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JUN 20 2016  
SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from York County

Roger M. Young, Circuit Court Judge

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ARTEASA M. WHITLOCK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-00001

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SUPPLEMENTAL APPENDIX

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ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i  
PETITION TO RECONSTRUCT THE RECORD.....1  
RETURN TO PETITION TO RECONSTRUCT THE RECORD.....8  
ORDER DENYING PETITION TO RECONSTRUCT THE RECORD .....16

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

 COPY

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Appeal from York County  
Lee S. Alford, Circuit Court Judge  
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**RECEIVED**

MAR 26 2014

**SC Court of Appeals**

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

ARTEASA MAURICE WHITLOCK,

APPELLANT.

Appellate Case #2013-001340

**RECEIVED**

MAR 26 2014

\_\_\_\_\_  
PETITION FOR ORDER  
TO RECONSTRUCT THE RECORD OF  
APPELLANT'S CRIMINAL TRIAL  
\_\_\_\_\_

SC OFFICE OF  
APPELLATE DEFENSE

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned counsel requests an order requiring the parties to reconstruct the record of Appellant Arteasa Maurice Whitlock's trial on March 2, 2005 before the Honorable L. S. Alford.

STATEMENT OF THE CASE

On June 17, 2004, the York County Grand Jury indicted Appellant for trafficking crack cocaine and possession of crack cocaine with intent to distribute within proximity of a

public park. Exhibit A. On March 3, 2005, Appellant was tried-in-absence before a jury and The Honorable Lee S. Alford. Jim Morton represented Appellant and Misti S. Horton represented the State. The jury found Appellant guilty on both counts, and Judge Alford entered a sealed sentence. Exhibit A; Exhibit B.

Appellant next appeared before Judge Alford at a sentencing hearing on June 6, 2013. Twana Burris represented Appellant and Misty Shelton represented the State. Exhibit C, 1. Appellant notified the court that he had been out of the state in federal prison since 2009 on separate charges and was unable to appear in South Carolina court. Exhibit C, 4. Appellant was not released until February of 2013, after which he voluntarily himself in at the York County detention center. Exhibit C, 11-12. Judge Alford unsealed the sentences of ten-years concurrent imprisonment for each charge. Judge Alford gave Appellant credit for time served in federal prison. Exhibit C, 23-24.

In representing Appellant for the current appeal, the undersigned counsel has discovered that a transcript from Appellant's original trial cannot be produced. Exhibit D; Exhibit C, 14-16. Accordingly, counsel has diligently amassed records to determine the scope of the hearing and the feasibility of reconstructing the record.

#### DISCUSSION

Based on law enforcement records, Appellant's case arose out of the execution of a search warrant at the apartment of a codefendant by the York County Multi-Jurisdictional Drug Enforcement Unit. Officers allegedly seized from Appellant's person quantities of crack cocaine and currency within one-half mile of "Glencairn Gardens." Exhibit E.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from York County

Lee S. Alford, Circuit Court Judge

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STATE OF SOUTH CAROLINA,

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APPELLANT.

Appellate Case #2013-001340

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PETITION FOR ORDER  
TO RECONSTRUCT THE RECORD OF  
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#### DISCUSSION

Based on law enforcement records, Appellant's case arose out of the execution of a search warrant at the apartment of a codefendant by the York County Multi-Jurisdictional Drug Enforcement Unit. Officers allegedly seized from Appellant's person quantities of crack cocaine and currency within one-half mile of "Glencairn Gardens." Exhibit E.

Based on records from trial, the trial court denied Appellant's pretrial motions for continuance and for a bench trial. A hearing regarding the admissibility of certain evidence ensued with testimony from law enforcement officers Mike Ligon and Marvin Brown. Thereafter, another hearing ensued regarding trial in Appellant's absence. The court then drew the jury and excused it until the following morning. The next morning, the State presented its evidence. Appellant moved for a directed verdict, and the court denied the motion. Appellant did not offer evidence in defense. Exhibit F.

Based on records from trial counsel, trial counsel moved, inter alia, to suppress certain evidence. An issue existed as to whether the officers lawfully seized and searched Appellant. Exhibit G.

This Court should order a hearing to reconstruct the record of Appellant's criminal trial because an examination of the record is necessary to review Appellant's conviction as it contains the only evidence on which Appellant could base an appeal. When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. See 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); see also Deaton v. Leath, 279 S.C. 82, 302 S.E.2d 335 (1983) (granting the appellant's motion to set aside convictions and remand for a new trial 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).

In this case, based on the reliable information at hand, Appellant has appealable issues regarding whether the State adduced at trial evidence that Appellant had knowledge that he was within the proximity of a public park as required under S.C. Code

Ann. § 44-53-445 and whether law enforcement officers lawfully seized and searched him.

WHEREFORE, Appellant requests an order for the reconstruction of the record from Appellant's criminal trial in order to perfect Appellant's direct appeal in the case. In addition, Appellant requests that the time periods for filing Appellant's initial brief and designation of matter be held in abeyance pending this Court's decision on this petition.

Respectfully submitted,

  
\_\_\_\_\_  
Benjamin John Tipp  
Appellate Defender

March 26, 2013

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from York County  
Lee S. Alford, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,


V.

ARTEASA MAURICE WHITLOCK,

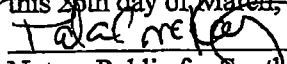
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the petition for order to reconstruct the record of Appellant's criminal trial in the above referenced case has been served upon Salley W. Elliott, Esquire, Office of the Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, and Mr. Arteasa Maurice Whitlock, #277009, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 26th day of March, 2014.

  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 26th day of March, 2014.  
 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from York County  
Honorable Lee S. Alford, Circuit Court Judge

Appellate Case No: 2013-001340

STATE OF SOUTH CAROLINA,

Respondent,

vs.

ARTEASA MAURICE WHITLOCK,

Appellant.

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

Respondent, State of South Carolina, by way of Return to Arteasa Whitlock's 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 York County in June 2004 for trafficking crack cocaine (2004-GS-46-1846) and possession of crack cocaine with intent to distribute within proximity of a public park (2004-GS-46-1845) (See Exhibit A attached to Appellant's Petition). The

documents related to this case also reflect that Appellant was arrested on February 27, 2004 and released on bond pending trial on February 28, 2004. (See Petitioner's exhibit B, page 1 for arrest date and Respondent's Exhibit A attached hereto). On the bond order, Appellant confirmed his address and contact information and acknowledged that he must appear in court on April 19, 2004 and every term of court thereafter until final disposition of his criminal cases. He also acknowledged by an additional signature on the bond order the right to be present at trial and his understanding that he will be tried in his absence if he fails to appear for court as required. (See Respondent's Exhibit A). In addition to the bond order directing Appellant's appearances in court, Appellant's attorney and bondsman were specifically notified to have Appellant present in court for trial or plea on February 7, 2005. (See Respondent's Exhibit B). The prosecutor provided notice that Appellant failed to appear in court as required on February 7, 2005. Id. A bench warrant was issued by the Honorable John C. Hayes on February 15, 2005. (See Respondent's Exhibit C). Thereafter the cases were called for trial on May 2, 2005, before the Honorable Lee S. Alford and a jury. Appellant failed to appear, was tried in his absence, was found guilty of the charges and the sentences were sealed. (See Petitioner's Attachment B, transcript pages 4 - 5).

## II.

Appellant was not returned to the jurisdiction of the York County Court of General Sessions until 2013 when he appeared in court for sentencing. On June 6, 2013, Appellant was brought before the Honorable Lee. S. Alford and Appellant's sentences were published. (See Petitioner's Exhibits A & C, pp. 4 - 5). Appellant was sentenced to ten (10) years for the proximity charge and eighteen (18) years for trafficking. Appellant was given credit for time

served in federal prison (See Petitioner's Exhibit C, pp. 23-24). The transcript of the sentencing proceeding reveals that Petitioner was arrested by federal authorities in 2009 and served time in federal custody beginning in 2009 on unrelated charges and after he had been missing from South Carolina for four years. (Petitioner's Exhibit C, p. 8).

### III.

Appellant filed and served Notice of Appeal on Monday, June 17, 2013 and a Petition for Order to Reconstruct the Record of his criminal trial ("Appellant's Petition") on March 26, 2013.

### IV.

In the Petition for Order to Reconstruct, Appellant states that reconstruction of the record of his trial-in-the-absence is necessary because the transcript cannot be produced. Exhibit D attached to Appellant's Petition for Order to Reconstruct the Record of Appellant's Criminal Trial and the transcript of the 2013 sentencing proceeding establish that the court reporter's records and tapes of Appellant's trial in 2005 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) (Petitioner's Exhibit D; Petitioner's Exhibit C, pp. 6 - 7). Appellant contends that this Court should order a hearing to reconstruct the record of the criminal trial because it is necessary to do so to allow meaningful appellate review of what he argues are appealable issues.

### V.

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

In August of 1998, Rule 607 of the South Carolina Appellate Court Rules was adopted which stated that a court reporter was to retain the primary and back-up tapes of proceedings for a period of at least three years after the date of the proceeding. After the expiration of that time, the court reporter could reuse or destroy the tapes. The rule was later amended to require a court reporter to retain the primary and back-up tapes for a period of five years. See South Carolina Rules of Court, State and Federal 407 (West Group 1999) and South Carolina Rules of Court, State 219 (West Group 2004).

The reason Appellant's trial transcript is not available is because Appellant became and remained a fugitive for more than eight years between the time of his conviction and sealed sentence and when he was presented in court for publication of the sentence, which directly resulted in the unavailability of the transcript. In previous orders dismissing appeals under similar facts, this Court recognized the burden is on the Appellant to provide an adequate record for review, State v. Hutto, 279 S.C. 131, 132, 303 S.E.2d 90, 91 (1983), that the right to an appeal may be lost through a variety of actions by the Appellant, and that the appellate court will decline to hear the appeal of a party who absconds and evades the process of the Court. Lamb v. State, 293 S.C. 174, 359 S.E.2d 282 (1987), citing Jordan v. State, 276 S.C. 168, 276 S.E.2d 781 (1981). See State v. Nequane Crosby, S.C. Ct. App. Order dated October 13, 2004. This Court

also determined that dismissal of an appeal was warranted as an appellate sanction for a nine year fugitive status prior to sentencing and which resulted in the loss of the trial transcript and prejudice to the State caused by the delay in perfecting the appeal. See State v. Roland Robinson, S.C. Ct. App. Order dated August 20, 2007.

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).

## VI.

The State submits that the trial court in this case determined Appellant willfully failed to appear for trial as reflected in the sentencing transcript and as signified by the issuance of a bench warrant for Appellant’s failure to appear. (Petitioner’s Exhibit C, pp. 16-18; Respondent’s Exhibit C). Appellant, by his own conduct to avoid disposition of his charge, significantly disrupted the timely, efficient, and orderly administration of justice. 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 court reporter destroyed her notes 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 eight 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 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, 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. Appellant may argue he was out of state in federal custody on separate charges and had no means of appearing in court in South Carolina. However the record indicates Appellant was not held in federal custody until 2009, despite being aware of the ongoing state proceedings in South Carolina since 2004. At the June 6, 2013 hearing, the trial judge even recognized it was the Appellant's fault the transcript is unavailable (Petitioner's Exhibit C, p. 18). The trial judge also raised the question: "Once he was released, was there anything stopping [Appellant] from driving back down here and turning himself in?" (Id., p 14).

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.

## VII.

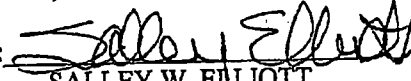
WHEREFORE, Respondent requests that its motion to dismiss the appeal be granted and the appeal be dismissed with prejudice.

Respectfully submitted,

ALAN WILSON  
Attorney General

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Senior Assistant Deputy Attorney General

KEVIN BRACKETT  
Solicitor, Sixteenth Judicial Circuit

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April 17, 2014

ATTORNEYS FOR RESPONDENT

# The South Carolina Court of Appeals

The State, Respondent,

v.

Arteasa Maurice Whitlock, Appellant.

Appellate Case No. 2013-001340

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## ORDER

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Appellant has filed a motion for remand for a reconstruction hearing, requesting reconstruction of the trial record because the records were destroyed pursuant to Rule 607(i), SCACR. Appellant was tried in his absence and sentenced on March 2, 2005; however, his sentence remained sealed until he was arrested and appeared before the circuit court in 2013. Respondent filed a return and a cross-motion to dismiss the appeal, contending Appellant is not entitled to the requested relief and the appeal should be dismissed.

After careful consideration of the parties' filings, Appellant's motion to remand for reconstruction is denied and Respondent's motion to dismiss is granted. *See State v. Serrette*, 375 S.C. 650, 654 S.E.2d 554 (2007) (dismissing defendant's appeal because the defendant's willful decision to remain a fugitive from justice for nearly eleven years following his conviction presented an obstacle to orderly appellate review in the decision led to the destruction of trial transcript pursuant to Rule 607(i), and thus, on appeal, defendant was not entitled to remand for reconstruction hearing).

  
FOR THE COURT

Columbia, South Carolina

FILED

5/14/14