

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

The State of South Carolina,

Respondent, MAR 03 2014

v.

Don-Survi Chisolm,

SC Court of Appeals

Appellant.

Appellate Case No. 2011-200186

**MOTION TO HOLD TIME LIMITS IN ABEYANCE PENDING
RECEIPT OF ADDITIONAL TRANSCRIPTS**

Respondent, the State, moves this Court to hold the time limits in the above captioned appeal in abeyance pending receipt of four (4) additional transcripts of record and require Appellant to order (3) of those additional transcripts from the proceedings below. Respondent has already ordered the fourth transcript. In support of this motion, Respondent would respectfully show the Court.

1. The initial brief of respondent is currently due to be filed March 5, 2014. Undersigned counsel for Respondent has been reviewing transcripts and other records in order to prepare the brief and designation of matter.

2. Appellant has presented five (5) issues in the appeal. The fifth issue presented alleges error in allowing self-representation. Within his argument on the issue, Appellant has alleged that there is nothing "in the record before this court" to indicate Appellant had an understanding of case law, court rules, or possible defenses. (Initial Brief of Appellant, pp. 30-31).

He has also argued there is nothing “in the record before this court” to indicate an understanding of the danger of self-representation in light of another pending murder charge in Berkeley County, as his Berkeley County murder charge “was hardly even mentioned in passing during the waiver hearing to impress upon appellant the seriousness of what he was doing.” (Initial Brief of Appellant, p. 30).

3. It would appear that the only transcripts that have been ordered and are presently available for review are from February 11, 2011 (pre-trial on self-representation issue); and September 13-19, 2011 (trial before Judge Goodstein). There was, however, a prior trial in August 2011 before Judge Dickson which included pre-trial motions by Petitioner and self-representation during the trial; and further, upon information and belief, there were also two (2) other pre-trial hearings before Judge Goodstein on July 14 and July 22, 2011.¹

4. From review of the February 11, 2011 transcript, it is evident that Judge Goodstein repeated several times that Appellant could change his mind at any time and she encouraged him to do so. (See, for example, Attachment 1, February 11, 2011 Tr. pp. 31-33; p. 36). These additional transcripts should reflect to some extent Appellant’s knowledge, understanding, and the voluntariness and continued firmness of his choice. *See generally State v. Starnes*, 388 S.C. 590, 698 S.E.2d 604 (2010) (referencing pre-trial motions and the fact that appellant was going into a second trial on the charges in determining knowing and voluntary waiver of right to counsel). Specifically, upon information and belief, the July 14 and 22, 2011 transcripts have detailed requests by Appellant for certain discovery including phone records, criminal record history (or histories), forensic reports, pictures and maps. Respondent submits that this should go to the

¹ Also upon information and belief, the court reporter for both the July and August proceedings was Bonnie Kelly.

allegation in Appellant's issue five concerning whether the record demonstrates "appellant understood the rules of evidence or what court rules the judge was referring to" in the waiver hearing. (Initial Brief of Appellant, p. 30). At the very least, the transcripts should demonstrate the multiple opportunities to request the Court re-appoint counsel.

5. Respondent has confirmed with opposing counsel that opposing counsel did not know of, nor has previously ordered transcripts from the July 14 and 22, 2011 pre-trial proceedings before Judge Goodstein. Further, opposing counsel advises that opposing counsel did not order, nor has, a transcript from the August 2011 proceedings before Judge Dickson.

6. Counsel for respondent has consulted with opposing counsel concerning this motion and the outstanding transcripts. Opposing counsel has declined to order the transcripts.

7. Rule 207(a), SCACR provides that "[u]nless the parties otherwise agree in writing, the appellant must order a transcript of the entire proceedings below." For all the foregoing reasons, and in particular due to the allegation of error in allowing *pro se* representation which is presently pending before the Court, Respondent respectfully requests this Court direct opposing counsel, as counsel for Appellant, to order the above referenced transcripts for this appeal.

8. Counsel for respondent has also identified still another pre-trial hearing on July 29, 2011 which appears to be related to the Dorchester charge but held in Berkeley County before Judge Dennis following a hearing on the Berkeley County murder charge. As counsel for Respondent cannot at this point determine whether the July 29, 2011 Berkeley transcript is relevant to the specific issue and argument on self-representation, Respondent has not requested Appellant ordered this additional transcript. Respondent has, however, ordered the Berkeley transcript as evidence by the attached letter. (Attachment 2).

9. Respondent requests the Court hold the time limits in abeyance as of the filing of this motion, and allow Respondent to file the initial brief of respondent within ten (10) days of Respondent's receipt of all of the available transcripts as identified above.

THEREFORE, Respondent respectfully requests the time limits in the appeal be held in abeyance pending receipt of aforementioned transcripts. Further, Respondent respectfully requests this Court direct Appellant to order the above referenced transcripts before Judge Goodstein and Judge Dickson. Lastly, Respondent respectfully requests this Court allow Respondent to file the initial brief of respondent and designation of matter within ten (10) days from Respondent's receipt of the transcripts.

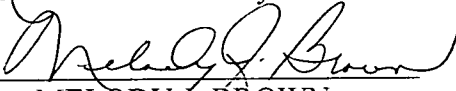
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

BY: 
MELODY J. BROWN

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

March 3, 2014.
Columbia, South Carolina.

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

The State of South Carolina,

Respondent,

v.

Don-Survi Chisolm,

Appellant.

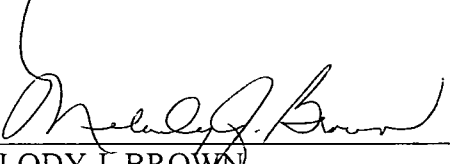
Appellate Case No. 2011-200186

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served Respondent's *Motion to Hold Time Limits in Abeyance Pending Receipt of Additional Transcripts*, by depositing one copy of same in the United States mail, postage prepaid, to counsel for appellant, addressed as follows:

Robert M. Dudek, Chief Appellate Defender
Lara M. Caudy, Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

This 3rd day of March, 2014.



MELODY J. BROWN

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

ATTACHMENT ONE

State v. Don-Survi Chisolm
Appellate case No. 2011-200186
Motion to Hold Time Limits in Abeyance
March 3, 2014

1 Q -- heart of hearts.

2 A Yes.

3 Q And I don't want you to do that, because I know you're
4 at risk. And I think you understand that, too.

5 A Yes, Your Honor.

6 Q Okay. Oh. And so let me ask you this question: Do
7 you know that you can change your mind?

8 A Yes, Your Honor.

9 Q At any time.

10 A Yes, Your Honor.

11 Q Okay. And you certainly can have counsel --

12 THE COURT: Now, Mr. Loy, where are we on stand-by
13 counsel? You can have stand-by counsel, right?

14 MR. LOY: In the past you can, because I have been
15 stand-by counsel ---

16 THE COURT: That's what I thought.

17 MR. LOY: --- Your Honor.

18 THE COURT: What is the -- what is the hybrid that you
19 can't have? Isn't that right? One of them we're -- one
20 of them we're not happy with, and one of them -- stand-by
21 we're okay; hybrid we're less sure about.

22 MR. LOY: I -- I --

23 THE COURT: You don't know. We won't go there.

24 THE DEFENDANT: I actually have the case law, but I --
25 I forgot to bring it ---

1 THE COURT: Well, how are we on hybrid?

2 THE DEFENDANT: I -- I have the papers downstairs. I
3 forgot to bring them up here.

4 THE COURT: That's okay. That is okay.

5 Here's what I -- here's what I want to tell you.

6 Here's what I would like you to know: What I would like
7 you to know is that I -- I would certainly want Mr. Loy to
8 continue as stand-by counsel, whatever that means. If you
9 need him, he's there.

10 But here's what I absolutely want you to know --

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: -- is you know that you still have to
13 comply with the rules.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All of the rules.

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Rules of evidence, the court rules.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. And -- and if you -- and you do
20 know that you can change your mind.

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Yes?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. And it's okay if you change your
25 mind.

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And it's a good thing if you change your
3 mind.

4 THE DEFENDANT: It can ---

5 THE COURT: Yes?

6 THE DEFENDANT: --- be. Yes, Your Honor.

7 THE COURT: Okay. And I would -- I would celebrate a
8 mind-changing event for you, right? You know that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. Okay. Because -- and again, only
11 because I worry about you, and I know that you're putting
12 your freedom at risk; and I know that -- and -- and I
13 worry about you, right? You know that.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. Very well. Well, here's my problem
16 with -- with this whole thing, Mr. Chisolm: You're
17 obviously very bright. You're obviously highly educated.
18 Your work background is superior. I mean, there's -- as I
19 go through my notes and I go through the case law,
20 unfortunately, I -- I mean, I really -- you know, I would
21 really like to say, "I'm sorry, Mr. Chisolm, but you can't
22 represent yourself." And -- and I'm looking for a way to
23 say, "Mr. Chisolm, I -- you know, you can't represent
24 yourself, only because I worry about you." You know that.
25 Because I know what kind of risk you put yourself in.

1 represent themselves.

2 And you know, if you had chosen to -- to probably to
3 go to law school instead of going to nursing school, you
4 probably could have done that, too, because you're
5 obviously very bright and very capable and you're aware of
6 what you're doing.

7 Do you have any questions of me with regards to this
8 part of the process?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Okay. Now, let me ask you this question -
11 - or -- or you know, you're in Berkeley County.

12 THE DEFENDANT: Yes.

13 THE COURT: If you choose to -- you know, you're going
14 to have to file things, right?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And it suits me if the first thing you
17 want to choose to do is to file a motion to appoint
18 counsel, right? Yeah?

19 THE DEFENDANT: No.

20 THE COURT: Okay. Well, don't hesitate to do that if
21 you change your mind.

22 THE DEFENDANT: Yes ---

23 THE COURT: I'm going to ask Mr. Loy to -- to draft
24 for me an order, but I'm going ask him to run that by you
25 first. Okay?

ATTACHMENT TWO

State v. Don-Survi Chisolm
Appellate case No. 2011-200186
Motion to Hold Time Limits in Abeyance
March 3, 2014



ALAN WILSON
ATTORNEY GENERAL

March 3, 2014

Deborah Garrison
P.O. Box 901
Johns Island, S.C. 29457

Re: State of South Carolina v. Don Survi Chisolm
2008- GS-18-0009

Dear Ms. Garrison:

I hope this finds you well. Please prepare the transcript of the pre-trial hearing in the above-referenced case held on July 29, 2011 before the Honorable R. Markley Dennis, in Berkeley County, SC. If you will prepare this transcript and forward it to me along with your statement, I will arrange for payment.

Thank you for your cooperation and assistance.

Sincerely,

Melissa Vail
Legal Assistant to Melody J. Brown
Senior Assistant Attorney General

MJB/mv

cc: Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

March 3, 2014

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Don Survi-Chisolm
Appeal from Dorchester County
Appellate Case No. 2011-200186

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Respondent's Motion to Hold Time Limits in Abeyance Pending Receipt of Additional Transcripts, dated March 3, 2014, together with a Proof of Service in the above-referenced matter.

Thank you for your assistance in this matter. Please call this office if you need any additional information.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General

MJB/mv

cc: Robert M. Dudek, Chief Appellate Defender
Lara M. Caudy, Appellate Defender

RECEIVED

MAR 03 2014

SC Court of Appeals