

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

\_\_\_\_\_  
Appeal from Aiken County  
Doyet A. Early, Circuit Court Judge  
\_\_\_\_\_

MAY 25 2017  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CLARENCE ASHBY, III,

APPELLANT

Appellate Case No. 2017-000781  
\_\_\_\_\_

MOTION TO ACCEPT THE REQUEST FOR TRANSCRIPT  
OUT OF TIME  
\_\_\_\_\_

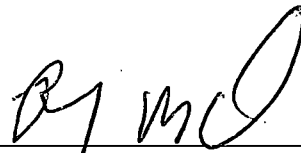
Pursuant to Rule 240, SCACR, counsel for the Appellant, Clarence Ashby, III, respectfully requests the Court to accept the transcript request in this case out of time. In support of this request, counsel shows:

- (1) The transcript in this case was due to be ordered by April 24, 2017.
- (2) Upon receipt and review of the Notice of Appeal in this case, my legal services coordinator inadvertently thought the appeal was based on a guilty plea. (See Exhibit A referencing a guilty plea in the first paragraph). Consequently, she emailed Brandon Hall at your Court of her belief that this case involved a guilty plea, which this Court would need to review and determine if it would go forward after review. Based on

that her belief that this case involved a guilty plea she placed the Notice of Appeal in this case in a separate guilty plea cases file, and did not take any further action since she was waiting for further notification from this Court whether this appeal would proceed. For that erroneous, but good faith reason, the transcript was not timely ordered.

(3) At that time she received the Notice of Appeal, she did not fully understand the Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) resentencing for certain juvenile offenders process. Since discussing the issue with undersigned counsel, she now has a better understanding of the process. She has obtained the hearing dates and ordered the only needed transcript in this case. A copy of the transcript request is attached to this motion as Exhibit B. Undersigned counsel regrets the error in this case, and has the good faith belief it will not be repeated since it has been addressed.

WHEREFORE, counsel for Appellant respectfully requests the Court accept the transcript request as filed out of time.



---

Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

May 25, 2017

# **EXHIBIT A**

**RECEIVED**

MAR 28 2017

SC Court of Appeals

NOTICE OF INTENT TO APPEAL  
THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
FROM AIKEN COUNTY  
THE HONORABLE Doyet A. Early, III  
March 22, 2017  
Indictment # 1979-GS-02-00268

THE STATE OF SOUTH CAROLINA -- Respondent

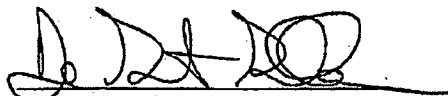
VS.

CLARENCE ASHBY -- Appellant

NOTICE OF INTENT TO APPEAL

Clarence Ashby ~~pled guilty~~ to Murder and Armed Robbery, and was sentenced to life without parole on the murder and a consecutive sentence of 25 years on armed robbery. Pursuant to Aiken v Byars, 410 S.C. 534, 765 S.E.2d 572 (SC 2014), Mr. Ashby filed a pro se motion on October 14, 2016, asking to have his sentence re-litigated.

A hearing was held on February 28, 2017 before the Honorable Doyet A. Early. Judge Early issued his decision on the matter in an order dated March 20, 2017, denying Mr. Ashby relief. He appeals the denial of his motion.



De Grant Gibbons  
Attorney for Defendant

Other Counsel of record is:

J. Strom Thurmond  
2<sup>nd</sup> Circuit Solicitor  
Post Office Box 3368  
Aiken, South Carolina 29802

# **EXHIBIT B**



# 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) 734-1397

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

May 25, 2017

Bethanie K. Creppon  
Circuit Court Reporter  
P.O. Box 85411  
Lexington, SC 29073

Dear Ms. Creppon:

Please provide us with the following transcript:

The State v. **Clarence Ashby, III**  
Appellate Case No. 2017-000781  
County: Aiken  
Presiding Judge: Doyet A. Early

Case #: 1979-GS-02-00268

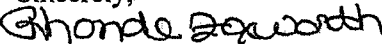
Date of Trial: February 28, 2017

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 (pretrial 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, additional transcripts, or if the Attorney General's Office has already requested a transcript, please let us know.

SCCID prefers that all transcripts are sent via **certified mail**. If you would prefer the convenience of sending transcripts electronically, please use SCCID's file transfer servers found by navigating to <https://filexfer.sccid.sc.gov>. For further assistance or questions with this service, please contact Ryan Cole at [rcole@sccid.sc.gov](mailto:rcole@sccid.sc.gov) or by phone at 803-734-1239.

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,  
  
Rhonda Foxworth  
Legal Services Coordinator

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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Aiken County

Doyet A. Early, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

MAY 25 2017

**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

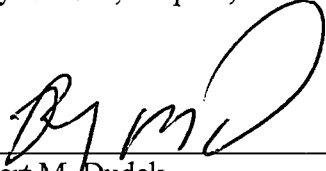
CLARENCE ASHBY, III,

APPELLANT

Appellate Case No. 2017-000781  
\_\_\_\_\_

CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Motion to Accept the Request for Transcript Out of Time in the above referenced case has been served upon John Benjamin Aplin, Esquire and Alan McCrory Wilson, Esquire, this 25<sup>th</sup> day of May, 2017.

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 25<sup>th</sup> day of May, 2017.

Rhonda Demese Foxworth (L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 17, 2021.