

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Lexington County  
Perry H. Gravely, Circuit Court Judge  
\_\_\_\_\_

RANDALL EARL SIGHTLER,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO. 2016-002415  
\_\_\_\_\_

MOTION TO HOLD APPEAL IN ABEYANCE AND  
MOTION TO REMAND FOR RECONSTRUCTION OF THE RECORD  
\_\_\_\_\_

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order placing Petitioner's appeal in abeyance and remanding this case to the Lexington County Court of Common Pleas for a reconstruction of the post-conviction relief evidentiary hearing held on November 13, 2013. In support of this motion, Appellant alleges the following:

**Procedural History and Relevant Facts**

1. The Lexington County Grand Jury indicted Petitioner during the June, 2011 term of court on one count of trafficking in methamphetamine, 10-28 grams third-offense and manufacturing methamphetamine, 10-28 grams second-offense.

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MAY 25 2017

S.C. SUPREME COURT

2. Petitioner waived presentment and pled guilty to manufacturing methamphetamine, 10-28 grams second-offense, and the lesser included charge of trafficking in methamphetamine, second-offense. The Honorable Edward D. Cottingham sentenced Petitioner to two concurrent terms of fifteen years imprisonment. Petitioner's probation for a 2010 possession of methamphetamine conviction was also revoked. Petitioner did not appeal.

3. Petitioner filed an application for post-conviction relief on September 23, 2011. The State filed a Return on April 5, 2012.

4. On November 13, 2013, an evidentiary hearing was held before the Honorable R. Lawton McIntosh. Assistant Attorney General Walt Whitmire represented the State. Andrew F. Farley represented Petitioner.

5. On October 2, 2014, Judge McIntosh denied Petitioner's application in a written order of dismissal. PCR Counsel did not file a timely notice of appeal.

6. On October 15, 2014, Petitioner filed a second PCR application alleging that Petitioner's original PCR counsel was ineffective for failing to file a timely notice of appeal following the October 15, 2014 order of dismissal.

7. On April 18, 2016, an evidentiary hearing was held on the merits of Petitioner's second PCR application before the Honorable Perry H. Gravely. Aimee Zmroczek represented Petitioner. Assistant Attorney General Johanna Valenzuela represented the State.

8. On October 12, 2016, Judge Gravely granted Petitioner's application and ordered that Petitioner be permitted to file a belated appeal of the October 2, 2014 order of dismissal pursuant to *Austin v. State*, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991).

9. On April 25, 2017, this Court mailed a letter to Chief Appellate Defender Robert M. Dudek notifying the Office of Appellate Defense that no transcript of the November 13, 2013 evidentiary hearing was available. *See Exhibit A.*

10. This Court's letter enclosed correspondence from Court Reporter Pamela Green and Court Administration stating that no "materials needed to prepare this transcript" have been found. Further, that the computer files containing the relevant materials "are corrupt and cannot be opened." *See Exhibit B.*

### Argument

11. When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed so as to allow for meaningful appellate review. *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); *Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); *Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); *State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007).

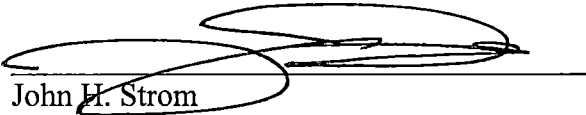
12. In the present case, the entire transcript of the November 13, 2013 evidentiary hearing is missing. "Meaningful appellate review" of the October 2, 2014 order of dismissal is impossible with a complete and accurate transcript of the evidentiary hearing.

13. Petitioner respectfully requests an order for the reconstruction of the evidentiary hearing in order to perfect the appeal. *State v. Ladson*, 373 S.C. at 325, 644 S.E.2d at 273-274. While this motion is pending, Petitioner asks this Court to hold the timelines for filing his petition for writ of certiorari in abeyance.

WHEREFORE, in order to allow meaningful appellate review, Petitioner respectfully requests that this Court hold Petitioner's appeal in abeyance and remand his case to the

Lexington County Court of Common Pleas for reconstruction of the missing evidentiary hearing and to hold the timelines for filing the petition for writ of certiorari in abeyance during the pendency of this motion.

Respectfully submitted,

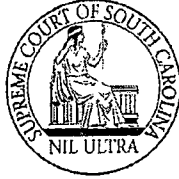
A handwritten signature in black ink, appearing to read "John H. Strom", is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

John H. Strom  
Appellate Defender  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR PETITIONER

This 25<sup>th</sup> day of May, 2017.

**Exhibit A**



South Carolina Court Administration  
South Carolina Supreme Court  
Columbia, South Carolina

ROSALYN FRIERSON  
DIRECTOR

1220 SENATE STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
PHONE: (803) 734-1800  
FAX: (803) 734-0269

April 24, 2017

Paula Murdoch  
Administrative Coordinator  
1330 Lady Street, Suite 401  
Columbia, SC 29201

In re: Randall Earl Sichtler v The State, 2016-002415

Dear Ms. Murdoch:

This is to follow up on the letters your office has sent concerning the transcript in this matter. I am sorry for the delay, but I wanted to ask another court reporter to check the hard drive delivered by Ms. Thueme before writing. I have attached the letter from Ms. Green.

Unfortunately, we are unable to produce this transcript. Court Administration has exhausted all avenues for the production of this transcript, and it cannot be produced. I sincerely regret the inconvenience this causes you and all parties involved. If I can assist you further, do not hesitate to contact me.

Sincerely,

  
Desiree R. Allen  
Court Reporter Manager

Enclosure: Letter from Pamela Green

CC: S.C. Supreme Court  
Office of Attorney General

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APR 25 2017  
APPELLATE DEFENSE

**Exhibit B**

**Pamela E. Green, Circuit Court Reporter**

516 Traversie Court  
Spartanburg, SC 29306

April 10, 2017

**Ms. Desiree Allen**

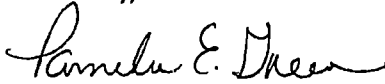
South Carolina Court Administration  
1220 Senate Street  
Columbia, South Carolina 29201

RE: Randall Earl Sightler v. The State

Dear **Ms. Desiree Allen**:

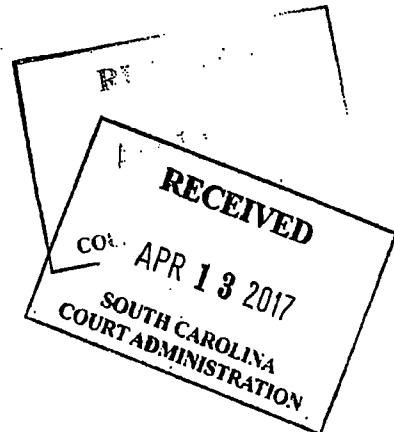
Enclosed please find a copy of a letter from SCCID requesting a transcript in the above referenced case. I am writing to inform you that I have searched the hard drive for Carol Thueme that was sent to me to try to locate any materials needed to prepare this transcript and have been unable to find anything pertaining to this case. There are files on the hard drive that are corrupt and cannot be opened. If you need any further information from me, feel free to contact me about this matter.

Sincerely,



Pamela E. Green

Enclosure





# SCCID

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) 734-1387

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

*R. McIntosh*  
*CONJ/PCR*

March 2, 2017

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

Dear Ms. Allen:

The transcript listed below was requested by this office. Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

Court Reporter  
Carol M. Thueme

Due Date  
February 14, 2017

Case Name  
Randall Earl Sightler v. The  
State, 2016-002415

*W.H.C.*  
Trial Date(s): November 13, 2013

I would appreciate your confirming in writing as to the status of the above-referenced transcript. If you should have any questions, please do not hesitate to contact me.

Sincerely,

*Paula Murdoch*

Paula Murdoch  
Administrative Coordinator

cc: S. C. Supreme Court  
Attorney General's Office

*hitwire*



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) 734-1387

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

April 4, 2017

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

Dear Ms. Allen:

The transcript listed below was requested by this office. Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

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Carol M. Thueme	February 14, 2017	Randall Earl Sightler v. The State, 2016-002415

Hearing Date(s): November 13, 2013

I would appreciate your confirming in writing as to the status of the above-referenced transcript. If you should have any questions, please do not hesitate to contact me.

Sincerely,

Paula Murdoch  
Administrative Coordinator

cc: S.C. Supreme Court  
Attorney General's Office



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

April 19, 2017

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

Dear Ms. Allen:

The transcript listed below was requested by this office. Pursuant to Rule 207(a)(2), SCACR, the allotted time of sixty (60) days has lapsed to either receive the transcript or an extension to deliver same.

<u>Court Reporter</u>	<u>Due Date</u>	<u>Case Name</u>
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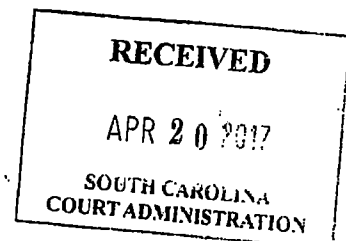
Trial Date(s): November 13, 2013

I would appreciate your confirming in writing as to the status of the above-referenced transcript. If you should have any questions, please do not hesitate to contact me.

Sincerely,

Paula Murdoch  
Administrative Coordinator

cc: S.C. Supreme Court  
Attorney General's Office



STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————  
Certiorari to Lexington County

Honorable Perry H. Gravely, Circuit Court Judge

—————  
RANDALL EARL SIGHTLER,

PETITIONER

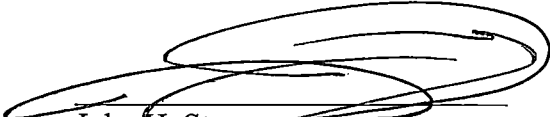
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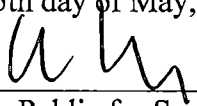
—————  
CERTIFICATE OF SERVICE  
—————

The undersigned hereby certifies that a true copy of the motion to hold appeal in abeyance and motion to remand for reconstruction of the record in the above referenced case has been served upon Jessica Kinard, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of May, 2017.

  
John H. Strom  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 25th day of May, 2017.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 5/12/2025 (L.S)