

STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM HORRY COUNTY
Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2015-002107

RECEIVED
JAN 29 2018
SC Court of Appeals

THE STATE,

Respondent,

v.

ARNOLD LEA WARD,

Appellant.

**RETURN TO MOTION FOR EXTENSION
OF TIME AND RETURN TO MOTION FOR
ORDER COMPELLING DISCOVERY**

Respondent (the State), by and through undersigned counsel and making Return to Appellant's motion for extension of time and his motion for an order compelling discovery, would respectfully show unto this Court:

1. Appellant Arnold Lea Ward was indicted at the January 2007 term of the grand jury of Horry County for attempted first degree burglary. (Indictment No. 2007-GS-26-418). He was represented by William Thomas Floyd, Esquire. On April 13-14, 2010, Appellant proceeded to a trial by jury before the Honorable Steven H. John pursuant to which he was found guilty as indicted. Judge John sentenced Appellant to fifteen (15) years' imprisonment.

2. Appellant timely filed and served notice of appeal and Wanda H. Carter of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Appellant's conviction on February 29, 2012. State v. Ward, Op. No. 2012-UP-123 (S.C. Ct. App. filed February 29, 2012). The Court of Appeals returned the remittitur to the circuit court on

March 16, 2012.

3. On August 12, 2012, Appellant filed an Application for Post-Conviction Relief (PCR) in the Horry County Court of Common Pleas. The State made a return to the Application on December 17, 2012, and an evidentiary hearing into the matter was convened on June 19, 2014, before the Honorable Benjamin H. Culbertson at the Horry County Courthouse. Appellant was present and was represented by Tristan M. Shaffer, Esquire. The State was represented by Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office.

4. In an Order of Dismissal dated August 1, 2014, Judge Culbertson denied and dismissed the Application with prejudice. Appellant timely served and filed a notice of appeal and a *Johnson* petition for a writ of certiorari was submitted on his behalf by Assistant Appellate Defender John H. Strom of the South Carolina Office of Appellate Defense. In an order dated August 20, 2015, the Supreme Court denied the petition and on September 9, 2015, sent the remittitur to the lower court.

5. Appellant subsequently filed a motion for after/newly discovered evidence in the Horry County Court of General Sessions. On September 1, 2015, a hearing into the matter was convened before the Honorable Benjamin H. Culbertson at the Horry County Courthouse. Appellant was present and was appeared *pro se*. The State was represented by Assistant Solicitor Bradley C. Richardson of the Fifteenth Circuit Solicitor's Office. At the conclusion of the hearing, Judge Culbertson orally denied Appellant's motion.

6. In a Form 4C Order issued September 1, 2015, the day of the hearing, Judge Culbertson denied the motion for newly discovered evidence and in a separate Form 4C Order issued September 17, 2015, Judge Culbertson denied Appellant's motion for reconsideration of that denial.

7. In October of 2015 Appellant filed a notice of intent to appeal with this court and on August 1, 2017, he submitted his initial brief of Appellant. In an order dated November 15, 2017, this Court granted the State a first extension until December 13, 2017, to serve and file the initial brief of respondent. In a letter dated December 13, 2017, the State requested a second extension of time in which to serve and file the initial brief of respondent.

8. On December 18, 2017, Appellant filed a “Motion of Default for Failure to Timely File, Objection to Extension of Time and Motion for Judgement on the Pleadings” complaining in part that the State had not timely filed its Initial Brief. In an Order dated December 19, 2017, this Court granted the State’s request for an extension until January 12, 2018. On January 4, 2018, the State filed a return to Appellant’s motion arguing it was moot and without merit. On January 12, 2018, the State filed its Initial Brief and Designation of Matter. In Order filed January 26, 2018, this Court denied Appellant’s motion.

9. On January 17, 2018, Appellant filed the “Motion for Extension of Time” and “Motion for Order Compelling Discovery” which are the subjects of this return now filed on behalf of the State. Although it is not entirely clear, it appears Appellant is asking for an extension of time in which to serve and file the Record on Appeal (Rule 210, SCACR) and his Final Brief (Rule 211, SCACR) because he wants additional time to obtain and review an item he describes as “Horry County Grand Jury Transcript Case No: 2007-GS-26-00418,” which he is simultaneously asking this Court to compel the State to disclose. He asks that this Court allow him to amend his designation of matter to include the requested item.

10. The State opposes both Appellant’s motion for an order compelling discovery and his motion for an extension of time. The designation of matter may only propose to include material which may properly be included in the record on appeal. Rule 209(b), SCACR. The record on


appeal “shall not . . . include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCARC. Here, Appellant is asking this court to issue an order compelling discovery of material he claims he needs time to review and potentially add to his designation of matter. Despite the fact that the material Appellant now seeks does not exist, it also clearly was not presented to the lower court. Therefore, it may not be designated for inclusion in the record on appeal, and it may not be included in the record on appeal. Because the purported item may not be a part of the appeal presently before this Court, Appellant is in no need of an extension of time. The State therefore asks this Court to issue an order denying and dismissing Appellant’s motions.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

BY: 
J. Benjamin Aplin
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ATTORNEYS FOR RESPONDENT

January 29, 2018

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PROOF OF SERVICE

I, Angela Bennett, Administrative Coordinator, certify that I have served the *Return to Motion for Extension of Time and Return to Motion for Order Compelling Discovery* on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Arnold Lea Ward, SCDC #109169
Allendale Correctional Institution
Post Office Box 1151 F-3-B-23
Fairfax, SC 29827

I further certify that all parties required by Rule to be served have been served.

This 29th day of January, 2018.


ANGELA BENNETT
Administrative Coordinator
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

RECEIVED

January 29, 2018

JAN 29 2018

SC Court of Appeals

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

Re: State v. Arnold Lea Ward:
Appellate Case No. 2015-002107

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Respondent's *Return to Motion for Extension of Time and Return to Motion for Order Compelling Discovery* in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General

Enclosures

cc: Arnold Lea Ward, #109169
Victim Advocacy Division