

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

RECEIVED
OCT 18 2017
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TERRY EDWARD MCCALL,

APPELLANT

APPELLATE CASE NO. 2015-001097

MOTION TO ACCEPT DECISION NOT TO APPEAL THE
RULING RECONSTRUCTING THE RECORD

Pursuant to Rule 240 of the South Carolina Appellate Court Rules (SCACR), Appellant Terry Edward McCall respectfully requests this Court accept his decision not to challenge the oral ruling finding the record of his trial was sufficiently reconstructed to allow for meaningful appellate review. In support of this motion, Appellant shows the following:

1. Appellant was indicted by a Greenville County Grand Jury on December 21, 2012 for felony DUI resulting in great bodily injury. His case was called to trial on May 12, 2015 before the Honorable Robin B. Stilwell, and a jury. Assistant Solicitors Sara Lee Drawdy and Stan Overby represented the state, and Jake Erwin and Randy Chambers represented Appellant. The jury found Appellant guilty as indicted. Judge Stilwell sentenced him to fifteen years imprisonment.

2. Appellant filed a timely notice of appeal and was approved for representation by the Office of Appellate Defense. It took over a year for a partial trial transcript to be produced. On July 5, 2016, the Office of Appellate Defense received an unsigned facsimile from Court Reporter Caroline Hiskell stating that her records for several cases, including Appellant's trial, were stolen. As a result, certain portions of Appellant's trial could not be transcribed.

3. By order filed November 4, 2016, this Court granted Appellant's motion to remand his case to the circuit court for reconstruction of the record.

4. On March 14, 2017, a hearing was held in Greenville County before Judge Stilwell to reconstruct the record. Assistant Solicitors Sara Lee Drawdy, Stan Overby, and Judy Munson represented the state, and Appellate Defender John Strom represented Appellant. At the beginning of the hearing, Appellant moved to have the assistant solicitors who represented the state at trial recused because they were witnesses for purposes of the reconstruction hearing. However, Judge Stilwell denied the motion. At the conclusion of the hearing, Judge Stilwell orally ruled the record had been sufficiently reconstructed to allow for meaningful appellate review.

5. By letter dated April 19, 2017, Judge Stilwell informed this Court that he did not intend to issue a formal written order unless the Court preferred such an order.

6. On April 28, 2017, Appellant ordered the transcript of the March 14, 2017 hearing from the court reporter. This transcript was received on June 27, 2017.

7. By letter dated August 25, 2017, Appellate Defender John Strom notified this Court that Appellant McCall wished to waive his right to challenge Judge Stilwell's oral ruling that the record of his trial had been sufficiently reconstructed to allow for meaningful appellate review. Enclosed within this letter was an affidavit signed by Appellant McCall confirming his desire not to appeal Judge Stilwell's ruling. Mr. Strom indicated that he had spoken with Appellant McCall

at length about the consequences of not appealing Judge Stilwell's ruling and that, based on these discussions, he believed McCall's decision not to challenge the ruling was knowing and voluntary.

8. By letter dated September 6, 2017, in response to Appellant's August 25, 2017 letter and accompanying affidavit, this Court directed Appellant to file a motion. The Court also informed Appellate Defender Strom that there was a discrepancy in Mr. McCall's affidavit in paragraphs seven and eight.

9. On October 11, 2017, undersigned counsel was assigned to represent Appellant McCall after Appellate Defender John Strom left the Office of Appellate Defense.

10. Appellant McCall now files this motion informing this Court that he does not intend to challenge Judge Stilwell's oral ruling that the record of his trial was sufficiently reconstructed to allow for meaningful appellate review.

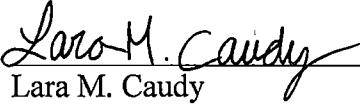
11. Undersigned counsel, based on her own discussion with Appellant McCall, is fully satisfied that Mr. McCall understands the advantages and disadvantages of his decision not to challenge Judge Stilwell's finding that the record of his trial was sufficiently reconstructed to allow for meaningful appellate review and has made this decision knowingly and voluntarily. Attached to this motion is a formal affidavit signed by Mr. McCall indicating that he does not wish to appeal Judge Stilwell's ruling and that he is aware of the risks and consequences of this decision. The discrepancy in paragraphs seven and eight has been corrected.

12. Appellant McCall still desires to move forward with the direct appeal from his conviction and sentence. While he does not wish to challenge Judge Stilwell's oral ruling that the record of his trial was sufficiently reconstructed to allow for meaningful appellate review, this motion is not intended as a waiver of Appellant's right to challenge his conviction and sentence on direct appeal.

13. Appellant respectfully requests this Court hold the timelines for filing the initial brief of appellant and designation of matter in the appeal from his conviction and sentence in abeyance during the pendency of this motion.

WHEREFORE, Appellant respectfully requests this Court accept his decision not to appeal Judge Stilwell's oral ruling that the record of his trial was sufficiently reconstructed to allow for meaningful appellate review. Appellant also respectfully requests this Court hold the timelines for filing the initial brief of appellant and designation of matter in the appeal from his conviction and sentence in abeyance during the pendency of this motion.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

Attorney for Appellant

This 18th day of October, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
THE STATE,)
RESPONDENT,)
v.)
TERRY MCCALL,)
APPELLANT,)
_____)

IN THE SOUTH CAROLINA
COURT OF APPEALS

APPELLATE CASE NO.: 2015-001097

AFFIDAVIT RECEIVED
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PERSONALLY appeared before me, TERRY MCCALL, who being duly sworn, deposes and says:

1. I am the appellant in the above-captioned case.
2. On December 21, 2012, I was indicted by Greenville County Grand Jury for felony

DUI resulting in great bodily injury.

3. On March ^{12-14, 2015} 12-14, 2015, I proceeded to trial before the Honorable Robin B. Stilwell and a jury. The jury found me guilty as charged. Judge Stilwell sentenced me to fifteen years imprisonment.

4. I filed a timely notice and John H. Strom of the South Carolina Office of Appellate Defense was appointed to represent me. It took over a year for a partial transcript to be produced. On July 5, 2016, the Office of Appellate Defense received an unsigned facsimile from Court Reporter Hiskell stating that her records for several cases, including my case, were stolen. As a result, "certain portions" of my transcript were not available.

5. On March 14, 2017, I attended a reconstruction hearing before Judge Stilwell. At the hearing, I was represented by Appellate Defender John H. Strom. Assistant Solicitors Sara Lee Drawdy, Judy Munson, and Stan Overby represented the State.

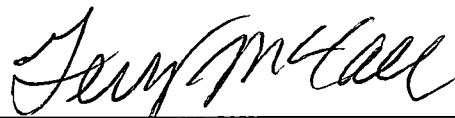
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APPELLATE DEFENSE

6. I understand that Judge Stilwell had determined that the missing portions of the trial record can be adequately reconstructed so as to allow for meaningful appellate review. I understand that I have the right to appeal Judge Stilwell's determination. I further understand that the direct appeal of my conviction would be held in abeyance during the appeal of the reconstruction finding.

7. After discussion with counsel, **I do not wish** to appeal the reconstruction findings of Judge Stilwell. I have been informed that if I drop the appeal of the reconstruction that I forever waive those issues that could be raise regarding the adequacy of my trial transcript.

8. In light of the risks which have been explained to me, it is my desire not to appeal the reconstruction of the record. I have made this decision on my own, with a full understanding of all the possible consequences of this action.

9. **I do not wish to appeal Judge Stilwell's determination that the missing portions of my trial record could be adequately reconstructed so as to allow for meaningful appellate review.**



Terry McCall

SWORN TO before me this 9th
day of October, 2017.

Catharine A. Ornesa (L.S.)
Notary Public for South Carolina
My Commission Expires: _____

~~My Commission Expires December 22, 2016~~

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

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THE STATE,

RESPONDENT,

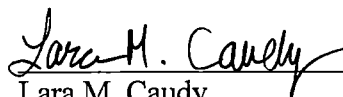
V.

TERRY EDWARD MCCALL,

APPELLANT

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Motion to Accept Decision Not to Appeal the Ruling Reconstructing the Record in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of October, 2017.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of October, 2017.



(L.S.)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.



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

October 18, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

Re: The State v. Terry Edward McCall
Appellate Case No. 2015-001097

Dear Ms. Kitchings:

Enclosed are an original and six copies of the Motion to Accept the Decision Not to Appeal the Ruling Reconstructing the Record in the above referenced case.

Thank you for your assistance in this matter. If the Court requires any further information or has any questions, please do not hesitate to contact me.

Sincerely,

Lara M. Caudy
Appellate Defender

LMC/meb

Enclosures

cc: J. Benjamin Aplin, Esquire
Terry Edward McCall, #233236