

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 11 2017

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

Case No. 2015-CP-40-4689
Appellate Case No. 2017-000163

Henry Pressley.....Respondent,

v.

Eric Sanders.....Appellant.

**RETURN IN OPPOSITION TO
MOTION TO DISMISS**

The Appellant respectfully submits this Return to the Respondent’s Motion to Dismiss, which was filed and served on December 6, 2017.

The entire basis for the Respondent’s motion is an allegation that the Appellant failed to request and/or obtain the trial transcript in a timely manner. As the discussion below and the exhibits to this Return will demonstrate, the Respondent’s implication that the Appellant has been dilatory in his efforts to get the transcript is inaccurate. The following timeline sets forth the events related to the Respondent’s motion:

1. The Appellant commenced this appeal on January 27, 2017. On January 30, 2017, counsel for the Appellant made a timely request to the trial court reporter for the trial transcript. (Exhibit 1.)

2. On February 3, 2017, counsel for the Appellant received an e-mail from court reporter Crystal Holmes acknowledging receipt of the trial transcript request. (Exhibit 2.)

3. On April 20, 2017, the Office of Court Administration notified the attorneys of record that Ms. Holmes had been granted an extension to complete the trial transcript. (Exhibit 3.)

4. Counsel for the Appellant did not receive any further communication from Ms. Holmes or from Court Administration in the six weeks following that extension order and reasonably believed Ms. Holmes was still working on the transcript.

5. In June 2017, after this Court requested an update on the status of the trial transcript, counsel for the Appellant sent a letter to Court Administration inquiring about the transcript. (Exhibit 4.)

6. In response to that letter, an employee of Court Administration called counsel for the Appellant and informed him that Ms. Holmes had left her position as a court reporter without preparing this transcript. The employee said that she would check to make sure that another court reporter was assigned to prepare the transcript and that the contact information for the new court reporter would be provided once that had been determined.

7. Prior to that telephone conversation, counsel for the Appellant had not received any notification that the original court reporter had resigned from her position or that no one was then working on the transcript.

8. Counsel for the Appellant did not receive any further communication, written or oral, from Court Administration during the rest of the summer. Counsel for the Appellant believed Court Administration was still finding another court reporter and/or that the

replacement court reporter was working on the transcript and would contact him when it was ready.

8. On September 20, 2017, after this Court requested another update, counsel for the Appellant sent a second letter to Court Administration asking if a new court reporter had been assigned to prepare the transcript. (Exhibit 5.)

9. Counsel for the Appellant did not receive any response to that letter until October 30, 2017, when he received a letter from a new court reporter regarding the transcript. (Exhibit A to Respondent's Motion.)

10. Despite having already ordered the trial transcript in January, the Appellant contacted the new court reporter via telephone in the first week of November 2017 to respond to her letter. Counsel for the Appellant had previously indicated to counsel for the Respondent that he still planned to obtain the transcript. (Exhibit A to Respondent's Motion.)

11. Counsel for the Appellant sent the new court reporter a check for the amount stated in her letter of October 30, 2017. This check was sent to the address listed on the court reporter's letter, but it was returned by the Postal Service marked undeliverable. The Appellant obtained a correct address and resent the check. After she received that check, however, the court reporter responded that she had quoted the price for a copy of the transcript, and a higher amount would be necessary for the original. This telephone communication occurred on November 17, 2017.

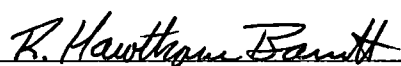
12. Counsel for the Appellant requested a check for the new amount from his client's insurance carrier shortly before Thanksgiving, and he understands that it is being sent, or has already been sent, to the court reporter.

As this series of events demonstrates, the Appellant made a timely request for the trial transcript after commencing this appeal. The long delay in obtaining the trial transcript was not due to any dilatory conduct by the Appellant. Rather, it appears to have resulted from administrative problems and delays that resulted after the original court reporter resigned from her position. The Appellant contacted the new court reporter about the transcript within a few days of learning her identity and contact information. Contrary to the Respondent's allegation, that contact certainly occurred less than thirty days after the new court reporter's first letter.

Because the issue on appeal depends largely on the testimony and evidence at trial, the Appellant needs the trial transcript in order to prepare the Initial Appellant's Brief. The Appellant fully intends to file and serve that brief within thirty days after receiving a copy of the trial transcript.

The Appellant understands, and even shares, the Respondent's frustration with the delay in obtaining the trial transcript. However, the delay has been caused by events beyond the Appellant's control, and it would be fundamentally unfair to deny the Appellant his chance to seek review of the challenged trial court order based on those events.

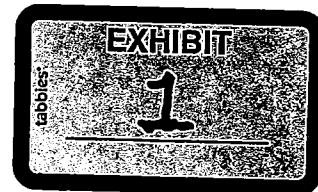
For all of these reasons, this Court should deny the Respondent's motion and allow this appeal to continue in its normal course.



R. Hawthorne Barrett
Richard A. Jones, III
Turner Padgett Graham & Laney P.A.
P.O. Box 1473
Columbia, SC 29202
(803) 254-2200
TBarrett@TurnerPadgett.com
TJones@TurnerPadgett.com

December 11, 2017

Attorneys for the Appellant



Turner | Padget

REPLY TO:

R. Hawthorne Barrett

E-Mail: TBarrett@TurnerPadget.com
Writer's Direct Dial: (803) 227-4219
Writer's Direct Fax: (803) 400-1454

January 30, 2017

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Henry Pressley v. Eric Sanders
Civil Action No. 2015-CP-40-4689
Our File No. 1464.7564

Dear Ms. Kitchings:

Enclosed is a printed copy of an email in which the Appellant has ordered a copy of the trial transcript. I am providing a copy of this correspondence to you, to opposing counsel and to the Office of Court Administration pursuant to Rule 207(a)(1), SCACR. Please let me know if you need any additional information from me.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

R. Hawthorne Barrett

RHB
Enclosure

cc: Page M. Kalish, Esq.
Office of Court Administration

Barrett, Thorne

From: Barrett, Thorne
Sent: Monday, January 30, 2017 11:13 AM
To: 'CHolmes@sccourts.org'
Subject: trial transcript order

Re: Henry Pressley v. Eric Sanders (C/A No. 2015-CP-40-4689)

Dear Ms. Holmes:

It is my understanding that you served as the court reporter for the trial of this case, which took place before Judge Manning in Richland County on October 12-13, 2016. Our client has filed an appeal in this case, and we wish to obtain a copy of the transcript for the entire trial. We will, of course, pay for the transcript in accordance with the S.C. Appellate Court Rules. By hard copies of this correspondence, we are notifying opposing counsel, the Clerk of Court for the Court of Appeals, and the Office of Court Administration of this request.

Thank you for your kind assistance, and please do not hesitate to contact me if you need additional information.

Sincerely,

Thorne Barrett

R. Hawthorne Barrett
Attorney
PO Box 1473 | Columbia, SC 29202
1901 Main Street, Suite 1700 | Columbia, SC 29201
803-227-4219 | Fax 803-400-1454
tbarrett@turnerpadget.com
[Bio](#) | [vCard](#) | [Location](#)

Turner | Padget

Barrett, Thorne

From: Holmes, Crystal <CHolmes@sccourts.org>
Sent: Friday, February 3, 2017 10:03 AM
To: Barrett, Thorne
Subject: Re: trial transcript order Henry Pressley v. Eric Sanders



?Mr. Barrett,

I am in receipt of your request for the above-referenced transcript.

Thank you,

Crystal Holmes

Circuit Court Reporter

5th Circuit

From: Barrett, Thorne <TBarrett@TurnerPadget.com>
Sent: Monday, January 30, 2017 11:13 AM
To: Holmes, Crystal
Subject: trial transcript order

Re: Henry Pressley v. Eric Sanders (C/A No. 2015-CP-40-4689)

Dear Ms. Holmes:

It is my understanding that you served as the court reporter for the trial of this case, which took place before Judge Manning in Richland County on October 12-13, 2016. Our client has filed an appeal in this case, and we wish to obtain a copy of the transcript for the entire trial. We will, of course, pay for the transcript in accordance with the S.C. Appellate Court Rules. By hard copies of this correspondence, we are notifying opposing counsel, the Clerk of Court for the Court of Appeals, and the Office of Court Administration of this request.

Thank you for your kind assistance, and please do not hesitate to contact me if you need additional information.

Sincerely,

Thorne Barrett

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R. Hawthorne Barrett

Attorney

PO Box 1473 | Columbia, SC 29202

1901 Main Street, Suite 1700 | Columbia, SC 29201

803-227-4219 | Fax 803-400-1454

tbarrett@turnerpadget.com<mailto:tbarrett@turnerpadget.com>

Bio<../../../../../../../../Program%20Files/eMailSignature/editor/http://www.turnerpadget.com/attorneys/details/r-hawthorne-barrett/> | vCard<[https://urldefense.proofpoint.com/v2/url?u=http-](https://urldefense.proofpoint.com/v2/url?u=http-3A_vcard.turnerpadget.com_RHB.vcf&d=DwMF-g&c=YGvVmrQQ6VQOFx3Z93C9uQ&r=nsCLgZ9IfCh63b2XxtDoRLrzQJqiOJtrBerESZkqIQI&m=IP-Wg39MYdHN-anx0Z9qC7Gtbp6cfsfWAF0w2ZnCIA&s=LcKgyzQ5M0Z3OJBXekhZsAOrKfx65USvJh7EAOToSb0&e=>)

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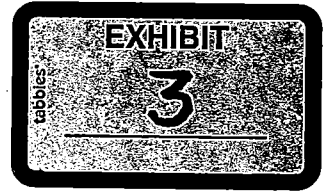
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The Supreme Court of South Carolina

( Henry Pressley  
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TITLE OF ( V. 2015CP4004689  
CASE ( ( ( ( ( Eric Sanders  
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Notice

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Upon request and for good cause shown, Crystal Holmes, Court Reporter, is hereby granted an extension up to and including April 30, 2017 to prepare and deliver the Transcript of Record in the above case.

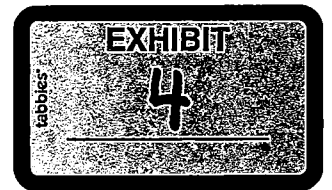
*Desiree Allen*  
Court Services Manager  
South Carolina Court Administration

Columbia, South Carolina  
04/20/2017

cc: R. Hawthorne Barrett

Crystal Holmes

# Turner | Padget



**R. Hawthorne Barrett**

**REPLY TO:**

**E-Mail: TBarrett@TurnerPadget.com**  
**Writer's Direct Dial: (803) 227-4219**  
**Writer's Direct Fax: (803) 400-1454**

June 8, 2017

The Hon. Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Henry Pressley v. Eric Sanders  
Appellate Case No. 2017-000163

Dear Ms. Kitchings:

This letter is in response to yours dated June 6, 2017, regarding the status of the trial transcript. I have not yet received a copy of the transcript. Enclosed is a copy of a letter to the Office of Court Administration inquiring about the transcript's status. I will notify you as soon as I receive a response from the Office of Court Administration. If you need any additional information from me in the meantime, please let me know.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

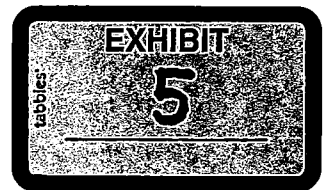
A handwritten signature in black ink, appearing to read "R. Hawthorne Barrett".

R. Hawthorne Barrett

RHB  
Enclosure

cc: Page M. Kalish, Esq.

# Turner | Padget



**R. Hawthorne Barrett**

**REPLY TO:**

**E-Mail: TBarrett@TurnerPadget.com**  
**Writer's Direct Dial: (803) 227-4219**  
**Writer's Direct Fax: (803) 400-1454**

September 20, 2017

South Carolina Office of Court Administration  
1220 Senate Street, Suite 201  
Columbia, SC 29201

Re: Henry Pressley v. Eric Sanders  
Civil Action No. 2015-CP-40-04689  
Appellate Case No. 2017-000163

Dear Sir/Madam:

I am writing to inquire about the status of the trial transcript for this case, which was tried in the Richland County Court of Common Pleas before the Honorable L. Casey Manning on October 12-13, 2016. In response to a previous inquiry about this transcript, your office informed me that the original court reporter had resigned and that a new court reporter would be assigned to finish the job. Please let me know the status of this transcript at your earliest convenience, as I need to advise the Court of Appeals. Thank you for your kind attention to this matter.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

A handwritten signature in black ink, appearing to read "R. Hawthorne Barrett".

R. Hawthorne Barrett

RHB

cc: Hon. Jenny Abbott Kitchings  
Page M. Kalish, Esq.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

---

Case No.: 2015-CP-40-4689  
Appellate Case No. 2017-000163

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RECEIVED  
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SC Court of Appeals

Henry Pressley,.....Respondent,

v.

Eric Sanders,.....Appellant.

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**PROOF OF SERVICE**

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The undersigned, an attorney in this matter for the Appellant Eric Sanders, certifies that I have this 11<sup>th</sup> day of December, 2017, served a copy of the **Return In Opposition to Motion to Dismiss** upon counsel for the Respondent by causing it to be deposited in the United States mail with sufficient postage attached, addressed to:

Page M. Kalish, Esq.  
Palmetto Law Center, P.C.  
791 Greenlawn Dr., Suite 2  
Columbia, SC 29209

(Signature on next page.)



---

R. Hawthorne Barrett  
Richard A. Jones, III  
Turner Padgett Graham & Laney P.A.  
P.O. Box 1473  
Columbia, SC 29202  
(803) 254-2200  
[TBarrett@TurnerPadgett.com](mailto:TBarrett@TurnerPadgett.com)  
[TJones@TurnerPadgett.com](mailto:TJones@TurnerPadgett.com)

Attorneys for the Appellant

December 11, 2017

# Turner | Padget

REPLY TO:

R. Hawthorne Barrett

E-Mail: TBarrett@TurnerPadget.com  
Writer's Direct Dial: (803) 227-4219  
Writer's Direct Fax: (803) 400-1454

December 11, 2017

**Via Hand Delivery**

The Hon. Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RECEIVED

DEC 11 2017

SC Court of Appeals

Re: Henry Pressley v. Eric Sanders  
Civil Action No. 2015-CP-40-4689  
Our File No. 1464.7564

Dear Ms. Kitchings:

Enclosed is the original and one copy of Appellant's Return in Opposition to Respondent's Motion to Dismiss along with the Proof of Service. Please file the originals and return the stamped copies to our courier. Thank you for your kind assistance.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.



R. Hawthorne Barrett

RHB  
Enclosures

cc: Page M. Kalish, Esq.