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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Trial Court Case No. 2013CP23-02794

Honorable Alexander S. Macaulay, Circuit Court Judge

Appellate Case No. 2014-002297

Neva Steffens, Appellant,

v.

Ocwen Loan Servicing, LLC, Mortgage Electronic Registration Systems, Inc., MERSCorps, Inc., American Home Mortgage Servicing, Inc. a/k/a Homeward Residential, Wells Fargo National Association, and Deutsche Bank National Trust Company, Defendants,

Of whom Ocwen Loan Servicing, LLC, American Home Mortgage Servicing, Inc. a/k/a Homeward Residential, are the Respondents.

MOTION TO SUPPLEMENT TRIAL RECORD

Neva Steffens
Appellant Pro Se
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Greenville, SC 29615

(864) 241-8602
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December 15, 2016.

INTRODUCTION

Appellant Neva Steffens (hereinafter, "**Appellant**" or "**Steffens**") files this motion to supplement trial record as certain portion of the trial record which shows portion of the appellant's argument and justification for relief has been left out.

STATEMENT OF FACTS

A Notice of Appeal was filed on 10/27/2014. The Record on Appeal was filed on 08/07/2015. The Transcript was filed in the Court on 03/06/2015. The Transcript was deficient as it did not include Appellant's oral argument record in the hearing. On 10/20/2015, the Court stated in its Order:

"After careful consideration, Respondents' motion to require Appellant to supplement the record on appeal was granted. Within twenty days of the date of this order, Appellant shall serve and file a supplemental record on appeal that includes all of the matters designated by Respondents that were omitted from the record. Specifically, Appellant shall include in the supplemental record on appeal: Complaint; Respondents' Answer and Affirmative Defenses; Entire Transcript of Court Proceedings on October 13-14, 2013; Defendants' Trial Exhibit 6 (Homeward Transaction History; and Defendants' Trial Exhibit 7 (Ocwen Transaction History). Finally, Appellant shall also include in the supplemental record the missing pages 963 and 964 of Book 4503 (Appellant's signature on the Mortgage and the Notary signature page)."

The Supplemental Record was filed on 11/10/2015 which included all of the matters designated by the Respondents.

The Appellant moves the motion to cure the deficiency in the Transcript and supplement the record with the Appellant's Oral Argument Portion of the Transcript. See Exhibit A.

ARGUMENT

It is stated in the case of *ESTRADA V. WITKOWSKI*, (D.S.C. 1993) as follows:

"If the petitioner's attorney, for some unknown reason, truly believed that the audio tape was an important part of the record, the proper procedure would have been to obtain and file the transcripts while simultaneously filing motions to compel the production of the tape and to supplement the record. By neglecting to submit the required transcripts, the petitioner's attorney failed to provide the appellate court any basis to consider either his motion to supplement the record or petitioner's appeal."

In case of deficiency in record in the Transcript, the proper procedure is to file a motion to supplement the record. The Appellant files this motion to cure the deficiency in the Transcript and supplement the record with the Amended Transcript.

It is stated in the case of 667 F. 2d 1364 - *Dickerson v. State of Alabama* as follows:

"The Court of Appeals for the Second Circuit has based this authority on Fed. Rule App. Proc. 10(e) which provides in part that a Court of Appeals may "of its own initiative ... direct ... that a supplemental record be certified and transmitted." United States v. Aulet, 618 F.2d 182, 187 (2d Cir. 1980). Other circuits have relied primarily on the appellate court's inherent equitable powers to supplement the record as justice requires. See, e.g., Erkins v. Bryan, 663 F.2d 1048, 1052 n.1 (11th Cir., 1981); Turk v. United States, 429 F.2d 1327, 1329 (8th Cir. 1970)."

The Appellate Court has the inherent equitable powers to supplement the record as justice requires.

It is further stated in the case of 667 F. 2d 1364 - *Dickerson v. State of Alabama* as follows:

"we view it appropriate to include the state court trial transcript in the record of this case. First, we believe that the proper resolution of the substantive issues in this case, when viewed in the context of all of the relevant historical facts"

Hence, complete Transcript should be presented in the appellate court for proper resolution of the substantive issues in the case, when viewed in the context of all of the relevant historical facts. At present, the Transcript is incomplete as it does not contain the oral argument record of the Appellant in the hearing. Accordingly, relief requested by the Appellant may be granted by the Court.

CONCLUSION

The Appellant may be allowed to supplement the record with the oral argument record of the Appellant in the hearing.

WHEREFORE, the Appellant Steffens prays to the Court for the following relief:

A. The Appellant may be allowed to supplement the record with the oral argument record of the Appellant in the hearing.

B. The Appellant may be awarded such other and further relief as deemed just by the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Neva Steffens
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Sworn to before me this 13TH day of December, 2016.

NOTARY PUBLIC
My Commission Expires
May 4, 2026

Stephanie Conaway, being duly sworn, deposes and says that on December 13TH, 2016 the within motion to supplement record was mailed to all counsel at the following addresses:

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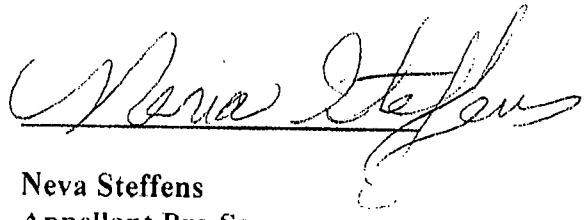

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667 F.2d 1364

Howard L. DICKERSON, Petitioner,

v.

STATE OF ALABAMA, Respondent.

No. 80-7780.

United States Court of Appeals,

Eleventh Circuit.

Feb. 16, 1982.

Fulford, Pope & Minisman, B. G. Minisman, Jr., Mark Elliott Hoffman, Birmingham, Ala., for petitioner.

Elizabeth Ann Evans, Asst. Atty. Gen., Montgomery, Ala., for respondent.

Appeal from the United States District Court for the Northern District of Alabama.

Before TUTTLE, HENDERSON and HATCHETT, Circuit Judges.

TUTTLE, Circuit Judge:

view counter

1

Petitioner Dickerson, an Alabama state inmate, appeals from the denial of his petition for a writ of habeas corpus. Dickerson was arrested and charged with the robbery of approximately seventy-eight dollars worth of "Class A" drugs from a Scottsboro, Alabama drugstore. He was convicted in the Circuit Court of Alabama, Jackson County, and sentenced to imprisonment for a period of thirty years. This conviction was affirmed in a written opinion issued by the Alabama Court of Criminal Appeals. 362 So.2d 1322 (Ala.Cr.App.1978). The Alabama Supreme Court denied certiorari on January 16, 1979.

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Dickerson then filed a petition for writ of error coram nobis, alleging fifteen grounds in support of his petition. Finding that all but two of these grounds had been decided against Dickerson on direct appeal, the state court took evidence on the remaining two issues and denied the petition on March 1, 1979. Such denial was affirmed without opinion by the Alabama Court of Criminal Appeals on August 21, 1979. The Alabama Supreme Court denied certiorari on September 25, 1979.

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Having exhausted his state court remedies, Dickerson filed a pro se petition for writ of habeas corpus in the United States District Court for the Northern District of Alabama. This petition alleged seven grounds for reversal of his conviction. After ordering the State of Alabama to transmit a copy of the state court's coram nobis transcript, the district court entered a memorandum opinion denying Dickerson's petition without an evidentiary hearing. The district court found that six of these seven grounds1 had been decided against Dickerson in his direct appeal to the Alabama Court of Criminal Appeals, and that the Alabama Court's written opinion was adequately supported by the record.

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Dickerson now appeals from the denial of his petition raising two substantive issues.2 First, he alleges that his Sixth and Fourteenth Amendment rights to compulsory process were violated when the state court refused to grant a continuance to enable him to procure the attendance of an alibi witness. Second, Dickerson contends that he was deprived of his constitutional right to an impartial jury when it was discovered after trial that one of the jurors who worked in the police department had typed the investigating officer's report in this case.

I. THE RECORD ON APPEAL

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Before reaching the merits of Dickerson's claims, we must address the rather unusual problems which have arisen concerning the record in this case. In its order denying Dickerson's petition, the district court stated that the state appellate court's opinion was adequately supported by the

record. Upon our review of the record on appeal, we discovered that the district court could not have properly made such a determination since the state court trial transcript in this case was never made a part of the habeas corpus record. Instead, the district court had before it only the transcript of the state coram nobis proceedings which did not contain an independent review of the issues decided by the state appellate court and raised in the federal habeas corpus action.3 In his appellate brief, Dickerson recites several legally significant facts which can be found in the state trial transcript but which were omitted from the state appellate opinion on which the district court relied.

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The State of Alabama has consistently urged us to decide this case on the basis of the materials which were originally presented in the record on appeal. Thus, the state would have us ignore the facts in the trial transcript in deciding the merits of this case. The state also contends that we may not correct the district court's oversight by supplementing the record on appeal.4 Apparently, the bases for this objection are that the State has never commented on this transcript and that the district court has never had an opportunity to review it.

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While federal appellate courts do not often supplement the record on appeal with evidence not reviewed by the court below, it is clear that the authority to do so exists.5 See, e.g., Erkins v. Bryan, 663 F.2d 1048, 1052 n.1 (11th Cir., 1981); United States v. Aulet, 618 F.2d 182, 187 (2d Cir. 1980); Turk v. United States, 429 F.2d 1327, 1329 (8th Cir. 1970); Gatewood v. United States, 209 F.2d 789, 792-93 (D.C.Cir.1953). Whether an appellate record should be supplemented under the particular circumstances of a case is a matter left to the discretion of the federal courts of appeals. Cf. Singleton v. Wulff, 428 U.S. 106, 121, 96 S.Ct. 2868, 2877, 49 L.Ed.2d 826 (1976) (issues raised for the first time on appeal). For several reasons, we view it appropriate to include the state court trial transcript in the record of this case. First, we believe that the proper resolution of the substantive issues in this case, when viewed in the context of all of the relevant historical facts, is beyond any doubt. Id. Second, a decision to remand this case for the sole purpose of allowing the district court to review the several additional significant facts contained in the transcript would be contrary to both the interests of justice and the efficient use of judicial resources. At least one dispositive issue in this appeal raises a pure question of law and, thus, there is no need for an evidentiary hearing to be held.6 Counsel for the State of Alabama cannot in good faith contend that they were without notice of the existence of this transcript or of its contents. Finally, it should be remembered that, in effect, we are here reviewing the district court's review of the habeas corpus claim of a state prisoner.7

II. THE STANDARD OF REVIEW

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When reviewing a federal habeas petition made by a prisoner in state custody, a federal court is required to follow the statutory criteria set forth in 28 U.S.C. § 2254 (1976). This statute provides that federal courts are to accord a presumption of correctness to factual determinations made by a state appellate court unless one of eight specific circumstances is found to exist. Sumner v. Mata, 449 U.S. 539, 101 S.Ct. 764, 66 L.Ed.2d 722 (1981).

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The State of Alabama argues that we are foreclosed from finding a constitutional violation in this case because we must apply a presumption of correctness to certain determinations made by the state appellate court. The state's argument regarding the proper application of section 2254 to this case is two-fold. First, the state argues that section 2254 requires this Court to base its decision in this case solely on the facts contained in the state appellate court opinion. We disagree. The factual determinations of a state appellate court are to be accorded a presumption of correctness only to the extent that they are "fairly supported by the record." 28 U.S.C. § 2254(d) (8) (1976); Sumner v. Mata, 449 U.S. 539, 101 S.Ct. 764, 769-70, 66 L.Ed.2d 722 (1981); Solomon v. Smith, 645 F.2d 1179, 1184, n.2 (2d Cir. 1981); Taylor v. Lombard, 606 F.2d 371, 375 (2d Cir. 1979), cert. denied, 445 U.S. 946, 100 S.Ct. 1346, 63 L.Ed.2d 781 (1980). Our independent review of the state trial transcript reveals that while the state appellate opinion correctly states most of the facts developed at trial, it fails to include several legally significant facts such as the identity of the alibi witness as a police officer and the three witnesses as Dickerson's close relatives or friends. Thus, at least to the extent of the omission of these legally sufficient facts, the state appellate court's decision is not "fairly supported by the record."

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Second, the state argues that section 2254 requires this Court to presume that the state appellate court's holding is correct. The Alabama Court of Criminal Appeals held alternatively that either the defense counsel's statements were not definite enough to constitute a request for a continuance or that the trial court did not abuse its discretion in denying this request.8 362 So.2d at 1324-25. We find that the presumption of correctness required by section 2254(d) is not applicable to this holding by the state appellate court. A federal court is not bound by a state appellate court's determination of a question of law or of a mixed question of law and fact. E.g., Cuyler v. Sullivan, 446 U.S. 335, 341-42, 100 S.Ct. 1708, 1714-1715, 64 L.Ed.2d 333 (1980); Panzavacchia v. Wainwright, 658 F.2d 337, 339 (5th Cir. 1981). Whether certain statements are sufficiently definite to constitute a request for continuance is, at the least, a mixed question of law and fact. A trial judge's discretionary power to deny a motion for continuance is necessarily limited by the Sixth Amendment right to compulsory process and any denial of an accused's attempt to present testimony in his behalf must be weighed against that right. United States v. Davis, 639 F.2d 239, 244 (5th Cir. 1981). The determination of whether the denial was such an

abuse of discretion as to violate an accused's Sixth Amendment right is a question of law. Hicks v. Wainwright, 633 F.2d 1146 (5th Cir. 1981). Thus, it is necessary for us independently to apply the constitutional standards to the facts in this case and decide the appropriate questions of law.

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We conclude that the statements made by defense counsel were sufficient to constitute a request for continuance in this case. Before trial, Dickerson properly subpoenaed a man named Echols who was employed as a police officer in the city of Anniston, Alabama.9 When Echols failed to appear on the day the trial was to begin, defense counsel informed the court that he could not announce ready until this witness appeared. When Echols again failed to appear on the following day, the court issued an attachment for him. Again, defense counsel stated that he could not announce ready until Echols arrived. The court then stated:

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Well, we passed the matter over from yesterday until today to try to get them line up and get them here. The circumstances of the case situation which you are aware of demands that that case be tried this term of court; and we'll do everything within the power of this court to get these people here. Any suggestion that you have at this time or later on,-

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362 So.2d at 1324. The state then called its only witness, the robbery victim, who testified that the drugstore had been robbed at approximately 4:45 p.m. on July 16, 1977. Defense counsel then called three witnesses, Dickerson's brother and sister-in-law and an old family friend, who testified that Dickerson was with them in Anniston, Alabama at various times between approximately 1:00 and 4:00 p.m. on the day of the robbery. At least one of these witnesses also testified that Anniston is located nearly one hundred miles away from Scottsboro. At the conclusion of this testimony, defense counsel stated:

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Judge, those other two material witnesses, we haven't been able to, I don't feel like we can rest until we have the testimony of those witnesses. I realize they couldn't find two of them; but Echols is material. Other than those, we would be able to rest.

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Id. Although defense counsel might have clarified his request at this point in time, the court made clear its position by stating:

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Well, I don't know really anything further we could do unless we just held the case open forever, you know. And, of course, we can't do that.

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Id. Under these circumstances, we must conclude that, as a matter of law, defense counsel made a sufficiently definite request for continuance to elicit a ruling from the state court. Therefore, we must determine whether the denial of this request for continuance violated Dickerson's constitutional rights.

III. DENIAL OF COMPULSORY PROCESS

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The constitutional right of the accused to have compulsory process to obtain witnesses in his defense is well established. See, e.g., Washington v. Texas, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967); United States v. Melchor Moreno, 536 F.2d 1042 (5th Cir. 1976). Holding this Sixth Amendment right to be applicable in state proceedings, the Supreme Court in Washington noted:

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The right to offer testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense.... This right is a fundamental element of due process of law.10

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388 U.S. at 19, 87 S.Ct. at 1923.

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Not every denial of a motion for continuance to obtain witnesses violates the accused's right to compulsory process. See, e.g., McKinney v. Wainwright, 488 F.2d 28 (5th Cir.), cert. denied, 416 U.S. 973, 94 S.Ct. 1998, 40 L.Ed.2d 562 (1974). A court may not, however, refuse to grant a reasonable continuance for the purpose of obtaining defense witnesses where it has been shown that the desired testimony would be relevant and material to the defense. Hicks v. Wainwright, 633 F.2d 1146 (5th Cir. 1981); Singleton v. Lefkowitz, 583 F.2d 618 (2d Cir. 1978). In Hicks this Court recently enunciated several factors which are to be considered in determining whether an accused was deprived of his right to compulsory process by a denial of a motion for continuance:

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(T)he diligence of the defense in interviewing witnesses and procuring their presence, the probability of procuring their testimony within a reasonable time, the specificity with which the defense is able to describe their expected knowledge or testimony, the degree to which such testimony is expected to be favorable to the accused, and the unique or cumulative nature of the testimony.

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633 F.2d at 1149 (quoting United States v. Uptain, 531 F.2d 1281, 1287 (5th Cir. 1976) (footnotes omitted)).

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In this case, each of these factors weighs in favor of the defendant. The record indicates that Dickerson's counsel exercised due diligence in attempting to procure the presence of Echols at trial. Echols was properly subpoenaed before trial and his failure to appear was noted by defense counsel. A writ of attachment was then issued. Thus, Echols' absence can more easily be attributed to the state's failure to enforce the writ of attachment and to arrest the police officer than to any lack of diligence on the part of Dickerson's counsel. Furthermore, it would appear highly probable that the attendance of Echols, a police officer in a neighboring city, could have been secured within a reasonable time. No explanation was offered for the failure to have him arrested.

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The state contends that Dickerson failed to make a sufficient showing that the witness would provide favorable evidence which would not be cumulative of the testimony by other defense witnesses. Based on our review of the trial transcript, we find this contention to be wholly without merit. Indeed, defense counsel identified Echols as a police officer at the time the attachment for Echols was issued. And the testimony of Dickerson's brother-that he and Dickerson were seen by Echols in another city shortly before the crime occurred-presented the court with a clear indication of the type of evidence sought to be presented by defense counsel.11 The testimony of a credible alibi witness would, of course, have been highly relevant to Dickerson's defense. Furthermore, such testimony by a police officer could not be considered cumulative of similar testimony by Dickerson's relatives and friends.12 It is only reasonable to suppose that such testimony by a police officer would have lent a new aura of credibility to Dickerson's alibi defense. Thus, we conclude that the failure by the trial court to grant a continuance to allow Dickerson the opportunity to compel the presence of a credible alibi witness violated Dickerson's Sixth and Fourteenth Amendment rights to compulsory process.

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The State of Alabama does not even attempt to argue that the harmless error rule should apply to this case. We note that even if this rule applies, we could not conclude beyond a reasonable doubt that Dickerson was not prejudiced by the failure to compel the attendance of a credible alibi witness. United States v. Hammond, 598 F.2d 1008 (5th Cir. 1979); United States v. Melchor Moreno, 536 F.2d 1042 (5th Cir. 1976).

IV. EXTRINSIC EVIDENCE

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Because we find that Dickerson was deprived of his Sixth and Fourteenth Amendment rights, it is not necessary for us to address the other issues raised on appeal. We note, however, that the district court erred in failing to grant an evidentiary hearing on the issue of whether the juror who typed the investigating officer's report prior to the trial in this case had any extrinsic knowledge of the case. Both the federal habeas corpus statute, 28 U.S.C. § 2254 (1976) and the doctrine of Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963), require a district court to hold an evidentiary hearing where there are facts in dispute which were not fully and adequately developed at the state court trial. See Guice v. Fortenberry, 661 F.2d 496 (5th Cir. 1981). Since the parties in this case disagree as to the possibility that Mrs. Davis read and remembered the report while serving as a juror as well as to the contents of the report, an evidentiary hearing should have been held. It will not be necessary for the district court to hold such a hearing on remand, however, since we reverse on other grounds.

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The judgment of the district court is REVERSED and the case is REMANDED for proceedings not inconsistent with this opinion.

1

The district court found that petitioner's seventh ground, an alleged confession by another, was not an appropriate basis for federal habeas corpus and that in any event, this issue had been properly decided by the Alabama coram nobis court after an evidentiary hearing. This issue was not raised on this appeal

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After being denied by the district court, Dickerson's pro se application for certificate of probable cause and for cause to appeal in forma pauperis was granted by this Court on September 17, 1980

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The district court's oversight in this matter is understandable given the complex history of the case and the pro se nature of the petition. Nevertheless, such an error is, in itself, a sufficient

basis for reversal. See Townsend v. Sain, 372 U.S. 293, 318-19, 83 S.Ct. 745, 759-760, 9 L.Ed.2d 770 (1963); Valdez v. California, 439 F.2d 1405 (9th Cir. 1971); 28 U.S.C. §§ 2243, 2254 (1976)

4

We were somewhat surprised to learn of the state's objection considering that the following colloquy occurred during the oral argument in this case:

STATE COUNSEL: ... And we were never asked to present the transcript, so it is not part of the record.

COURT: Is it available?

STATE COUNSEL: If you wish it, I could, I would, present it to the Court. I mean, I certainly have no objection because it is not going to say anything different than is said in the Court of Criminal Appeals opinion.

Transcription of the tape recording of the oral argument in Dickerson v. Alabama, No. 80-7780 (Oct. 28, 1981). Accordingly, we directed the state to transmit a certified copy of this record. Nearly eight weeks later the state complied with this request and informed us, for the first time, of their objection.

5

The Court of Appeals for the Second Circuit has based this authority on Fed.Rule App.Proc. 10(e) which provides in part that a Court of Appeals may "of its own initiative ... direct ... that a supplemental record be certified and transmitted." United States v. Aulet, 618 F.2d 182, 187 (2d Cir. 1980). Other circuits have relied primarily on the appellate court's inherent equitable powers to supplement the record as justice requires. See, e.g., Erkins v. Bryan, 663 F.2d 1048, 1052 n.1 (11th Cir., 1981); Turk v. United States, 429 F.2d 1327, 1329 (8th Cir. 1970). We express no view concerning the correct interpretation of Rule 10(e), but rely on this Court's inherent equitable powers to supplement the record

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Furthermore, counsel was appointed for Dickerson in this appeal. And, although counsel for the state arguably relied solely on the facts in the state appellate court opinion, see note 4 supra, the issues were fully briefed and argued on the merits

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Federal appellate judges have been granted unique powers in the context of habeas corpus actions. See 28 U.S.C. § 2254(a) (1976)

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In its written opinion, the Alabama Court of Criminal Appeals stated that "the record does not show that defendant ever unequivocally requested a continuance." 362 So.2d at 1324. Noting that a request for continuance does not require any particular formality, the court stated that the request "should have been more definite than that shown on the record." Id. Finally, the court stated that:

Aside from any question whether defendant sufficiently invoked a ruling continuing the case, the Court cannot be held in error for not continuing it. A continuance of a criminal case by reason of the absence of some defense witness is left to the sound discretion of the trial court and is not reversible on appeal unless a clear abuse of discretion is positively shown. Id.

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In fact, Dickerson attempted to secure the attendance of four alibi witnesses at trial. Echols was the only one served with a subpoena. Two of the other witnesses apparently could not be found even though they operated well-known businesses near the city of Anniston. In this appeal, Dickerson relies on the failure to compel the attendance of Echols

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Subsequent cases have sometimes referred to this right as a due process right without reference to the Sixth Amendment. E.g., Webb v. Texas, 409 U.S. 95, 93 S.Ct. 351, 34 L.Ed.2d 330 (1972); United States v. Hammond, 598 F.2d 1008 (5th Cir. 1979); but see Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)

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In its opinion, the Alabama Criminal Court of Appeals noted:

The Court was never apprised of exactly what the defendant expected to show in evidence (by this witness), but it is clear that he proposed to show ... that (he) saw defendant in the area of Anniston, Alabama on the afternoon of the robbery in Scottsboro, nearly one hundred miles away.

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So.2d at 1326. However, this opinion omits any reference to the fact that Echols was a policeman or that the other defense witnesses were Dickerson's friends and relatives. In light of these additional facts, we believe that Dickerson's counsel made a sufficient showing of the type of evidence sought to be presented by this witness. A defendant cannot realistically be expected to show "exactly" what the witness' testimony would be. See Singleton v. Lefkowitz, supra

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This is especially true where, as here, the Alabama appellate court found that these witness'

imprecision as to the time that defendant was out of their view ... constitutes a predicate for a reasonable ... conclusion (by the jury) that there was no irreconcilable conflict between their testimony and that of the victim of the robbery as to the time it occurred.

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So.2d at 1326

Estrada v. Witkowski, 816 F. Supp. 408 (D.S.C. 1993)

U.S. District Court for the District of South Carolina - 816 F. Supp. 408 (D.S.C. 1993)
March 10, 1993

816 F. Supp. 408 (1993)

Orlando ESTRADA, Petitioner,
v.
Stanley WITKOWSKI and T. Travis Medlock, Attorney General of South Carolina, Respondents.

Civ. A. No. 3:91-2113-3BD.

United States District Court, D. South Carolina, Columbia Division.

March 10, 1993.

***409 *410** T. Travis Medlock, Donald J. Zelenka, Office of the South Carolina Atty. Gen., Columbia, SC, for petitioner.

Joseph W. Gibson, Jr., Miami, FL, Stephen J. Henry, Greenville, SC, for respondents.

GEORGE ROSS ANDERSON, Jr., District Judge.

This matter is before the court for review of the magistrate's Report and Recommendation made in accordance with 28 U.S.C. § 636(b) (1) (B) and Local Rule 19.00 for the District of South Carolina.

The magistrate makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court. *Mathews v. Weber,* 423 U.S. 261, 270-71, 96 S. Ct. 549, 554-55, 46 L. Ed. 2d 483 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the magistrate, or recommit the matter to him with instructions. 28 U.S.C. § 636(b) (1).

This order addresses respondent's motion for summary judgment and to dismiss pursuant to Rule 12(b) (6) and 56(b) of the Federal Rules of Civil Procedure. The petitioner, Orlando V. Estrada, is presently confined at the Perry Correctional Institution of the South Carolina Department of Corrections, having been convicted of trafficking in cocaine, conspiracy, and carrying a firearm. The petitioner asserts that he was deprived of his right to effective assistance of counsel. Specifically, the petitioner contends that his trial counsel was incompetent, failed to engage in any discovery or investigation, failed to preserve issues for appeal, failed to interview or provide witnesses and was "totally unprepared with respect to the investigation and trial of Petitioner's cause, which was conducted in *absentia.*"

BACKGROUND

The petitioner was indicted and tried for conspiracy to distribute crack cocaine, trafficking cocaine, and carrying a firearm. The *411 petitioner contends that he failed to appear for his trial at the request of his trial attorney, Charles E. Smith. On December 5, 1988, the petitioner was convicted by a jury on all three charges and subsequently sentenced by the Honorable James E. Moore to twenty-five years and a $100,000 fine for trafficking in cocaine, ten years and a $12,500 fine for the crime of conspiracy, and one year for carrying a pistol. This conviction was not appealed.

On September 19, 1989, the petitioner filed an application for post-conviction relief (PCR)[1]. This application alleged that the petitioner was denied due process and effective assistance of

counsel during his trial. On February 15, 1990, South Carolina Circuit Judge Daniel Laney held an evidentiary hearing to determine the merits of the petitioner's claims. The petitioner was present at this hearing and was represented by Stephen Henry, Esquire, of the Greenville County Bar. After hearing the parties' arguments and proffered testimony, Judge Laney entered an order on March 26, 1990 denying the application for PCR in its entirety.

The court concluded *inter alia* that the trial counsel's representation of the petitioner was effective. It is important to note, however, that the court's findings were based, at least in part, on the testimony of the petitioner's trial attorney, Charles E. Smith. Smith appeared as the state's only witness in the PCR hearing.

Following the denial of his PCR application, the Petitioner petitioned the South Carolina Supreme Court for *certiorari* to review the decision of the PCR judge. The petitioner was represented by Joseph W. Gibson, Esquire, of Miami, Florida in his petition. In support of *certiorari,* the petitioner alleged:

> 1. That the trial court proceeding in the absence of the defendant violated his due process rights;
>
> 2. That the defendant's trial counsel was ineffective inasmuch as:
>
> "(a) Counsel was a witness against his client;
>
> (b) Counsel totally failed to prepare for trial;
>
> (c) That the trial performance of the trial counsel fell below the range of competence demanded of attorneys in criminal matters and performed below the wide range of reasonable professional assistance."

The respondents filed their Return on October 18, 1990 contending, among other arguments, that the petitioner's petition for *certiorari* should be dismissed for failure to comply with South Carolina Supreme Court Rule 50(9) (c) (i) requiring the petitioner to file and serve an appendix containing the transcript of the lower court proceedings. Supreme Court Rule 50(9) (c) (i) is now codified as Rule 227(e) (1) of the South Carolina Appellate Court Rules.

On November 13, 1990, the petitioner filed a motion to supplement the record on appeal, requesting that a wiretap recording of an alleged conversation between the petitioner and a

cooperating witness/co-defendant be obtained from the Solicitor for Greenville County and made a part of the record on appeal. On November 26, the respondents filed a return to this motion, stating that the petitioner was still not in compliance with Supreme Court Rule 50(9) (S.C.Ap.Ct.R. 227). The return also objected to having the tape made a part of the record when the complete transcript of the lower court proceedings had not yet been filed. On January 10, 1991, the South Carolina Supreme Court denied the petitioner's petition and motion in the following one sentence Order: "The Petition for Writ of Certiorari and Motion to add to the record are denied."

The petitioner subsequently filed this petition for habeas under 28 U.S.C. § 2254 and the respondents filed their return and memorandum of law in support of summary judgment. The respondent's motion was argued before Magistrate Bristow Marchant on October 9, 1992 and a report recommending summary judgment was issued on October 27, 1992.

*412 On December 21, 1992, the petitioner's trial attorney, Charles E. Smith, was disbarred by the South Carolina Supreme Court[2]. Smith's disbarment resulted from twenty-three separate incidents of unethical conduct. These ethical violations included twelve instances of grossly inadequate client representation and twenty-three incidents of flagrant dishonesty.

DISCUSSION OF LAW

It is well established that federal courts will not review a question of federal law decided by a state court if that decision relies on a state law ground that is both independent of the federal question and adequate to support the judgment. *Coleman v. Thompson,* ___ U.S. ___, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991). This general rule applies regardless of whether the state ground is substantive or procedural. *Id.* In addition, this doctrine is applicable to direct federal review of state court judgments and federal review of state prisoners' habeas corpus petitions alike. *Id.*

The Supreme Court has held that there is a conclusive presumption that no independent and adequate state ground exists when a state decision "fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and ... the adequacy and independence of any possible state law ground is not clear from the face of the opinion." *Michigan v. Long,* 463 U.S. 1032, 1040-41, 103 S. Ct. 3469, 3476, 77 L. Ed. 2d 1201 (1983). An omission of a clear expression that a state court decision is based on an adequate and independent state ground does not, in and of itself, create the presumption that the state court's decision was based on the merits of a petitioner's federal claims. *Coleman,* ___ U.S. at ___ ___, 111 S. Ct. at 2557-58, 115 L. Ed. 2d at 660-61. Rather, the decision of the last state court to which the petitioner presented his federal claims must *fairly appear* to rest primarily on, or to be interwoven with, federal

law. *Coleman*, ___ U.S. at ___, 111 S. Ct. at 2557-58, 115 L. Ed. 2d at 660. Accordingly, the state supreme court's one sentence opinion denying *certiorari*, does not create a presumption that the court's decision relied on the merits of the petitioner's habeas claims. In fact, absent other considerations no conclusion can be drawn from such.

Where, however, as in the instant case, there has been one reasoned state judgment rejecting a federal claim, later unexplained orders that either uphold or reject that judgment are presumed to rest upon the same ground, absent "strong evidence" to the contrary. *Ylst v. Nunnemaker*, ___ U.S. ___, 111 S. Ct. 2590, 115 L. Ed. 2d 706 (1991). Thus, if the earlier PCR opinion "fairly appears" to rest primarily on, or to be interwoven with, federal law and the adequacy and independence of any possible state law ground is not clear from the face of the opinion, this court must presume, absent "strong evidence" to the contrary, that the latest state court's decision was not based on an adequate and independent ground. In short, this court shall presume that there has been no procedural default on the part of the petitioner by failing to file the transcripts of the lower court proceedings.

This approach has been referred to as the "look through" doctrine and it was developed to deal with the reality that unexplained orders in essence say nothing. In other words, "a presumption that gives [unexplained orders] no effect which simply `looks through' them to the last reasoned decision most nearly reflects the role they are ordinarily intended to play." *Ylst*, ___ U.S. at ___, 111 S. Ct. at 2595, 115 L. Ed. 2d at 717.

The court which heard the petitioner's application for PCR issued an order on March 26, 1990 denying the application in its entirety. This order expressly stated that petitioner's allegation of the state's violation of his due process rights was denied upon state procedural grounds. Consequently, this court has no jurisdiction to address the petitioner's due process claim because the state court's decision was clearly based upon an adequate and independent state ground. The petitioner's ineffective counsel claim, however, was addressed by the PCR court and its decision "fairly appears" to be interwoven ***413** with, if not resting primarily on, federal law. In addition, the adequacy and independence of any possible state law ground for the decision is not clear from the face of the opinion. Accordingly, this court presumes that a procedural default has not been invoked by the South Carolina Supreme Court's unexplained denial of *certiorari* with respect to petitioner's allegation of ineffective trial counsel.

The next step of the analysis requires a determination of whether there is "strong evidence" to rebut this presumption. The Supreme Court in *Ylst* stated that a plainly evident stale appeal to the court which issued the unexplained order was "strong evidence" of procedural default if that court did not ordinarily waive similar defaults without stating such. ___ U.S. at ___, 111 S. Ct. at 2595, 115 L. Ed. 2d at 717. The instant case exhibits similarly "strong evidence" of procedural

default. The petitioner clearly failed to provide a transcript of the lower court proceeding as required by Supreme Court Rule 50(9) (S.C.Ap.Ct.R. 227) and has offered no evidence that the state Supreme Court ordinarily waives such defects without so stating.

Supreme Court Rule 50(9) (S.C.Ap. Ct.R. 227) provides in pertinent part:

> (b) Notice of Appeal and Ordering Transcript. In the same manner and under the same time limitations as provided for appeals from the Court of Common Pleas in Rules 203 and 206, the petitioner shall serve and file a notice of appeal and shall obtain from the court reporter a transcript of the proceedings of the lower court.
>
> (c) Service and Filing of Petition and Appendix. Within thirty (30) days of receipt of the transcript, petitioner shall serve a copy of the Appendix and petition for writ of certiorari on opposing counsel and shall file with the Clerk of the Supreme Court an original plus six (6) copies of the petition, two (2) copies of the Appendix, and proof of service showing the Appendix and petition have been served.
>
> . . . . .
>
> (e) Content of Appendix. The Appendix shall contain:
>
> (1) The entire lower court record.
>
> (2) A copy of the final order entered after the post-conviction proceeding.

Sup.Ct.R. 50(9) (S.C.Ap.Ct.R. 227).

The magistrate concluded, and this court agrees, that the statement "transcript of the proceeding of the lower trial court" in the above rule refers to the transcripts of the lower PCR hearing and that of the petitioner's jury trial. The petitioner failed to provide either transcript to the state Supreme Court for its review. By neglecting to submit the required transcripts, the petitioner failed to provide the appellate court any basis to consider either his motion to supplement the record or his appeal. Accordingly, the petitioner clearly failed to comply with the mandated procedures for filing a petition for writ of *certiorari* to the state supreme court and such failure is "strong evidence" of procedural default. Given such "strong evidence," this court concludes that the petitioner's PCR appeal was denied *certiorari* due to procedural default.

This finding, however, does not terminate the court's analysis. Rather, this court must next determine whether there are overriding interests that warrant its interference with the state's disposition of the matter. The United States Supreme Court in *Engle v. Isaac,* 456 U.S. 107, 102 S. Ct. 1558, 71 L. Ed. 2d 783 (1982), articulated a "cause and prejudice" approach to aid in this determination. The "cause and prejudice" standard will be met in those cases where cause for the default and actual prejudice is shown *or* where review of a state prisoner's claim is necessary to correct a "fundamental miscarriage of justice." *Id.* at 135, 102 S. Ct. at 1576 (emphasis added).

The petitioner has failed to prove cause and actual prejudice. "[T]he existence of cause for a procedural default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the state procedural rule." *Murray v. Carrier,* 477 U.S. 478, 488, 106 S. Ct. 2639, 2645, 91 L. Ed. 2d 397 (1986). An attorney's ***414** ignorance, inadvertence or poor judgment is not "cause." *See Coleman,* ___ U.S. at ___, 111 S. Ct. at 2566, 115 L. Ed. 2d at 671.

The petitioner's appellate attorney contends that he did not obtain and file the transcript of the lower court proceedings as required by the Supreme Court Rules because he was allegedly unable to obtain a copy of an audio tape that was not admitted as evidence during the trial. The inability of the petitioner's attorney to copy the audio tape, however, did not prevent him from obtaining and filing the lower court transcripts. If the petitioner's attorney, for some unknown reason, truly believed that the audio tape was an important part of the record, the proper procedure would have been to obtain and file the transcripts while simultaneously filing motions to compel the production of the tape and to supplement the record. By neglecting to submit the required transcripts, the petitioner's attorney failed to provide the appellate court any basis to consider either his motion to supplement the record or petitioner's appeal. Accordingly, the petitioner's attorney clearly failed to comply with the mandated procedures for filing a petition for writ of *certiorari* to the state supreme court and has failed, under controlling law, to establish cause for this noncompliance.

Petitioner's petition for habeas does not contend that he was deprived of effective assistance of counsel during his PCR appeal, rather the petition challenges only the constitutionality of his conviction at trial. Consequently, this court need not address the PCR appeal issue.

Having concluded that the procedural default was not the result of cause, it is unnecessary to evaluate whether actual prejudice resulted. Rather, this court must next determine whether review of the petitioner's claim is necessary to correct a "fundamental miscarriage of justice." The Supreme Court has stated that a fundamental miscarriage of justice exists "where a constitutional violation has probably resulted in the conviction of one who is actually innocent." *Murray,* 477 U.S. at 496, 106 S. Ct. at 2649. This reference to "actual innocence" is

distinct from the concept of legal innocence. *Sawyer v. Whitley*, ___ U.S. ___, ___, 112 S. Ct. 2514, 2519, 120 L. Ed. 2d 269, 280 (1992). In an attempt to explain the "actual innocence" standard applicable to noncapital cases the Court stated the following:

> A prototypical example of "actual innocence" in a colloquial sense is the case where the State has convicted the wrong person of the crime. Such claims are of course regularly made on motions for new trial after conviction in both state and federal courts, and quite regularly denied because the evidence adduced in support of them fails to meet the rigorous standards for granting such motions. But in the rare instances it may turn out later, for example, that another person has credibly confessed to the crime, and it is evident that the law has made a mistake. In the concept of a noncapital case, the concept of "actual innocence" is easy to grasp.

Id. at ___, 112 S. Ct. at 2519-20, 120 L. Ed. 2d at 280-81.

The Court in *Sawyer* specifically distinguished this noncapital standard from the criteria applied in capital cases. In capital cases the "actual innocence" standard is met by clear and convincing evidence establishing that but for a constitutional error, no reasonable juror would have found the petitioner eligible for the death penalty under the applicable state law. *Id.* at ___, 112 S. Ct. at 2517-18, 120 L. Ed. 2d at 278. The Court developed this distinct standard of "actual innocence" for capital cases because federal district judges are typically presented with successive or abusive habeas petitions on the eve of scheduled executions, and have only limited time to determine whether the petitioners have shown that their case falls within the exception. *Id.* at ___, 112 S. Ct. at 2520, 120 L. Ed. 2d at 281. In addition, the Court found it difficult to translate the traditional actual innocence standard into the sentencing phase of a trial on a capital offense. *Id.* at ___, 112 S. Ct. at 2519, 120 L. Ed. 2d at 280. Consequently, the capital "actual innocence" standard articulated in *Sawyer* established a framework of relatively objective standards designed to cope with the time restraints and bifurcated nature of capital cases.

***415** Because the instant case involves the petitioner's conviction of a noncapital offense, this court will not apply the capital "actual innocence" standard. Rather, this court must determine whether the "State has convicted the wrong person of the crime." The petitioner has failed to brief this issue. Moreover, review of the record indicates that the petitioner has failed to meet this burden.

As a result of the foregoing analysis, this court concludes that it is without jurisdiction to hear the petitioner's habeas petition. The petitioner, however, is not without further recourse. The petitioner's future options are as follows: first, he may seek post-conviction relief from the State

EXHIBIT A

for ineffective counsel resulting in the denial of certiorari of his PCR appeal due to procedural default, *see Austin v. State,* 305 S.C. 453, 409 S.E.2d 395 (1991); or second, petitioner may seek a new PCR hearing on the ineffectiveness of his trial counsel given the newly developed material facts concerning trial counsel's recurrent incidents of inadequate representations and dishonesty. *See,* S.C.Code Ann. § 17-27-20(a) (4) (Law.Co-op 1985); S.C.Code Ann. § 17-27-90 (Law.Co-op 1985); *Case v. State,* 277 S.C. 474, 289 S.E.2d 413 (1982) ("unique" combination of facts warranted allowing successive application).

IT IS ORDERED that this action be dismissed for lack of jurisdiction.

NOTES

[1] Civil action number 89-CP-23-3672.

[2] *In re Smith,* 427 S.E.2d 634 (S.C.Sup.Ct.1992) (Davis Adv.Sh.No. 1 at 21).

ORAL ARGUMENT Trial Oct. 13, 2014

I signed and participated in a Confidential Full Release and Settlement Agreement on April 12, 2012. During 2012 American Home Mortgage Servicing, Inc. became Homeward Residential. My original transaction occurred in January 2006 when I purchased the house on a Bond for Title with Jason Dillard, seller in the Offices of Alex Newton, attorney who was indicted on or about March 2006 for wire fraud related to "flipping houses with dual transactions" and was later convicted and sentenced to about 3 years in a federal penitentiary.

In January 2008 a foreclosure action was filed against me and dismissed because the Assignment was NOT filed until June of 2008, which meant that American Home Mortgage Services, Inc. (the servicer at that time) did not own or did not have standing to file a foreclosure action against me.

Mortgage Statement aka Account Statement

I sent a letter dated February 17, 2014 to Ocwen Loan Servicing and Henry Mashburn, of State Farm with copies to Ocwen Loan Servicing at the ISAOA Department and Ocwen Loan Servicing Attn: Tax Department regarding a letter of verification from Ocwen and received no response. In March of 2013 I received a mortgage/account statement from Ocwen Loan Servicing that indicated a $55 previous servicer fee which was in violation of my Settlement Agreement. Sent a

certified letter to Elizabeth Scott Moise, previous counsel on Steffens v. AHMSI and Deutsche Bank v. Steffens regarding the $55 fee in violation of my Settlement Agreement. Copies of that letter went to Ocwen Loan Servicing, Henry Mashburn at State Farm Insurance, Homeward Residential. I received a response only from Ms. Moise at Nelson, Mullins including the same letter called a "RESPA" letter. Which allegedly represents the transfer of my Note to Ocwen for servicing. I received nothing from Ocwen except a boiler plate letter saying they had 20 additional days to answer. I received two of those letters more than 40 days apart with the same date.

I sent another certified letter dated March 25, 2013 to Ocwen at Customer Service Dept., and Research Dept., Consumer Communications at the Fed Housing Finance Agency in Wash DC, Office of the Comptroller of the Currency, Louie A. Jacobs, Comm of Banking in Columbia, Alan Wilson SC Atty Gen and Eric Holder, Atty Gen at the US Dept of Justice. The only letter I got back was from the Comm of Banking telling me to file a complaint with the FTC. Ocwen never answered me. I waited, because I thought 30 days would have to pass before I received an Answer from Ocwen. Nothing arrived. In late April or early May, I called Ocwen to find out if anything was happening. I told the representative who answered the phone that I wanted to know why there was a $55 previous servicer fee that was in violation of my Court-ordered Settlement Agreement. The

representative I spoke with told me that "We do not accept settlement agreements only government loan modifications." I decided to sue them. I filed my complaint for Breach of Contract, Quiet Title, Fraud, Declaratory Judgment, Negligence, Gross Negligence on May 17, 2013. I later amended the Complaint and removed the Fraud allegation.

Endorsement

The endorsement on the note is to blank "without recourse by American Brokers Conduit" [bankrupt out of existence entity] who is not a party to this action.

The Parties to this action are Ocwen Loan Servicing, Inc. and Deutsche Bank National Trust Company As Trustee for GSAA Home Equity Trust 2006-10, Mortgage Electronic Registrations Systems, Inc. aka MERS and MERSCorp, Homeward Residential and Wells Fargo Bank as Master Servicer who never appeared and is not represented by present opposing counsel. There is no chain of custody that indicates that Ocwen is the holder of this note nor is there a chain of custody for Deutsche Bank National Trust Company, as trustee for GSAA Home Equity Trust 2006-10. Each entity that held or transferred the Note has to be endorsed on the Note. There is only one endorsement on the Note. Notes and Securities cannot coexist.

I was given an opportunity to see the Note which opp. Counsel said was the original. I submit to you that it is not an original and is a copy and should be brought into Court for the Judge to examine.

ASSIGNMENT

The present Assignment is entitled Assignment of Mortgage. It does not assign the Note. FYI, Ladies & Gentlemen: the Assignment is a legal document filed with the Register of Deeds Office here in Greenville County. Opposing counsel has repeatedly stated to me and during my deposition that there is no law in South Carolina that makes filing an Assignment mandatory as evidence of a chain of title and a real estate transaction. It is mandatory to file the Assignment with the Register of Deeds office per South Carolina Statue under Title 30 Public Records, Chapter 7, Recordation Essential to Validity.

In this case, the Assignment is an Assignment of Mortgage only and does not indicate there is a note or any note in existence. It was filed October 4, 2013 AFTER the Settlement Agreement was signed and AFTER the lawsuit was instituted. For this document to be correct and legal, it must specifically indicate both the Mortgage and the Note. FYI, the mortgage follows the Note not the other way around. The Note is evidence of a debt and the Mortgage is the manner and method of paying off the debt. So, the question arises: who was I paying? If the property was "assigned" on October 4, 2013, I was paying the wrong entity from October through March. As for a "free" house. It looks like the Defendants are getting a free house. I paid $15,000 down and more than $20,000 in repairs and upgrades, I paid about $17,500 in mortgage payments until October of 2007 and then $5,130 in mortgage payments and additional repairs and upkeep of about $1,500 under the

Settlement Agreement as well as the costs of defending myself against a foreclosure lawsuit that was dismissed by the Honorable Charles B. Simmons.

The Assignment dated Octob er 4, 2013 indicates transfers BEFORE the Settlement Agreement was put in place. It was filed October 4, 2013 AFTER the Settlement Agreement was put in place. If, as opp. Counsel argues that nothing can be put into the record AFTER the settlement Agreement dated April 11, 2012, how can the assignment dated October 4, 2013 allegedly submitted by a company known as Financial Dimensions, Inc. for Ocwen be evidence of an assignment of the Mortgage only or an assignment of anything?

Mortgage Electronic Registrations Systems, Inc. aka MERS as stated on the Assignment of Mortgage and missing the word Note is an alleged nominee for American Brokers Conduit, which is a bankrupt entity no longer in existence (out 45 Bank National Trust Company as Trustee for GSAA Home Equity Trust 2006-10 which is a trust that closed in 2006 as the name indicates. The Trust cannot accept any loans or notes after it closed or it violates REMIC laws of the IRS. 26 U.S.C. § 860D; US Code – Section 860D; REMIC defined. That means the so-called amount the note is allegedly worth is taxed at 100 percent if the US IRS code is not adhered to. Also, it means the Trust purchases the note which produces documents that prove the Note made it into the Trust. I have not seen those documents, and there is more than one. There should be endorsements on the Note to indicate each entity that allegedly held or assigned or transferred the

Note per the law and the Pooling and Servicing Agreement which governed the Mortgage Backed Securities transactions. Additionally the Assignment of Mortgage is signed by Leticia N. Anas as Assistant Secretary of MERS. Leticia Anas cannot be found on the Internet by my new Intel I5 third generation core, 6 GB of RAM, 1 TB of memory computer. However, you can find a Leticia Arias who is an employee of Ocwen. It is notarized by a notary who only signs as a squiggle which is not legal as I am a Notary Public and you must sign with a compete signature that matches the one on record with the State and county. Also when I search MERS website, my loan number is indicated as inactive which means MERS agency relationship with American Brokers Conduit no longer exists because American Brokers Conduit no longer exists as the alleged original lender, because it is bankrupt and out of business. I state for the record that this Assignment does not represent any transaction related to South Carolina real estate and does not comport with South Carolina Law under Title 30, Chapter 7, Recordation Essential to Validity. Why would South Carolina and the County of Greenville have an office entitled Register of Deeds if no deeds or titles were registered or evidenced in writing as well as by book and page?

Defendant Ocwen has never provided the name of the Creditor who is allegedly receiving my money to pay down the loan which was in Requests for Production.. Apparently, my money is

going into a black hole at Ocwen, and I am only renting my house. See 15 U.S. Code § 1641 Liability of Assignees.

FANNIE & FREDDIE

FNMA and FHLMC (Freddie Mac) are NOT owners or purchasers of notes. They were at one time publically traded companies that went bankrupt. The government now backstops loans that have defaulted and guarantee payoffs. So the question arises, if the loan is paid off then why is the bank, servicer, still collecting payments? The answer: they are pocketing the money. It also means that if the Note is still out there being passed around and resold, homeowner/borrower can never pay off his loan or own her home.

I read this document into the record on October 13, 2014. It was left out of the official record of the trial.

Neva Steffens
6 Azalea Court
Greenville, South Carolina 29615
(864) 241-8602
Burmese8@yahoo.com

May 4, 2017

Clerk of Court
Court of Appeals
1220 Senate Sreet
Columbia, South Carolina 29201

Steffens v. Ocwen Loan Servicing
Appellate Case No. 2014-002297

Dear Sir/Madam:

Please find enclosed Check No. 1139 in the amount of $25 for Appellant's Motion to Supplement Trial Record. This document had been previously sent but not received in the Clerk's Office, so it will appear backdated.

Thank you in advance.

Sincerely,

Neva Steffens

Enclosure

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