

The Honorable Jenny A. Kitchings  
April 18, 2018  
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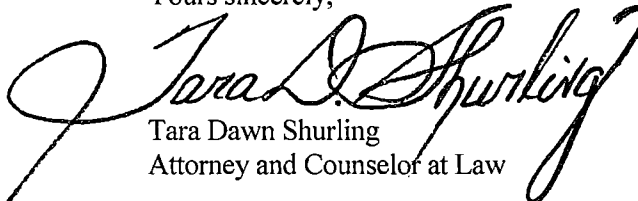
Appeals stays the direct appeal, if the Court feels that is necessary and appropriate. For the reasons noted above, I disagree with Mr. Aplin's assertion that "the presiding judge" quits being "the presiding judge" after the Notice of Appeal is filed. The relevant provision of the S. C. Court Reporter Manual clearly intends that further review be permitted by the presiding judge. Therefore, if any further action is required, I would submit that it would be re-filing the motion in the circuit court after the direct appeal is stayed by Order of the Court of Appeals. Should the Court conclude that the underlying motion should be heard by them as opposed to the circuit court, then I would ask for leave to re-file in the Court of Appeals.

Lastly, I strenuously disagree with Mr. Aplin's position that an assertion that matter heard in open court is not contained in the transcript provided by the Court Reporter, "would not require review of the backup tapes." Simply put, the backup audio recording would in fact be the very best evidence that everything heard in court was not transcribed. Since any Court Reporter is not likely to type an entire trial record at one sitting, there is always the danger that a Court Reporter might inadvertently start back transcribing at a point beyond where they left off. If there is material in the backup recording that *is not* in the transcript provided, that establishes that the record provided is not complete. A reconstruction hearing is more typically held where the Court Reporter's notes are lost and the backup system either was not used, failed to operate altogether or produced a recording of insufficient quality to transcribe a reliable record from.

Mr. Aplin has requested that I be required to listen to the backup audio recording with him. I have no objection to that request. He has however, also objected to my request that I be allowed to obtain a copy of the backup audio recording in order for my client to be given the opportunity to personally listen to these recordings, and satisfy himself that the record is accurate and complete. Since matters heard in open court are public record, I see no valid reason for denying my client that right. If however, the Court were to find that I may not be given a copy to review with my client, I would ask that the Court Reporter be required to play the backup recordings in a courtroom, and that my client be transported to that location in order that he might review the backup recordings along with Mr. Aplin and me.

I appreciate the Court's time and consideration of this request, and will await further instruction. For now, I remain,

Yours sincerely,



Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

cc: The Honorable Thomas A. Russo, Presiding Circuit Court Judge  
The Honorable Renee Elvis, Clerk of Court, Horry County  
J. Benjamin Aplin, Senior Assistant Deputy Attorney General  
Desiree Allen, Court Administration  
Kay Richardson, Circuit Court Reporter  
David Harold Campbell, #265686  
Jynere Friday

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April 18, 2018

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

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APR 20 2018

SC Court of Appeals

Re: State of South Carolina v. David Harold Campbell  
Appellate Case No. 2017-001229

Dear Ms. Kitchings:

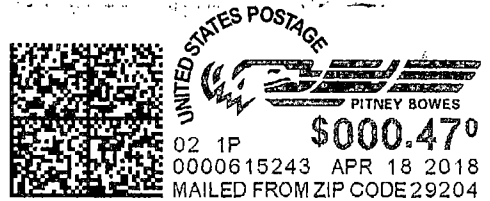
I am writing in response to Mr. Aplin's letter dated April 17, 2018. As you are aware, I filed a Motion to Stay the direct appeal in the above captioned matter with the Court of Appeals on April 10, 2018. That same date, I mailed my Motion for Authorization to Review Backup Tapes of Trial Proceeding to the Horry County Clerk of Court for filing.

Mr. Aplin is correct that the proper procedure for this situation is less than clear. It is accurate that the Court Reporter Manuel states "Further review of the record may be permitted by the presiding judge upon written request with good cause shown." *Id.* What that language does not provide, is the mechanism for requesting that "the presiding judge" authorize further review. While I certainly understand Mr. Aplin's point, the reality is Court Reporters have 60 days to provide a transcript once ordered. As you know, the defendant has thirty (30) days to order the transcript for the direct appeal. Therefore, the ten (10) days post-sentencing during which the presiding judge still has jurisdiction over the case will virtually always have run out before the transcript is even ordered. Perhaps of equal concern, this provision doesn't really give much guidance as to how we go about getting "permission" beyond the requirement that the request be put to the presiding judge in writing. I debated just writing Judge Russo a letter expressing my client's concerns about this transcript and erred on the side of caution by filing a motion. Once again, I see Mr. Aplin's point, however, I have seen many cases over the years where a Motion to Reconsider Sentence was filed in the circuit court after the Notice of Appeal was filed. In these situations, what typically happens is the moving party files a Motion to Stay the Direct Appeal in order to return jurisdiction to the circuit court for the presiding judge to rule on the post-trial motion. The operative considerations being whether the motion was filed within 10 days after sentencing as required by Rule 29(a), SCRCrimP, and whether a Motion to Stay the Direct Appeal was filed in order to return jurisdiction to the circuit court before the motion was ruled upon. Fortunately, the ten day rule found in Rule 29(a) is not at issue here. My personal belief is that this is more of an administrative matter versus one which required jurisdiction over the judgment. That being said, I will of course follow the Court's instructions on this matter, and will gladly re-file my motion in the circuit court *after* the Court of



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APR 20 2018

SC Court of Appeals

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