

Court
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SPECIAL NOTICE TO BE FILED

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APR 09 2015

To: Chief Justice Few, South Carolina Court Of Appeals SC Court of Appeals

Please be informed that I only found out about your March 9, 2015 Order because I had had a family member contact the clerk's office on 3/17/15. I then contacted Ms. Hackett and she sent me a copy of the Order, which I received on 3/27/15.

This is another example of Ms. Hackett's ineffective assistance of counsel. When this court clerk had erroneously first stated that, "No action will be taken on this pro se filing," Ms. Hackett jumped for joy and immediately sent me a copy of that order. But when this Court issued the Order in my favor, granting me the thirty (30) day stay, she did not inform me of that.

I therefore am requesting an additional thirty (30) day stay.

April 3, 2015



Alan L. Burns

ALB/alb

CC: Susan B. Hackett, Esq.
S.C. Attorney General's Office

f

Court
Copy April 3, 2015

Alan L. Burns, # 143218
Lee C.I., F-5, D-141
990 Wisacky Hwy.
Bishopville, SC 29010 - 1775

Hon. Jenny A. Kitchins, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Col., SC 29211

Re.: Appellate Case No.: 2012 - 212760

Dear Ms. Kitchins:

Please find enclosed the Appellant's Memorandum In Support Of Appellant's Motion For Leave Of Counsel, which is pending in this Court.

Respectfully,



ALB/alb

Enclosures

CC: Susan B. Hackett, Esq.
S.C. Attorney General's Office

Please check and return the additional copy.

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The State Of South Carolina
Court Of Appeals

Appeal From Charleston Co. Court Of General Sessions
R. Markley Dennis, Jr., Judge
Indictment No.: 2011 - GS - 10 - 3387 et al

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APR 09 2015

Appellate Case No.: 2012 - 21276D

SC Court of Appeals

State of S.C.

Respondent,

vs.

Burns, Alan L.

Appellant.

Memorandum In Support Of Appellant's
Motion For Leave Of Counsel

Background / Case History

Between Jan. 2011 and Aug. 2012, Appellant was allegedly indicted on twelve (12) felony charges. Appellant proceeded *pro se*, through all pretrial and trial proceedings. During trial Appellant raised two (2) specific issues, 1) he challenged the legality of the county grand jury and, 2) he challenged the lawfulness of the territorial jurisdiction of the investigating, charging and prosecuting municipal police department. Both issues were well preserved in the record for appeal.

Appellant was convicted by a jury on Aug. 10, 2012, of thirteen (13) indictment charges and was sentenced. He timely filed a notice of appeal. The S.C. Office of Appellate Defense was appointed to represent him on appeal and they assigned Ms. Susan B. Hackett, as counsel of record.

Appellant immediately informed Ms. Hackett of his involvement in the case, that he had proceeded *pro se*, and specifically detailed how he had preserved the two (2) issues for appeal.

Appellant repeatedly for months on end, instructed and insisted Ms. Hackett brief and argue both issues. At one point Appellant discussed Ms. Hackett's voluntarily removing herself from Appellant's case. On or about October 30th, 2014, Ms. Hackett informed Appellant by serving him a copy of her initial brief, that

she was not briefing and arguing the territorial jurisdiction issue.

Relevant Facts / Argument

An appellate counsel appointed in a criminal appeal has an inherited duty to the Appellant and the court to raise and bring to the courts attention [all] viable appealable issues, not just the one she perceives to be strongest. This primarily to ensure that the Appellant's rights to due process under the 4th, 5th, 6th, 8th and 14th Amendments to the U.S. Constitution are fulfilled. More importantly this protects the court and the State's interest in ensuring that they both stand clear of any semblance of corruption, injustice or unfairness.

For an Appellant to establish *Ineffective Assistance Of Counsel*, in which relief can be granted, the Appellant must show 1) that his counsel failed to render reasonably effective assistance under the prevailing professional norms, and 2) that he was prejudiced by his counsel's ineffective assistance. Skeen vs. State, 325 S.C. 210, 481 S.E. 2d 129, 131 (1997); Judge vs. State, 321 S.C. 554, 471 S.E. 2d 146, 151 (1996); see also Bell vs. State, 321 S.C. 238, 467 S.E. 2d 926, 927 (1996) holding that, "Allegations of ineffective assistance of counsel must be supported by proof that counsel was deficient in his performance and that this deficiency resulted in prejudice to the applicant."

In other words, the Appellant must show that counsel's representation fell below an objective standard of reasonableness and but for counsel's errors and/or negligence, there is a reasonable probability the results of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding. Glover vs. State, 318 S.C. 496, 450 S.E. 2d 538, 539 (1995); Sikes vs. State, 323 S.C. 28, 448 S.E. 2d 560, 562 (1994); and Jolly vs. State, 314 S.C. 17, 19-20, 443 S.E. 2d 566, 568-69 (1994).

In this instant appeal, appellate counsel Susan B. Hackett did intentionally omitted a well preserved clearly appealable issue because she prefers only citing one (1) issue in an appeal. Her rationale is that she makes strong argument for what she feels is the strongest issue. Please see Attachment Exhibit DD1 (highlighted for emphasis).

As this Court will duly note, this mode of rationale clearly depicts a constitutional deprivation. The Appellant has a [Right] to have [ALL] viable appealable issues presented for reviewing by an Appellate Court. Any attorney who

Knowingly and intentionally omits and excludes a preserved viable appealable issue from an appeal is guilty of committing a constitutionally protected rights deprivation.

As this Court will further duly note, Ms. Hackett does not deny that this issue is present, or that it isn't preserved, or that it was not made known to her prior to the drafting of her brief.

It is incumbent upon a court that, to the best of its abilities, prior to rendering its decision, it cures any and all errors known to it. This more so to ensure that the judgement rendered can be viewed in all light as just, fair and true. This further ensures that the Appellant suffers no prejudice.

There is absolutely NO question about it, appointed counsel Susan B. Hackett, has negligently prejudiced the Appellant's appeal by intentionally not including a well preserved viable appealable issue and has thereby denied him a significant measure of due process.

To cure the negligent act thus committed by this presently appointed counsel, the proper and necessary course of action should be to 1) relieve counsel, 2) allow Appellant to retain new counsel if possible, or 3) appoint new counsel, or 4) allow Appellant to proceed *Pro Se*. In any event, the issue should be allowed to be briefed and argued.

Finally, it is well established in our jurisprudence that an issue preserved in trial but not raised in direct appeal is thus considered waived and not preserved for review on certiorari, by the Supreme Court or in Federal Habeas Corpus petitions. This raises an important question, "Do an appointed counsel have the right to waive the Appellant's [Right] to raise an issue, without the express informed consent of the Appellant?"

The Appellant argues that Rule 1.4, RPC, Rule 407, SCACR, specifically mandates that informed consent is required in this type situation.

In this instant action, it must be remembered that the Appellant proceeded *pro se*, at trial and did specifically preserve the issue in question to be reviewed on appeal. Rule 6.2 (N3), RPC, Rule 407, SCACR, states an appointed lawyer has the same obligation to the client as retained counsel, including the obligations of **LOYALTY** and confidentiality, and is subject to the same limitations on the client lawyer relationship.

Ms. Hackett, has NO regards for this aspect of the Rules of Professional Conduct.

CONCLUSION

Based upon the foregoing, Appellant respectfully request that his Motion For Leave Of Counsel be granted.

Dated: April 3, 2015

Respectfully submitted,



Alan L. Burns, #143218

Lee C.I., F-5, D-141

990 Wisacky Hwy.

Bishopville, SC 29010 - 1775

The State Of South Carolina
Court Of Appeals

Appeal From Charleston Co. Court Of General Sessions
R. Markley Dennis, Jr., Judge

Indictment No. : 2011-GS-10-3387 et al

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APR 09 2015

Appellate Case No. : 2012-212760

SC Court of Appeals

State of S.C.

Respondent,

vs.

Burns, Alan L.

Appellant.

Certificate Of Service

Appellant above named hereby certifies that he has on this 3rd day of April 2015, served a true hand written copy of his Memorandum In Support Of Appellant's Motion For Leave Of Counsel on the following :

- 1) Susan B. Hackett, Appellate Defense Office P.O. Box 11589 Col., SC 29211 - 1589,
- 2) S.C. Attorney General's Office P.O. Box 11549 Col., SC 29211.

by placing same in the Mail.

I so certify :

Dated : April 3, 2015



Alan L. Burns, #143218

Lee C. I., F-5, D-141

990 Wisacky Hwy.

Bishopville, SC 29010-1775



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

EXHIBIT # 001
Page 1 of 3

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29204-9382
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

March 17, 2015

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APR 09 2015

SC Court of Appeals

Alan L. Burns, #143218
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Burns:

Today, I received your letter dated March 13, 2015. Your letter requests that I send you "a copy of any and all requests for extensions of time filed by [me] and the state." Please find those documents enclosed. ~~Your letter asks why I did not include the territorial jurisdiction issue in the brief I filed. After reviewing the record, case law, and applicable statutes, I selected an issue I believed was the strongest. Finally, I have enclosed a copy of your March 13, 2015 letter per your request.~~

Sincerely,

Susan B. Hackett
Appellate Defender

Enclosures: Email extension request dated June 9, 2014; Email extension request dated July 9, 2014; Extension request dated August 8, 2014; Extension request dated September 8, 2014; Extension request dated October 8, 2014; Email extension request dated December 15, 2014; Email extension request dated January 14, 2015; Extension request dated February 13, 2015; copy of your March 13, 2015 letter.

Alan L. Burns, #143218

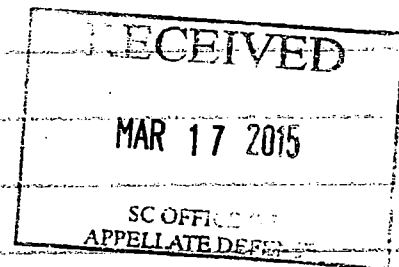
Lee C.I., F-5, 0-141

990 Wisacky Hwy.

Bishopville, SC 29010 - 1775

March 13, 2015

Susan B. Hackett, Esq.
SC Appellate Defense Division
P.O. Box 11589
Columbia, SC 29211-1589



Re: Appellate Case No.: 2012-212760 (Request For Information)

Dear Ms. Hackett:

This letter is a request for information pursuant to Rule 1.4(a)(4), Rule 407, SCACR.

As I understand the rules of procedure, Rule 208(a)(2), SCACR, states that the State has within thirty (30) days after service of appellant's brief to serve one copy of their brief on all parties to the appeal. I further understand that the State can request an extension of time to file, and that that motion can be filed electronically.

However, Rule 262(a)(2), SCACR, states in pertinent part, "An electronically transmitted facsimile copy of a document may be accepted for filing; however, an original of the document must be immediately sent by U.S. mail to the clerk." Paragraph (b) Service, of that rules, further requires that the State serve the Appellant with copy of the filing.

My Formal Request For Information . . .

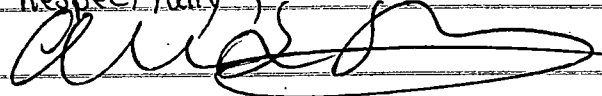
I am by this letter formally and officially requesting that you send me a copy of any and all requests for extensions of time filed by you and the State.

Additionally, I am formally and officially requesting that you send me ~~an~~ ~~written explanation as to why you did not include the Territorial Jurisdictional~~ ~~issue in your brief.~~ Please include both factual and legal reasons.

When a client makes a reasonable request for information, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged. Please see, Comment [4], Rule 1.4, RPC, Rule 407, SCACR.

Finally, please date stamp and return a copy of this letter with your response.

Respectfully,



ALB/alb

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

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R. Markley Dennis, Jr., Circuit Court Judge

APR 09 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ALAN L. BURNS,

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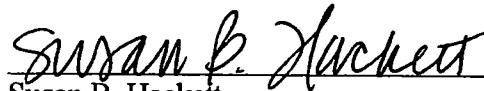
APR 09 2015

APPELLANT

SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Alan Burns #143218, at Lee Correctional Institution 990 Wisacky Highway, Bishopville, SC 29010, this 30th day of October, 2014.


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of October, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Alan L. Burns, Appellant.

Appellate Case No. 2012-212760

ORDER

Appellant has filed a letter, which we construe as a motion to relieve Appellant's counsel. Appellant asserts he intends to retain private counsel.

Newly retained counsel shall file a notice of appearance within thirty days. Upon receipt, or the expiration of thirty days, this court will consider Appellant's motion to relieve counsel.


FOR THE COURT

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Susan Barber Hackett, Esquire
Deborah R.J. Shupe, Esquire

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3/9/15

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MAR - 9 2015

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APPELLATE DEFENSE

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SC Court of Appeals

1775

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APR 09 2016

SC Court of Appeals

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