

State of South Carolina  
In The Supreme Court

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DEC 05 2014

SC Court of Appeals

Appeal from Greenville County  
Larry B. Hyman, Jr. Circuit Court Judge

Case Nos.            2012-GS-23-02699  
                              2012 - 213403

State of South Carolina,

Respondent,

v.

Sebastain Hepburn,

Appellant

WRIT OF MANDAMUS

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S.C. SUPREME COURT

Sebastain Hepburn, applicant in the aforementioned case number bring a complaint of a stalled appellate review at no fault of his own.

Applicant was tried and sentence on November 8, 2012 by the Honorable Larry B. Hyman, Judge of the 13<sup>th</sup> Judicial Circuit, Greenville County General Sessions, Applicant was found guilty.

On November 10, 2012, Robert Ray, Esquire, counsel for the Defendant filed a direct appeal.

On September 27, 2013, Appellant was contacted by Kathrine Haggard Hudgins, Appellate Defender for S.C.C.I.D informing him that there had been an unretrievable error made during the transcription of the trial record (post-trial, closing arguments, verdict and sentencing had been deleted), this error was fatal.

Ms. Hudgins, on behalf of the Appellate petitioned the Court with an "Order To Reconstruct The Record Of Appellate's Trial Transcript Or In The Alternitive An Order Setting Aside His Conviction and Ordering A New Trial" pursuant to Rule 240, S.C.A.C.R.

On November 14, 2013 an order was signed granting order petitioned.

Applicant avers that the Court has not timely proceeding in bringing about his ordered Reconstruction/New Trial appeal. It is his view that the Court is in failure of upholding the order and is contemptuously not moving to bring the appeal forward for a proper hearing.

Mr. Hepburn is aware that the court system in general is a lengthy process and at this time the court of appeals is back logged, however, this does not negate their responsibility of the fact that it has been (2) two years since the direct appeal was filed. Appellate has nothing but the utmost respect for the State of South Carolina and its judicial system therein, however, in his view when defendants and appellates, as a whole have an obligation to satisfy by statute of limitation, ie. (10) ten days to file a direct appeal, however the State and the Court system have no such limitation to abide by. This leaves the appellate at an unfair disadvantage, there is no equitably viable standard to adhere to, which leaves this process untimely and highly prejudiced.

## Mandamus

"Mandamus" is a writ issued by a superior court to compel (to convince a court that there is only one possible resolution of a legal dispute) a lower court or a government officer to perform mandatory or purely ministerial duties correctly. Black's Law Dictionary (9<sup>th</sup> ed., 2009)<sup>6</sup>.

The writ of mandamus is the highest judicial writ known to law and according to long approved and well established authorities, only issues in cases where there is a specific legal right to be enforced or where there is a positive duty to be performed, and there is no other specific remedy. *Willimon v. City of Greenville*, 243 S.C. 82, 86, 132 S.E.2d 169, 170 (S.C., 1963); *Edwards v. State*, 383 S.C. 82, 678 S.E.2d 412 (2009); *City of Rock Hill v. Thompson*, 349 S.C. 197, 563 S.E.2d 101 (2002)

The primary purpose of function of a writ of mandamus is to command and enforce an established right, and to enforce a corresponding imperative duty created to promote justice, subject to certain well-defined qualification. Its principal function is to command and execute, not to inquire or adjudicate. *Willimon*, 132 S.E.2d at 171; *Porter v. Jedziniak*, 334 S.C. 16, 18, 512 S.E.2d 497 (1999); *Redmond v. Lexington County School Dist. No. 4*, 314 S.C. 431, 445 S.E.2d 441 (1994). Therefore, it is not the purpose of the writ to establish a legal right, but to enforce one which has already been established. 55 C.J.S. Mandamus § 51, p.85.; *Sanford v. South Carolina State Ethics Comm'n.*, 385 S.C. 483, 493, 685 S.E.2d 600, 605-06 (S.C., 2007).

The Court has the power to issue writs or orders of injunction or mandamus, S.C. Const. Art. V, § 5; S.C. Code Ann. § 14-3-310 (1976) and has controlling authority to compel lower courts to perform its judicial duties. S.C. Const. Art. I, § 9, sect 2.

South Carolina approved a constitutional amendment which outlines a bill of rights. The power and duty to perform most of the rights found in the Bill of Rights falls squarely on a specific entity such as a court. Therefore, mandamus would compel such entities to perform their constitutional duties. S.C. Const. Art. I; The Honorable Kay Patterson, Senator Dist. 19, 2000 WL 773738 (2000).

To obtain a writ of mandamus requiring the performance of an act, the petitioner must show:

(1) a duty to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right to which discharge of the duty is necessary; and (4) a lack of any legal remedy. E.g. Wilson v. Preston, 378 S.C. 348, 662 S.E. 2d 580 (2008); Holden v. Crib, 349 S.C. 132, 561 S.E. 2d 634 (S.C. App. 2002); The Honorable Kay Patterson, Senator Dist. 19, 2000 WL 773738 (2000).

Mandamus lies to require a public official to perform a nondiscretionary legal duty. State ex rel. Williams v. Bd. of Trustees W.Va., pt 1 syl. 131 S.E. 2d 612; W.E. Long Co., etc. v. Burdett W.Va., pt 3 syl. 126 S.E. 2d 181

Mandamus is a proper remedy to require the performance of nondiscretionary legal duties by various governmental agencies or bodies. 12 M.J., Mandamus Section 14-19, pages 357 - 373; S.C. Const. Art. V, § 20, sect 2.

This issue at hand is a procedural mishap and is in no way the fault of the applicant, however the applicant has been punished by not having the opportunity for a meaningful appeal until this error is remedied.

To have this case held in abeyance any further is depriving the appellant his constitutional right to due process and equal protection of law.

Mr. Hepburn is requesting this court to grant this writ and compel the lower court to remedy this error and provide him a meaningful appellate review.

The Appellate is grateful to this court to provide him audience, and as always appreciate the service of the Officers of this Court.

Date: 12-1-14

c.e.

Kathrine Haggard Hudgins  
Alan Wilson, Esquire

Respectfully Submitted,

SI Sebastain J. Hepburn

Sebastain Hepburn

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Greenville County

Larry B. Hyman, Jr. Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

SEBASTIAN JAMES HEPBURN,

APPELLANT

Appellate Case No. 2012-213403

---

PETITION FOR ORDER TO RECONSTRUCT  
THE RECORD OF APPELLANT'S  
TRIAL TRANSCRIPT OR IN THE ALTERNATIVE  
AN ORDER SETTING ASIDE HIS CONVICTIONS  
AND ORDERING A NEW TRIAL

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Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order requiring the parties to reconstruct the record of post trial motions, closing arguments, pronouncement of verdict and sentencing from Appellant's trial held on November 8, 2012, before the Honorable Larry B. Hyman, Jr. in Greenville County. In the alternative, counsel for Appellant requests an order setting aside the conviction and ordering a new trial.

In accordance with Rule 240(c), SCACR, counsel submits the following documents to support his motion: the index from the trial transcript indicating that the post trial motions, closing arguments, pronouncement of the verdict and sentencing by

the Court were not transcribed (Exhibit #1); page 237 of the trial transcript stating, "Post-trial Motions, Closing Arguments, Verdict and Sentencing of the Court are unretrievable due to equipment malfunction that occurred after the conclusion of the proceedings." (Exhibit #2); and the certificate from the court reporter (Exhibit #3).

When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007). Important portions of appellant's trial transcript have been lost and are no longer available through no fault of appellant. The court reporter indicates that the equipment malfunctioned. (Exhibit #2). Meaningful review of the record below is not possible with the current transcript omitting post trial motions, closing arguments, pronouncement of verdict and sentencing. Appellant seeks reconstruction of those portions of the record to permit meaningful appellate review of his trial.

In the alternative, appellant requests this Court set aside his conviction and sentence and remand for a new trial because the transcript fails to permit meaningful review. In Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983), the defendant's convictions were set aside and a new trial had where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing Deaton, this Court denied a request for reconstruction in State v. Serrette, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) where the reason for the lack of transcript was due to the defendant's absence for a ten-year period,

which this Court explained was "not a situation where the court reporter's equipment malfunctioned at trial leading to a loss of the trial transcript." Appellant in the present case was not at fault for the absence of portions of his trial transcript. The court reporter indicates the omission was due to equipment malfunction. Appellant requests this Court order a new trial in his case.

Counsel respectfully requests an order for the reconstruction of the missing portions of appellant's trial transcript in order to perfect the direct appeal in the case. In the alternative, counsel requests this Court set aside the conviction and remand for a new trial. **While this petition is pending, Appellant asks this Court to hold the timelines for filing his initial brief and designations in abeyance.**

Respectfully submitted,



Kathrine Haggard Hudgins, S.C. Bar #65321  
Appellate Defender  
South Carolina Commission on Indigent Defense  
Appellate Division  
1330 Lady St. P.O. Box 11589  
Columbia, SC 29211  
(803)-734-1343  
[khudgins@sccid.sc.gov](mailto:khudgins@sccid.sc.gov)

September 27, 2013

KH

# The South Carolina Court of Appeals

The State, Respondent,

v.

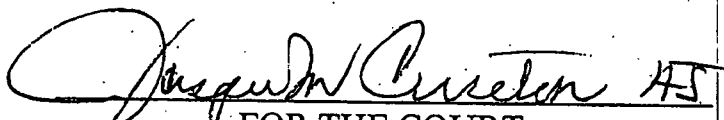
Sebastian James Hepburn, Appellant.

NOV 14 2013

Appellate Case No. 2012-213403

## ORDER

Appellant has filed a motion to remand to the circuit court for reconstruction of the record. The motion is granted and this case is remanded to the Greenville County Court of General Sessions. Counsel for Appellant is ordered to contact counsel for Respondent and the circuit court judge, the Honorable Larry B. Hyman, Jr., within ten days of this order to schedule such hearings as the circuit court judge deems appropriate. Counsel for Appellant shall provide an update to the clerk of this court no later than fifteen days from the date of this order, with a copy to counsel for Respondent.

  
FOR THE COURT

Columbia, South Carolina

cc:  
Salley W. Elliott  
Alan McCrory Wilson  
Kathrine Haggard Hudgins

FILED  
11/14/13

Certificate of Mail

Sebastain Hepburn, Appellant certifies he has provided a copy of an original Writ of Mandamus upon:

S.C. Atty Gen., Alan Wilson, Esquire, P.O. Box 11549, Columbia, S.C. 29211.

Kathrine Haggard Hudgins, S.C.C.I.D, P.O. Box 11589, Columbia, S.C. 29211

by Turbeville Institutional mailroom, by U.S. Mail postage prepaid.

Respectfully Submitted,

s/ Sebastain f. Hepburn

Sworn To And Subscribed before me  
this \_\_\_ day of \_\_\_\_\_, 2014

s/

Notary Public for South Carolina  
My Commission Expires \_\_\_\_\_

Sebastain Hepburn, S.C.D.C.#353163  
Turbeville Correctional Institution  
P.O. Box 252, SA - 105  
Turbeville, S.C. 29162 - 0252

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Sebastian James Hepburn, S.C.D.C. #353163  
Turbeville Correctional Institution  
P.O. Box 252 "SA-105A"  
Turbeville, South Carolina 29162-0252



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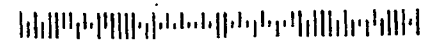
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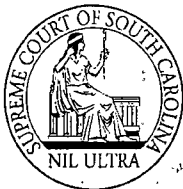
Supreme Court of South Carolina  
Clerk of Court, Daniel E. Shearouse  
P.O. Box 11330  
Columbia, South Carolina 29211

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SC Court of Appeals





# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE: (803) 734-1080  
FAX: (803) 734-1499

December 5, 2014

Mr. Sebastain Hepburn, #353163  
Turbeville Correctional Institution  
P.O. Box 252  
Turbeville, SC 29162-0252

Re: The State v. Sebastian J. Hepburn  
Appellate Case No. 2012-213403

Dear Mr. Hepburn:

This responds to your petition for a writ of mandamus dated December 1, 2014. Since this petition is related to the above case that is pending before the South Carolina Court of Appeals and you are represented by counsel in that matter, no action will be taken on this *pro se* petition by this Court. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989).

Very truly yours,

CLERK

cc: Salley W. Elliott, Esquire  
Kathrine Haggard Hudgins, Esquire  
The Honorable Jenny Abbott Kitchings (with copy of petition)

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SC Court of Appeals JS

**The Supreme Court of South Carolina**

DANIEL E. SHEAROUSE, CLERK OF COURT

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**SC Court of Appeals**

JENNY ABBOTT KITCHINGS  
1015 SUMTER ST  
COLUMBIA SC 29201-3726