

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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**RECEIVED**

MAR 25 2015

**SC Court of Appeals**

THE STATE

Respondent,

v.

SEBASTIAN JAMES HEPBURN

Appellant.

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APPELLATE CASE No. 2012-213403

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APPELLANT'S PRO SE BRIEF

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SEBASTIAN J. HEPBURN

TURBEVILLE CORRECTIONAL INSTITUTION,

P.O. BOX 252, SELOC A - 105A,

TURBEVILLE,

SOUTH CAROLINA 29162-0252.

Plaintiff, Sebastian James Hepburn was tried in Greenville County General Sessions Court on November 8, 2012 by the Honorable Larry B. Hyman, Jr., Judge, for an indicted charge of Criminal Sexual Conduct, Second degree; S.C. Code of Laws §16-3-655. Plaintiff was found guilty in a bench trial and given a six (6) year sentence. Counsel on record, Robert Ray, Esquire filed a motion of direct appeal on November 9, 2012.

On February 23, 2013, the trial transcript was prepared by Teresa B. Johnson, Thirteenth Circuit Court Reporter. September 27, 2013, Plaintiff was contacted by Katherine Hudgins, Appellate Defender employed by S.C.C.I.D., informing Applicant that she had placed a motion for "Petition for Order to Reconstruct the Record of Appellant's Trial Transcript or in the Alternative an Order Setting Aside His Conviction and Ordering a New Trial" to the South Carolina Court of Appeals, filed September 27, 2013.

This motion was filed due to the fact of notice given that there had been an equipment malfunction that had created an unretrievable error concerning trial court recording of the proceedings. Portion of the records have been permanently destroyed, due to this unfortunate mishap crucial portions of the trial (Post-Trial Motions, Closing Arguments, Verdict and Sentencing of the Court) no longer exists. This error deprives the Appellant a full meaningful appeal review, and denies him his Constitutional Rights of Due Process of law and Equal Process for Protection. 28 U.S.C.A. Const. Amend V, §1; XIV, §1; S.C. Const. Art. 1, §14.

Kathrine Hudgins, S.C.C.I.D., contacted trial counsel on record, Robert Ray, Esquire, Greenville County Bar to provide any notes of trial to assist in reconstruction, however, Mr. Ray had no collection nor trial notes to assist in a reconstruction hearing, accordingly, jurisprudence demands for an affirmative grant for a new trial.

Pursuant to S.C.A.C.R., Rule 210(e) "every record on appeal shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pretrial matters, opening statements, testimony, motions, closing arguments, jury charges, post-trial motions and exhibits."

SOUTH CAROLINA STATE HIGHWAY DEPT. v. MEREDITH, 241 S.C. 306, 128 S.E. 2d 179 (1962). "Transcript of record is source of Supreme Court's information as to what occurred in the trial, its very object being to inform Court authoritatively of legal questions contested below and of facts pertaining thereto."

"It is afforded every citizen to not be deprived of life, liberty, and property without due process of law and equal process for protection of the law." 28 U.S.C.A. Const. Amend. XIV, §1; S.C. Const. Art. 1, §14.

"A final order of judgment is appealable for Judicial review." S.C. Const. Art. 1, §22; U.S. v. DENNIS, WL 3916491 (D.S.C., 2012); CLARK v. STATE, 396 S.C. 164, 719 S.E. 2d 708 (S.C. App., 2011); WHITE v. STATE, 263 S.C. 110 (1974).

S.C. Const. Art. 1, §3 states, "due process of law is meant as a process which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and, whether it is necessary

for the protection of the parties, it must give them an opportunity to be heard respecting the justice of judgment sought. The clause in question means, therefore, that there can be no proceeding against life, liberty, or property which may result in the deprivation of either without the observances of those general rules established in our system of jurisprudence for the security of private rights." STATE v. Mc INTIRE, 221 S.C. 504, 71 S.E. 2d 410 (1952); S.C. Const. Art. 1, §14; STATE v. EARLE, 66 S.C. 194, 44 S.E. 781 (1903).

When a case has been brought to trial, all proceedings are to be recorded by the stenographer/court reporter. S.C. Code Ann. §14-15-30 (criminal cases, a transcript shall be required of such stenographer notes, the stenographer shall furnish the same, written out in "full") §14-13-10 (Jurisdiction standardized and records of litigation and criminal proceedings in these courts shall be retained permanently). §14-13-20 (official reporter for criminal jurisdiction is "fully responsible" for compiling and keeping records permanently). S.C.A.C.R., Rule 607(i) court reporter shall retain the primary and back-up tapes of proceeding for a period of at least five (5) years after the date of proceedings). U.S.C.A. Const. Amend. V, §1.

The "Administrative Procedures Act" (APA) requires that, in a contested case all parties must be informed and afforded the opportunity for a hearing". S.C. Code Ann. §1-23-320(A)(2005 and Supp. 2011). The APA additionally requires:

"Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved". §1-23-320(E)(2005 and Supp. 2011). Moreover, the APA provides that, in a contested case, "any party may conduct cross-examination. §1-23-330(3)(2005).

When cases are being contested, or brought into an appeals pending, S.C. Code Ann. §1-23-320(G), The record in a contested case must include : (1) all pleadings, motions, intermediate rulings, and depositions; (2) evidence received and collected; (3) a statement of matters officially noticed; (4) questions and offers of proof, objections, and rulings on the contested cases; (5) proposed findings and exceptions; (6) any decisions, opinions, or report by the officer presiding at the hearing."

S.C.A.C.R., Rule 207(a)(1) "(transcript of the proceeding must be prepared by the court reporter, and Appellate must order a transcript of the "entire" proceedings)"; (5) "failure to receive transcript in allotted time"; means a (6) "failure to comply constitutes contempt of court, enforceable by the Supreme Court."

S.C.A.C.R., Rule 209 Designation of Matter to be included in the record on appeal. Rule 210(e) Every record on appeal shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pre-trial matters, opening statement, post-trial motions, and exhibits.

Due to the fact that valuable portions and incompleteness of transcript and lack of notes of recollection of proceeding, Appellant views the only avenue of relief and jurisprudence is to, reverse the conviction and sentence to remand for a new trial. Appellant contends the conclusory and summary nature of purported record on appeal does not permit meaningful appellate review. STATE v. LADSON, 373 S.C. 320,325, 644 S.E. 2d 271,273-74 (Ct. App. 2007). Important portions of Applicant's trial transcript have been lost and are no longer available through no fault of the Applicant. The court reporter indicates that the equipment malfunctioned, creating an "unretrievable error".

In DEATON v. LEATH, 279 S.C. 82,84, 302 S.E. 2d. 335-36 (1983), the defendant's convictions were set-aside and a new trial had been granted 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.

"Because of the absence of a transcript, Ladson moved this court to reverse the conviction and sentence for a new trial. based on the State's assurance that the record could be easily reconstructed, a judge of this court denied Ladson's motion and remanded the motion to the trial court to reconstruct the record. More than a year after the trial, the trial judge convened a hearing with trial counsel in an affect to reconstruct the record.

We now have before us what the State contends is a reconstructed record of the trial court proceedings sufficient

enough to permit appellate review. Ladson contends the conclusory and summary nature of the purported record on appeal does not permit meaningful appellate review. Because we find the reconstruction record insufficient for meaningful review of direct appeal issues, we reverse and remand for a new trial". STATE v. LADSON, at 325, 644 S.E. 2d 271.

"A Plaintiff must show that the transcript error specifically prejudiced his ability to perfect an appeal". U.S. v. HUGGINS, 191 F. 3d 532, 537 (4th Cir., 1999); see also ROBERTSON v. SMITH, No. 07-3737, WL 4484020(\*1)(3rd. Cir., 2007). "Errors in the transcript could implicate his constitutional rights only if the errors called into question the validity of his appellate review". COYLER v. RYLES, 827 F. 2d 315-16 (8th Cir., 1987); Information regarding his private evaluation, if included in the transcript, could have been 'weighed' by the appellate court." DYCHES v. MARTAIN, WL 1093133. (D.S.C., 2014).

In U.S. v. BROWN, 202 F. 3d 691 C.A.4(N.C.), 2000, U.S. Court of Appeals held that, "although a defendant has a right to a meaningful appeal, with the assistance of a complete transcript, omissions from a trial transcript warrant a new trial if the missing portions of the transcript specifically prejudices a defendant's appeal." 202 F. 3d 691,696 (4th Cir., 2000)(quoting U.S. v. GILLS, 773 F. 2d 544, 549 (4th Cir., 1985)). Thus, "to obtain a new trial, whether or not appellate counsel is new, the defendant shows that the transcript error specifically prejudiced his ability to perfect an appeal." BROWN, 202 F. 3d at 696, (quoting U.S. v. HIGGINS, 191 F. 3d 532, 537 (4th Cir., 1999); U.S. v. GRAHAM, 711 F. 3d 445 C.A. (Md.), 2013.

"Where portions of stenographic notes are lost prior to transcription, it is appropriate for the judge to accept affidavits of counsel and the court reporter to determine what transpired". CHINA v. PARROTT, 251 S.C. 329, 333-34, 162 S.E. 2d 276, 278 (1968). Counsels for the State and defense have stated there are no notes available from them, and they have no recollection of what transpired to contribute for a reconstruction hearing. A record of reconstruction, "must allow for a meaningful review". LADSON, at 321, 644 S.E. 2d 271-72. "A new trial is therefore appropriate if the applicant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review." Id. at 325, 644 S.E. 2d at 274; ADAMS v. H.R. ALLEN Inc., 397 S.C. 652, 657, 726 S.E. 2d 9, 12.

#### CLOSING

Plaintiff contends that he has brought and provided acceptable reasoning by the constitutions, state law, and judicial decisions proving that his conviction should be reversed and remanded for a new trial. Plaintiff has shown that a reconstruction hearing is not possible and that this error is of no fault of his own and is denying him due process of law and a meaningful appellate review.

Plaintiff prays that this Court finds this motion decent and in order finding it meritorious and grant his motion in his favor. As always, Plaintiff is grateful and appreciates your audience.

Respectfully Submitted,

DATED: 3.23.2015

s/ Sebastian J. Hephurn

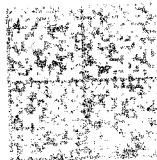
SEBASTAIN HEPHURN #353163, Pro Se,  
TURBEVILLE CORRECTIONAL INSTITUTION,  
P.O. BOX 252, SELOC A-105,  
TURBEVILLE, SOUTH CAROLINA 29162-0252.

SWORN TO and SUBSCRIBED before me  
this 23<sup>rd</sup> day of March, 2015.

Emily Hodge

NOTARY PUBLIC for SOUTH CAROLINA

My Commission Expires: 4-27-2016.



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