

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Paul M. Burch, Circuit Court Judge

RECEIVED

SEP 13 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

JOHN KENNETH MASSEY, JR.,

APPELLANT.

Appellate Case No. 2015-002563

MOTION TO HOLD APPEAL IN ABEYANCE

Undersigned counsel respectfully moves this Court to hold the timelines for filing the initial brief of respondent in abeyance pending receipt of an additional transcript and the opportunity for undersigned counsel to make a determination regarding whether to move to amend the initial brief of appellant.

Briefly, Appellant was convicted on December 2, 2015, of grand larceny and malicious injury to property. He represented himself at trial. His standby counsel, Philip L. Smith, filed a notice of appeal on December 10, 2015. Mr. Smith wrote to the Office of Appellate Defense providing the date of the trial, the name of the judge, the county of conviction, and the name of the

court reporter. No other information was provided concerning any additional hearings. As a result, on December 16, 2015, the Office of Appellate Defense ordered the trial transcript. The transcript was received on March 14, 2016. Undersigned counsel was assigned to represent Appellant on March 31, 2016.

Undersigned counsel filed the initial brief of appellant on August 25, 2016, raising three issues. One of those issues concerned whether the trial judge erred in permitting Appellant to proceed *pro se*. This issue necessarily involved a critical examination of the transcript to determine whether the trial judge ensured Appellant understood the dangers and disadvantages of self-representation. As argued in the brief, undersigned counsel's position was that according to the transcripts available, the trial judge had not warned Appellant of those dangers and disadvantages. Subsequently, Mark Farthing, Esquire, with the Attorney General's Office learned from the assistant solicitor in the case, Matthew Hogge, of the existence of a transcript that had not been obtained by undersigned counsel. Mr. Hogge informed Mr. Farthing that on March 30, 2015, there was a hearing before the Honorable John C. Hayes during which Appellant moved to relieve trial counsel, Philip L. Smith. Based on the information received from Mr. Hogge, Mr. Farthing contacted undersigned counsel to explain what he had learned and the likelihood that the transcript of the March 30, 2015 hearing would be relevant to the first issue raised in the initial brief of appellant.

During a telephone call on September 12, 2016 with Mr. Farthing, undersigned counsel agreed to order the transcript of March 30, 2015.¹ Mr. Farthing and undersigned counsel further agreed to ask this Court to hold the timelines in abeyance pending receipt of the transcript and to permit undersigned counsel an opportunity to review the transcript to determine whether an amended brief must be filed. Pursuant to this agreement and discussions with Chief Appellate Defender Robert M. Dudek, undersigned counsel has ordered the transcript as evidenced by the request forms attached to this motion.

WHEREFORE, undersigned counsel respectfully requests this Court hold the timelines in abeyance and permit undersigned counsel an opportunity to move to amend the initial brief of appellant should the transcript alter the case.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

Attorney for Appellant

This 13th day of September, 2016

¹ According to Mr. Hogge, Janet Rich was the court reporter. Mr. Farthing learned that Ms. Rich is no longer employed by Court Administration, and therefore, any request for the transcript must be sent to Court Administration directly. Undersigned counsel examined the calendar available on the Judicial Department's website. Wanda Rowe was listed as the court reporter for Judge Hayes on March 30, 2015. With this information in mind, undersigned counsel ordered the transcript from both court reporters. Those requests are attached to this motion.

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STATE OF SOUTH CAROLINA,

RESPONDENT,

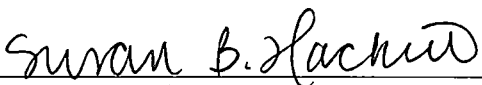
V.

JOHN KENNETH MASSEY, JR.,

APPELLANT.

CERTIFICATE OF SERVICE

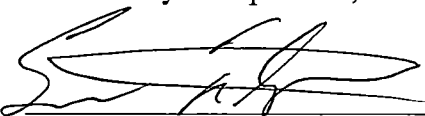
The undersigned attorney hereby certifies that a true copy of the Motion to Hold Appeal in Abeyance in the above referenced case has been served upon opposing counsel, Mark Farthing, Esquire, and John Kenneth Massey, Jr., #305341, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 13th day of September, 2016.



Susan B. Hackett
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 13th day of September, 2016.

 (L.S.)

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



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
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

September 13, 2016

Wanda S. Nelson
Circuit Court Reporter
P. O. Box 743
York, SC 29745-1662

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SC Court of Appeals

Dear Ms. Nelson:

Please provide us with the following transcript:

The State v. John Kenneth Massey, Jr.
Appellate Case No. 2015-002563

Case #: 2013-GS-46-3508;3509

County: York

Date of Trial: October 30, 2015

Presiding Judge: John C. Hayes

Pursuant to the SC Court Reporter's Manual, please number the lines on the paper from 1-25, and include any and all recorded motions, pre and post-trial. Consecutive numbering of pages must be used throughout all volumes regardless of the number of volumes involved. Additionally, please transcribe the **jury selection**, and the State and defense counsel's **opening and closing arguments**, and include the **jury strike sheet**. Please be sure to include **Headers** and a **complete index** including a **listing of exhibits**.

If you are aware of any co-defendants or if the Attorney General's Office has already requested a transcript, please let us know.

To ensure prompt payment, please sign and complete the enclosed form and include the original criminal case number (Indictment number) where the space is provided.

Sincerely,

Sean Flynn
Administrative Assistant

cc: S.C. Court of Appeals
Attorney General's Office



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 13, 2016

Ms. Desiree Allen
S.C. Court Administration
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

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SC Court of Appeals

Dear Ms. Allen:

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Sincerely,

Sean Flynn
Administrative Assistant

cc: S.C. Court of Appeals
Attorney General's Office



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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29221

Re: State of South Carolina v. John Kenneth Massey, Jr.

Dear Ms. Kitchings:

Enclosed are an original and six copies of the Motion to Hold Appeal in Abeyance in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/

Enclosure

cc: Mark Farthing, Esquire
John Kenneth Massey, Jr., #305341