

STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM ORANGEBURG COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2017-000557

THE STATE,

v.

WILLIE YOUNG,

RECEIVED
SEP 07 2018
SC Court of Appeals
Respondent

Appellant.

**RETURN TO MOTION TO REMAND CASE
TO RECONSTRUCT THE RECORD**

Respondent, through undersigned counsel and making return to Appellant's "Motion to Remand Case to Reconstruct the Record; Motion to Hold Filing Deadlines in Abeyance," would respectfully show unto this Court:

1. Appellant was indicted by the Orangeburg County grand jury on January 28, 2002, for armed robbery (Indictment Number 2001-GS-38-2492). He was convicted as indicted following a jury trial held at the Orangeburg County Courthouse before the Honorable James C. Williams, Jr., on June 24-28, 2002. Appellant was sentenced to thirty (30) years' imprisonment. (Appellant's Exhibit A). A timely Notice of Appeal was filed on Applicant's behalf and an *Anders* brief was perfected by Robert M. Pachak, Esquire, of the South Carolina Office of Appellate Defense. This

Court reviewed the record pursuant to *Anders* and dismissed the appeal. *State v. Young*, Op. No. 2003-UP-564 (S.C. Ct. App. filed September 29, 2003).

2. Appellant subsequently submitted multiple collateral challenges to his conviction and sentence including an initial post-conviction relief (PCR) application filed in 2003 (2003-CP-38-1585) which was denied and dismissed by order of the Honorable Diane S. Goodstein on June 22, 2005, following an evidentiary hearing; a second PCR application filed in 2010 (2010-CP-38-1759) which was dismissed by order of Judge Goodstein on July 18, 2012; and a third PCR application filed in 2013 (2013-CP-38-00757), which was dismissed by order of the Honorable Maité Murphy on March 20, 2015. Appellant's appeal from the dismissal of his first application was dismissed by this Court on April 20, 2007 and his appeal from the dismissal of his third application for PCR was dismissed by order of the South Carolina Supreme Court dated October 21, 2015. Appellant later attempted to submit a January 31, 2016 petition for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court, and it was denied by order dated March 24, 2016.

3. In regard to the matter currently before this Court, Appellant appears to have submitted a motion for a new trial based on after discovered evidence in the court of general sessions pursuant to Rule 29(B), SCRCrimP. (Appellant's Exhibit B).

4. A hearing on Appellant's Rule 29(b) motion was convened at the Orangeburg County Courthouse on October 24, 2016, before the Honorable Edgar W. Dickson. Appellant was present and though he consulted with Assistant Public Defender Breen Stevens, the court declined to appoint Mr. Stevens as counsel and Appellant presented his argument *pro se*. Respondent was represented by Assistant Solicitor Ashley Cornwell of the First Circuit Solicitor's Office. (Appellant's Exhibit C).

5. In a written order dated December 21, 2016, and filed with the Orangeburg County Clerk the same day, Judge Dickson denied Appellant's Rule 29(b) motion. (Appellant's Exhibit D).

6. Appellant has now filed and served a notice of appeal from that denial and is currently represented in this appeal by Christopher R. Geel, Esquire.

7. On July 26, 2018, Appellant filed a "Motion to Remand Case to Reconstruct the Record." Attached to the motion, Appellant submitted seven exhibits, labeled A, B, C, D, E, F, & G, which consist of the Clerk of Court's records, Appellant's Rule 29(b) motion, a transcript of the motion hearing, the court's file stamped order denying the motion, the notice of appeal, and copies of Mr. Geel's correspondence with the Orangeburg County Clerk of Court.

8. By letter dated August 29, 2018, this Court instructed Respondent to file a return to the motion. This return now follows.

9. In his motion, Appellant states that although he has been given copies of the pleadings in question, the documents are incomplete. He contends pages and attachments are missing from the pleadings, and that the pleading he has located include erroneous case numbers and Clerk's Office stamps. Appellant further contends the copy of Judge Dickson's Order denying his Rule 29(b) motion, while appearing to be file-stamped by the Clerk's Office, contains a stamp that is illegible. Appellant argues he is unable to verify the completeness or authenticity of the order of dismissal and complains that the handwritten case number on that order is inconsistent with the General Sessions case number for his motion. He further complains about the documents in question not being on file with the Clerk's Office. Ultimately, Appellant argues he cannot attempt to litigate this case without a complete and unadulterated record and asks this Court to remand with directions to re-open the record and allow him to submit missing/misfiled documents and to

further inquire into the completeness of the record.

10. Respondent respectfully opposes the motion to remand. While Respondent acknowledges Appellant bears the burden of providing the court with a record sufficient to allow appellate review, it is unclear why the existing combination of the complete transcript of the proceedings in the lower court and the copy of the written order denying Appellant's Rule 29(b), SCRCrimP, motion for a new trial based on after-discovered evidence would not provide a sufficient record for this Court's review of the propriety of the lower court's ruling. Indeed, while the file-stamp on the copy of the order Appellant provided to Respondent is indeed faint, it is not entirely illegible, and appears to bear a filing date of December 21, 2016, the same date the order was signed by Judge Dickson. Also, based on a review of Appellant's attached but non file-stamped motion, it appears the only document referenced as a possible attachment that could be missing is the indictment itself, which is already part of the Clerk's file and was reviewed by Judge Dickson. Finally, the "handwritten case number" noted at the top of the order is in fact the case number assigned to Appellant's third PCR application. This likely was added to the order by a staff member in the Clerk's office in a misguided effort to consolidate the current filing with one of Appellant's previous collateral challenges and does not impact the ability of this Court to review that order on appeal. As noted by the staff member in the Clerk of Court's office in a telephone conversation with counsel, missing inmate filings sometimes erroneously get filed under a prior PCR case number. For all of these reasons, Respondent submits a remand to reconstruct the record is unnecessary and therefore opposes the motion.

11. As to the motion to hold deadlines in abeyance, Respondent joins in the motion pending final resolution of Appellant's motion to remand.

WHEREFORE, having made Return, and for all of the reasons stated above, Respondent opposes Appellant's motion to remand case to reconstruct the record. The transcript provided by the court reporter and the order denying Appellant's Rule 29(b) motion in this matter are sufficient to allow for meaningful appellate review, and thereby fully protect Appellant's rights to due process and fundamental fairness. The State has no objection to Appellant's motion to hold the appeal in abeyance pending resolution of his motion to remand.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit

BY:



J. Benjamin Aplin
S.C. Bar No: 8729

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ATTORNEYS FOR RESPONDENT

September 7, 2018

STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM ORANGEBURG COUNTY
Edgar W. Dickson, Circuit Court Judge

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PROOF OF SERVICE

I, Troyeshi Brailey, Legal Coordinator, certify that I have served the Return to Motion to Remand Case to Reconstruct the Record on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to Christopher R. Geel, Esquire, 171 Church Street, Suite 201, Charleston, SC 29401.

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

This 7th day of September, 2018.



TROYESHI BRAILEY
Legal Coordinator
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ALAN WILSON
ATTORNEY GENERAL

September 7, 2018

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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. Willie Young
Appellate Case No. 2017-000557

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Respondent's Return to Motion to Remand Case to Reconstruct the Record in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General

Enclosures

cc: Christopher R. Geel, Esquire
Victim Advocacy Division