transcribing of the pre-trial or partial trial transcript held on January 29, 2013. Petitioner requests such other and further relief as to the trial transcript of January 30, 2013 - February 5, 2013 as this Court finds just and proper. (Counsel will advise the Court as early as possible whether the trial record of the January 30, 2013 – February 5, 2013 transcript is complete). Petitioner requests that the time limits be held in abeyance pending a ruling on this motion, and for an order mandating the filing of the brief of petitioner ten days after receipt of all transcripts. Finally, petitioner requests the time for the filing of the brief of respondent be adjusted accordingly.

Respectfully submitted,

By:



ROBERT M. DUDEK
Chief Appellate Defender

DAVID ALEXANDER
Appellate Defender

SUSAN B. HACKETT
Appellate Defender

SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEYS FOR PETITIONER

December 3, 2013

Exhibit

A



State of South Carolina
The Circuit Court of the Eleventh Judicial Circuit

Brenda J. Sigwald, Circuit Court Reporter At-Large
P.O. Box 206, Jackson, SC 29831 *** bsigwald@sccourts.org

July 5, 2013

Sharon A. Graham
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

Re: State of South Carolina v Curtis J. Simms
2011-GS-40-0829

Dear Ms. Graham,

This is to acknowledge that on June 24, 2013, I received your letter dated June 20, 2013, requesting the Transcript of Record in the above matter.

Under our rules, I have sixty days in which to complete the transcript. In addition, I am allowed to request from Court Administration thirty day 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 as of the date of receipt of your cancellation.

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,

Brenda J. Sigwald
Court Reporter for
The Honorable R. Knox McMahon

bjs

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

CURTIS JAMES SIMMS,

Petitioner,

v.

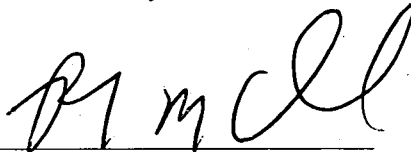
STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2013-001219

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the motion for expedited transcripts in the above-referenced case have been served upon opposing counsel, Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of December, 2013.



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO
before me this 3rd day of December, 2013.

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