

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Georgetown County  
Honorable J. Michael Baxley, Circuit Court Judge  
Appellate Case No: 2014-000572  
\_\_\_\_\_

**RECEIVED**

SEP 22 2014

**SC Court of Appeals**

STATE OF SOUTH CAROLINA,

Respondent,

vs.

ERNEST SMALLS,

Appellant.

\_\_\_\_\_  
**RETURN TO PETITION FOR ORDER TO RECONSTRUCT RECORD OF CRIMINAL  
TRIAL AND STATE'S CROSS-MOTION TO DISMISS APPEAL**  
\_\_\_\_\_

Respondent, State of South Carolina, by way of Return to Ernest Smalls' Petition for Order to Reconstruct the Record of Appellant's Criminal Trial, and making cross motion to dismiss the appeal, would respectfully show unto this Court that:

I.

Appellant was indicted in Georgetown County for possession with intent to distribute crack cocaine within proximity; trafficking crack cocaine more than twenty-eight grams but less than one-hundred grams; possession with intent to distribute marijuana and possession with intent to distribute marijuana within proximity. It appears the matters were called for trial before the

Honorable G. Michael Baxley, and a jury on November 18, 2004. On information and belief, Appellant was tried in his absence, was found guilty of the lesser included offense of possession with intent to distribute crack cocaine and of all of the remaining charges as indicted. Appellant was sentenced by Judge Baxley on November 18, 2004, to incarceration for a period of thirteen years for possession with intent to distribute crack cocaine and ten years, concurrent, for the remaining convictions. (See Petitioner's Exhibit A). Appellant's sentences were sealed.

## II.

The Order issued respecting Appellant's release on bond pending trial verified Appellant's address and required Appellant to appear in court at the call of court and to appear and remain until disposition of his criminal charges. The Order also included Appellant's acknowledgment of these requirements as well as the fact that he would be prosecuted in his absence if he failed to appear as required. (See Attachment A - Order Specifying Methods and Conditions of Bond & Checklist for Magistrate's and Municipal Judges). A subpoena was issued for Appellant at the address listed on the Bond Order directing Appellant to appear for court on November 12 - 19, 2004. (See Attachment B). A bench warrant was requested and later issued for Appellant. (See Attachment C).

## III.

On February 24, 2014, Appellant was brought before the Honorable Michael G. Nettles and Appellant's sentences were published. (See Petitioner's Exhibit C). On February 28, 2014, Judge Nettles heard Appellant's request to reconsider the sentences and declined to alter the sentences. Id. At sentencing, Appellant advanced in mitigation that he was living in South Florida where he was employed and supporting one child in Florida and one child in South Carolina. The

sentencing court was advised that Appellant established a positive lifestyle in Florida while he was a fugitive from South Carolina. (See Exhibit C attached to Appellant's Petition, pp. 14 – 16).

IV.

Appellant filed and served notice of appeal on October 19, 2011.

V.

Exhibit E attached to Appellant's Petition establish that the court reporter's records and tapes of Appellant's trial in 2004 were destroyed pursuant to the guidelines provided by Rule 607 (i), SCACR (stating court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five (5) years after the date of the proceeding and may reuse or destroy the tapes after the expiration of that period).

VI.

Appellant now moves this Court to remand this case to the Court of General Sessions for a hearing to reconstruct the entire record of the trial because the trial record is no longer available for appellate review.

VII.

Respondent submits that Appellant is not entitled to the relief requested and moves this Court to dismiss Appellant's appeal.

Pursuant to the South Carolina Rules of Appellate Practice, the time for appeal for a criminal defendant arises from the date sentence is **imposed**. See Rule 203(b)(2) (Emphasis added). Where a defendant is tried in his absence, an appeal may not be taken until the sealed sentence is opened and published to the defendant. Braddock v. State, 344 S.C. 578, 580, 545 S.E.2d 498, 499 (2001); State v. Washington, 285 S.C. 457, 458, 330 S.E.2d 289, 289 (1985).

Rule 607 (i) of the South Carolina Appellate Court Rules requires a court reporter to retain the primary and back-up tapes of proceedings for a period of five years. After the expiration of that time, the court reporter may reuse or destroy the tapes. Respondent submits that the reason Appellant's trial transcript is not available is because Appellant became and remained a fugitive for more than nine (9) years and the tapes were destroyed as permitted by our appellate court rules.

The right to an appeal may be lost through a variety of actions by Appellant, including through the "fugitive disentitlement" rule. The United States Supreme Court, in Ortega-Rodriguez v. United States, 507 U.S. 234 (1993), recognized that a defendant's actions while the case is still pending in the trial court may make a meaningful appeal impossible or otherwise disrupt or adversely affect the appellate process to such an extent that the appeal may be dismissed as an appropriate sanction. This Court considered the same question under facts similar to this case and concluded that the right to appeal may be lost when a defendant absconds during trial and the transcript of the trial proceeding is thereafter unavailable for appeal pursuant to Rule 607 (i) because the defendant remained a fugitive for a lengthy period of time before he was sentenced. See State v. Serrette, 375 S.C. 650, 654 S.E.2d 554 (Ct. App. 2007).

Numerous other jurisdictions have followed similar reasoning as this Court in Serrette in dismissing the appeal where a defendant's former fugitive status has contributed to the loss or destruction of records. See, e.g., State v. Ore, 192 S.W.3d 723 (Mo. App. 2006); State v. Ristick, 131 P.3d 762 (Or. App. 2006); Hires v. State 882 So.2d 225 (Miss. 2004); State v. Goree, 11 Neb. App. 685, 659 N.W.2d 344 (2003); State v. Bishop, 350 N.J. Super. 335, 795 A.2d 297 (2002); Commonwealth v. Johnson, 764 A.2d 1094 (Pa. Super. 2000); State v. Bell, 608 N.W.2d 232 (N.D. 2000); State v. Verikokides, 925 P.2d 1255 (Utah 1996); Bellows v. State, 110 Nev.

289, 871 P.2d 340 (1994); State v. Lundahl, 130 Or. App. 385, 882 P.2d 644 (1994); State v. Jones, 71 Ohio St.3d 293, 643 N.E.2d 547 (1994); State v. Brown, 116 N.M. 705, 866 P.2d 1172 (1993); Wynne v. State, 831 S.W.2d 513 (Tex. App. 1992); People v. Everett, 224 Cal. App.3d 932, 274 Cal. Rptr. 429 (1990); People v. Iacopelli, 141 Mich. App. 566, 367 N.W.2d 837 (1985); see also People v. Valdez, 137 Cal. App.3d 21, 187 Cal. Rptr. 65, 69 (1982)(“But for [the defendant’s] culpable misconduct in fleeing the jurisdiction, his appeal would have been processed and a transcript prepared long before the authorized destruction of the notes.”); cf. Lamb v. State, 293 S.C. 174, 359 S.E.2d 282 (1987)[escape of defendant from jail during the pendency of his appeal warranted its dismissal].

This Court and our supreme court have also concluded that appeals of defendants who are fugitives from justice during the pendency of the appeal must be dismissed as an appropriate sanction for their conduct. See Scelba v. Scelba, 342 S.C. 223, 535 S.E.2d 668 (Ct. App. 2000); See Lamb v. State, 293 S.C. 174, 359 S.E.2d 282 (1987); Martin v. State, 276 S.C. 514, 280 S.E.2d 210 (1981); State v. Johnson, 484 S.C. 556, 221 S.E. 806 (1895). The rule has also been applied to post-conviction relief proceedings. Jordan v. State, 276 S.C. 168, 276 S.E.2d 781 (1981).

#### VIII.

The State submits that the trial court in this case determined Appellant willfully failed to appear for trial as signified by the issuance of a bench warrant for Appellant’s failure to appear. Appellant offered nothing to justify his absence from trial or apprehension for more than nine years other than that he established a life in Florida. Appellant’s written acknowledgment that he must appear for court and that trial would proceed in his absence if he failed to do so confirm his

willful failure to appear. Because of his own conduct, Appellant's sentence could not be published. Nor could a timely appeal be taken from the conviction. See Braddock v. State, 344 S.C. 578, 580, 545 S.E.2d 498 (2001); State v. Washington, 285 S.C. 457, 458, 330 S.E.2d 289, 289 (1985). The notes of the court reporter were destroyed in accordance with authorized procedures during the time Appellant was a fugitive.

The State submits that Appellant's action in becoming and remaining a fugitive for more than nine (9) years caused a significant delay in the onset of a proper appeal and the loss of the transcript. Appellant forfeited the appeal by his own conduct in causing a delay of more than nine years in sentencing, the loss of the transcript, and the inadequacy of a record for appellate review. It is the Appellant's burden to provide an adequate record for review. State v. Hutto, 279 S.C. 131, 303 S.E.2d 98 (1983). There should be no attempt to reconstruct the record for one who caused the delay that resulted in destruction of the record. See Dolive v. JEE, 308 S.C. 380, 418 S.E.2d 319 (Ct. App. 1992).

By failing to appear for trial and remaining a fugitive for more than nine (9) years, Appellant was not diligent in prosecuting his appeal, thereby producing the kind of delay that may be anticipated to cause lost items, such as the destroyed trial record. The loss of the transcript constitutes a substantial interference with the appellate process and the ability of this Court to engage in meaningful appellate review. If Appellant succeeds in his request, then this will only encourage other defendants to escape or to avoid the judicial processes and thereafter secure a new trial when the record cannot be reconstructed due to the passage of time. Appellant's status cannot become an excuse to begin the process anew at great cost, burden, and prejudice to the State. The State had an equal right to have expeditious claims of appeal made by Appellant. A long escape

from justice may also so delay an appeal that the State would be prejudiced in locating witnesses and presenting evidence at retrial. It is unfair for the State to retry Appellant or be at the mercy of reconstructing the record due to Appellant's conduct. Appellant's former fugitive status significantly interfered with the appellate process. The efficient operation of the appellate process would be so frustrated by unfairness in this case that dismissal of Appellant's appeal is an appropriate sanction.

IX.

WHEREFORE, Respondent requests that its motion to dismiss the appeal be granted and the appeal be dismissed with prejudice and that Appellant's Petition be denied.

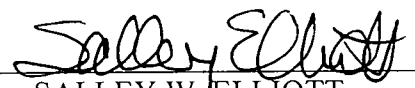
Respectfully submitted,

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

JIMMY A. RICHARDSON  
Solicitor, Fifteenth Judicial Circuit

BY:

  
SALLEY W. ELLIOTT  
S.C. Bar No. 1871

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 22, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Georgetown County  
Honorable Michael J. Baxley, Circuit Court Judge

Appellate Case No: 2014-000572

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STATE OF SOUTH CAROLINA,

Respondent,

vs.

ERNEST SMALLS,

Appellant.

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**PROOF OF SERVICE**

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I, Angela Bennett, certify that I have served the within Return to Petition for Order to Reconstruct Record of Appellant's Criminal Trial and State's Cross-Motion to Dismiss Appeal on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to Benjamin John Tripp, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 22nd day of September, 2014.

  
ANGELA BENNETT  
Administrative Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

# ATTACHMENT A

Ticket Or Warrant No.: H695463 H695 H695465 H695466 H69546 H695468

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN  
STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS  
( ) MAGISTRATE'S COURT  
( ) MUNICIPAL COURT OF \_\_\_\_\_

20108  
TWA

FIRST MI LAST  
ERNEST SMALLS, JR.

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Name of Defendant:

(Bond Proceeding Form 2)

Offense Charged: MPD COCAINE, MPD COCAINE NEAR SCH., PWID CRACK NEAR SCH., PWID CRACK, MPD MARIJ, MPD

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- The release of the defendant on recognizance will not reasonably assure his appearance as required.
- The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: \_\_\_\_\_

\_\_\_\_\_  
 NAMES OF CHARGES  
 PRIOR DRUG CONVICTIONS

GEORGETOWN  
 FILED  
 ALMA WHITE  
 CLERK OF COURT  
 2004 JUL 14  
 10:55  
 GEORGETOWN, SC

Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required, to answer the charge made against him and do what shall be ordered by the court, and not depart the State without the permission of the court and of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

- ( ) The defendant acknowledging himself to be indebted to the State of South Carolina, deposits \$ \_\_\_\_\_ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ( ) The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$ \_\_\_\_\_, his release to be obtained by payment to the court of \_\_\_\_\_ ( \_\_\_\_\_ %) of this bond in cash, this amount being \$ \_\_\_\_\_. The defendant will be obligated to the State in the full amount of \$ \_\_\_\_\_, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this order.

APPEARANCE RECOGNIZANCE WITH SURETY

- The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$ 100,000.

IT IS FURTHER ORDERED:

3. That the defendant shall appear at

GENERAL SESSIONS COURT, SCREVEN ST.

Place of Trial

CALL OF COURT

Date

Time

Initials of Defendant

ES

and remain there throughout the term of court or until some disposition is made of his case or at such other place, date and time as the court may direct.

4. That those conditions described on the reverse side which are marked are also imposed.

*[Signature]*

Signature of Judge

June 17, 2004

Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this order, including any conditions included on the reverse side of this order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence:

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the order or fail to appear as required.

71 JULIAN RUTLEDGE RD.

Address

PAWLEYS ISLAND, SC 29585

City and State

601-09-2693

843-237-5950

Social Security Number/Telephone No.

*[Signature]*

Signature of Defendant

(L.S.)

7/15/04

Date

Attorney Representing Accused (If known)

SPECIAL CONDITIONS OF RELEASE

a. ( ) Placement in custody. The defendant is placed in the custody of: \_\_\_\_\_  
Name of person or organization

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Telephone \_\_\_\_\_

who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

\_\_\_\_\_  
Signature of Custodian (If Appointed) Date

b. ( ) Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. ( ) Part-Time Release. The defendant will be released from custody from \_\_\_\_\_ a.m./p.m. to \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_ on condition that he return to the custody of \_\_\_\_\_ at \_\_\_\_\_ as designated.

d. ( ) Other Conditions. The defendant agrees that he will notify the court promptly if he changes his address from the one contained in this order and that he will comply with the following other conditions of release: \_\_\_\_\_

FILED  
SOUTH CAROLINA  
2004 JUL 14 AM 10:57  
ALMA Y. WHITE  
CLERK OF COURT

On the 3<sup>rd</sup> day of JULY '2004, **APPEARANCE RECOGNIZANCE WITH SURETY**, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$ 100,000, such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

AL HOLCOMB  
Name of Surety Printed or Typed  
2935 Hwy 701 N.  
Address of Surety  
Conway SC 29526 S.C.  
City

[Signature] (L.S.)  
Signature of Surety  
[Signature]  
Signature of Judge  
7/3/04  
Date

365-0009

It is unlawful to print this form without written consent of home office.

POWER OF ATTORNEY  
INTERNATIONAL FIDELITY INSURANCE COMPANY Power No. IM- 23433  
Bond Department: 1-800-935-2245  
One Newark Center, 20th Floor, Newark, New Jersey 07102  
THIS POWER OF ATTORNEY NULL AND VOID UNLESS USED BEFORE 12/31/04

KNOW ALL MEN BY THESE PRESENTS, that INTERNATIONAL FIDELITY INSURANCE CORPORATION, a corporation duly organized and existing under the laws of the State of New Jersey has constituted its true and lawful attorney-in-fact, with full power and authority to sign the company's name and affix its corporate seal to, and deliver on its behalf as surety, any and all obligations as herein provided, and the execution of such obligations in pursuance of these presents shall be as binding upon the company as if done by the regularly elected officers of said company at its home office in their own proper person; and the said company hereby ratifies and confirms all and whatsoever its said attorney-in-fact may lawfully do and perform on the premises by virtue of these presents.

THIS POWER OF ATTORNEY IS VOID IF ALTERED OR ERASED. THE OBLIGATION OF THE COMPANY SHALL NOT EXCEED THE SUM OF ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) AND MAY BE EXECUTED FOR RECOGNIZANCE ON CRIMINAL BAIL BONDS ONLY.

NOT VALID FOR IMMIGRATION BONDS

Bond Amt \$ 100,000.00 Case # N-69563468  
Defendant ERNEST Smalls Jr.  
Appearance Date C.O.C. DIV: G/S  
Court City GEORGETOWN  
Court County GEORGETOWN State SC  
Offense P.W.D. CARK P.W.D. MARI  
Date Filed 7-03-04  
Atty in fact [Signature]

NOTICE  
STACKING OF POWERS IS STRICTLY PROHIBITED!  
No more than one power from this Surety may be used to exceed any one bond.

IN WITNESS WHEREOF, said INTERNATIONAL FIDELITY INSURANCE COMPANY, by virtue of authority conferred by its Board of Directors, has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Secretary, this 1st day of August, 2003.

[Signature]  
Francis Mitterhoff, Chairman of the Board  
[Signature]  
Norman Komkoz, Secretary



- 1. A separate Power of Attorney must be attached to each bond executed.
- 2. Powers of Attorney must not be returned to attorney-in-fact, but should remain a permanent part of court records.
- 3. The authority of such attorney-in-fact is limited to appearance bonds and cannot be construed to guarantee for failure to provide payments, back alimony payments, fines or wage law claims.

ENTER SURETY ASSIGNED EXECUTING AGENT CODE # HERE:

FORM # IM

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PAWL  
601-09

First MI Last  
ERNEST SMALLS, JR.

H695466 ' 595467 ' H695468 '  
H695463 ' H695464 ' H695465 '  
Warrant/Ticket No.

County/Municipality of GEORGETOWN

Charges: MPD COCAINE, MPD COCAINE  
NEAR SCHOOL, PWID CRACK NEAR  
SCHOOL, PWID CRACK, MPD MARIJ,  
MPD MARIJ NEAR SCHOOL

Trial Court:  General Sessions  
 Magistrate  
 Municipal Court

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

DIRECTIONS: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS CASES and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge should attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. *DO13 5/3/82*

BAIL PROCEEDING *SSN 601-09-2693*  
 FIRST APPEARANCE (Non-Bailable Offenses)

*GS Call of Court*  
*\$100,000*

- 1. Form used at bail proceeding
  - a. Bond Form I (personal recognizance)
  - b. Bond Form II (surety, cash, percentage)
  - c. None (Non-Bailable Offense)

- 2. For cases in which bond is set, defendant was informed:
  - a. Warrant for arrest will be issued for violation of any condition of bail bond order. *237-5950*
  - b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
  - c. Failure to appear in court as required will result in institution of additional criminal charges. For failure to appear in connection with a felony, additional charge has penalty of fine of not more than \$5,000 or imprisonment for not more than five (5) years; or both. For failure to appear in connection with a misdemeanor, additional charge has penalty of fine of not more than \$1,000 or imprisonment for not more than one (1) year, or both.

- 3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
  - a. Orally
  - b. In writing[NOTE: Defendant must be informed of right both orally and in writing]

4. Defendant was informed of the right to trial by jury.

- 5. In all general sessions cases and in all magistrate or municipal cases in which a prison sentence
  - a. Charges against defendant and nature of the charges.
  - b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel
  - c. [(Optional: Local procedures may require judge to refer defendants to indigency screener. If so, note referral here) Required to appear before \_\_\_\_\_ on \_\_\_\_\_, 20\_\_ for appointment of counsel.]

FILED  
GEORGETOWN COUNTY, S.C.  
2004 JUN 22 PM 4:40  
APRIL T. WHITE  
CLERK OF COURT

Appearance or  
Hearing Date: June 17, 2004

*Alan Wall*  
\_\_\_\_\_  
Judge's Signature

## ATTACHMENT B

# SUBPOENA IN A CRIMINAL CASE

<b>South Carolina General Sessions Court</b>		COUNTY: <b>Georgetown TWA</b>
STATE OF SOUTH CAROLINA		CASE NO. <span style="border: 1px solid black; border-radius: 50%; padding: 2px;">80105 001</span>
v.		SUBPOENA FOR
ERNEST SMALLS JR.		<input checked="" type="checkbox"/> PERSON <input type="checkbox"/> DOCUMENT(S) or OBJECT(S)
TO:		
ERNEST SMALLS JR. 71 JULIAN RUTLEDGE ROAD FANLEYS ISLAND SC 29535		
<input checked="" type="checkbox"/> YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.		
PLACE	COURTROOM	
Georgetown County Courthouse Georgetown, South Carolina	General Sessions	
	DATE AND TIME	
	11/18/2004 THRU 11/19/2004 05 : 00 A M	
<input type="checkbox"/> YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):		
LIST DOCUMENT(S) or OBJECT(S):		
<div style="border: 1px solid black; padding: 10px; width: fit-content; margin: 0 auto;"> <p style="font-size: 2em; margin: 0;">RECEIVED</p> <p style="margin: 0;">NOV 02 2004</p> </div>		
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.		
CLERK OF COURT		DATE
		11/01/2004
(BY) DEPUTY CLERK		
This subpoena is issued upon application of the:		ATTORNEY'S NAME AND ADDRESS
<input checked="" type="checkbox"/> Solicitor <input type="checkbox"/> Defendant		T WILL ANDREW PHONE: 546-3751

# ATTACHMENT C

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 )  
 COUNTY OF GEORGETOWN ) INDICTMENT: 2004GS2201016,  
 ) 2004GS2201017,  
 ) 2004GS2201018,  
 STATE ) 2004GS2201019  
 )  
 VS. ) WARRANT # H695465, H695466, H695467,  
 ) H695468  
 )  
 ERNEST SMALLS, JR., )  
 )  
 )  
 )  
 ) ORDER ISSUING BENCH WARRANT  
 )  
 DEFENDANT )

FILED  
 GEORGETOWN COUNTY, S.C.  
 2014 FEB - 4 PM 4: 30  
 ALMAEY WHITE  
 CLERK OF COURT

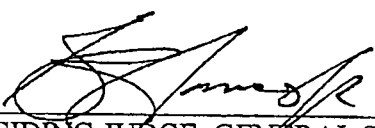
This matter is before the Court on Motion of the State that a bench warrant be forthwith issued and executed on the above defendant, who was tried before a General Sessions Jury in his absence and found guilty on November 18, 2004, on the following indictments:

- 2004GS2201016 Possession with Intent to Distribute Cocaine Base Near School/Park
- 2004GS2201017 Trafficking Cocaine Base, 28-100 grams, 3<sup>rd</sup> Offense
- 2004GS2201018 Possession with Intent to Distribute Marijuana, 3<sup>rd</sup> Offense
- 2004GS2201019 Possession with Intent to Distribute Marijuana Near School/Park

The sentence was sealed by Judge Baxley on November 18, 2004, and the Solicitor moved for a bench warrant at that time, but the Clerk of Court has no record of the Order being filed. The Defendant is currently incarcerated at J. Reuben Detention Center on unrelated charges. I find that good cause has been shown to issue a bench warrant on the defendant.

IT IS ORDERED that you make diligent search for Ernest Smalls, Jr., and take him into secure custody immediately, until he may be brought before this Court or otherwise discharged by due course of law.

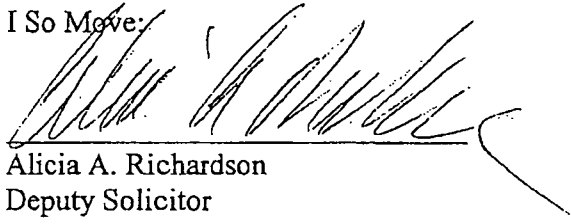
AND IT IS SO ORDERED.

  
 \_\_\_\_\_  
 PRESIDING JUDGE, GENERAL SESSIONS  
 FIFTEENTH JUDICIAL CIRCUIT

Georgetown, SOUTH CAROLINA

February 4, 2014

I So Move:

A handwritten signature in black ink, appearing to read 'Alicia A. Richardson', written over a horizontal line. The signature is fluid and cursive.

Alicia A. Richardson  
Deputy Solicitor



ALAN WILSON  
ATTORNEY GENERAL

September 22, 2014

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

RE: State v. Ernest Smalls  
Appellate Case No. 2014-000572

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent's Return to Petition for Order to Reconstruct the Record of Appellant's Criminal Trial and State's Cross-Motion to Dismiss Appeal in the above-referenced case.

Sincerely,

Salley W. Elliott  
Senior Assistant Deputy Attorney General

SWE/ab  
Enclosures

cc: Benjamin John Tripp, Esquire  
Ms. Trisha Allen

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SEP 22 2014

**SC Court of Appeals**