

The South Carolina Court of Appeals

John Garvin, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-001211

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JUL 02 2018

S.C. SUPREME COURT

ORDER

This case is transferred to the Supreme Court of South Carolina pursuant to Rule 204(a) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
John D Garvin, 355509
The Honorable Daniel E. Shearouse

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Hon. Michael G. Nettles, Circuit Court Judge

Case No. 2015-CP-42-4699

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JUN 28 2018

SC Court of Appeals

John Garvin Petitioner/Appellant,

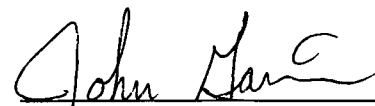
v.

State of South Carolina Respondent-Appellee.

NOTICE OF APPEAL

This Notice is hereby given that John Garvin, Petitioner-Appellant in the above name case, hereby appeals the Order of judgment. (Following timely Motion to reconsider and/or Alter/Amend Judgment dated June 7, 2018). This appeal is taken from a motion hearing that was held before the Honorable Michael G. Nettles and was held on February 21, 2018, respectively. Petitioner-Appellant received written notice of the entry of the Order on June 7, 2018. And enters in this action for an appeal of the decision made on May 29, 2018. A copy of the foregoing Judgment and/or Order are included with this Appeal.

DATED: June 25, 2018.



John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Hon. Edward W. Miller, Circuit Court Judge

Case No. 2015-CP-42-4699

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SC Court of Appeals

John Garvin Petitioner/Appellant,

v.

State of South Carolina. Respondent/Appellee

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NOTICE AND MOTION TO PROCEED
IN FORMA PAUPERIS UPON APPEAL

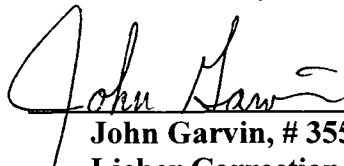
S.C. SUPREME COURT

To: Ms. Jordan A. Cox, Asst. Att’y. General, Attorney for Respondent/Appellee

YOU WILL PLEASE TAKE NOTICE, that upon the affidavit of John Garvin, sworn to on the 21st day of June, 2018, a Motion will be made at a term of this court, for an Order permitting Petitioner-Appellant to proceed with the appeal from the Order entered in this action on the 29 day of May, 2018, as a poor person, directing that he be furnished a copy of the stenographic transcript of the PCR Motion hearing that was held in this action without fee, and granting permission to appeal on the original record, upon the ground that said Plaintiff-Appellant has insufficient income and property to enable him to pay the costs, fees, and expenses to prosecute said appeal, and for such other and further relief as this Court may deem just and proper.

Petitioner-Appellant’s Motion is made and based on this notice and the attached motion, the affidavit of John Garvin, copies of which are served with this notice, and on the pleadings, papers, records, and files in this action.

DATED: June 25, 2018



John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Hon. Edward W. Miller, Circuit Court Judge

Case No. 2015-CP-42-4699

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JUN 28 2018
SC Court of Appeals

John Garvin Petitioner/Appellant,

v.

State of South Carolina. Respondent/Appellee.

AFFIDAVIT IN SUPPORT OF MOTION TO
PROCEED IN FORMA PAUPERIS UPON APPEAL

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S.C. SUPREME COURT

I, John Garvin, being first duly sworn, deposes and says:

1. I am the Petitioner-Appellant in the above – captioned case, and I make this affidavit in support of the attached Motion to Proceed In Forma Pauperis Upon Appeal and Motion for Authorization to have the Expense of Obtaining the Transcript of Petitioner’s February 21, 2018, PCR Motion hearing to be paid for by the South Carolina Commission on Indigent Defense, pursuant to S.C. Code Ann. §§ 17-3-310(G), 330(A) and 360(C) (1999 Supp.).

2. I am presently in the custody of Warden, Randell Williams at Lieber Correctional Institution, pursuant to a judgment of the Spartanburg County Court of General Sessions of the State of South Carolina rendered on May 23, 2013, convicting me of drug trafficking, pursuant to S.C. Code Ann. § 44-53-370(e)(3), and sentencing me to 25 years imprisonment.

3. I am unable because of my indigence to pay the cost, fees, and expenses that’s necessary to obtain the transcript of the PCR Motion hearing to execute this case for an appeal of the Petitioner’s denied motions. I am currently incarcerated and I have no income, in addition, I have no property of any worth. No other person has a beneficial interest in the outcome of this appeal.

4. During the Motion hearing I represented myself.

5. The transcript of those proceeding held in connection with Petitioner-Appellant’s Post-Conviction Relief application will be required, in order to properly review the facts raised by the Petitioner-Appellant at the February 21, 2018, PCR Motion hearing.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Hon. Edward W. Miller, Circuit Court Judge

Case No. 2015-CP-42-4699

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SC Court of Appeals

John Garvin Petitioner/Appellant,

v.

State of South Carolina. Respondent/Appellee.

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S.C. SUPREME COURT

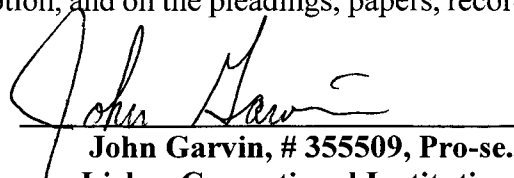
MOTION FOR AUTHORIZATION TO HAVE
THE EXPENSE OF OBTAINING TRANSCRIPT

Petitioner-Appellant, John Garvin, proceeding as pro-se moves this court for an Order granting the authorization to have the Expense of Obtaining the transcript of Petitioner-Appellant's PCR Motion hearing that was held on February 21, 2018, before the Honorable Michael G. Nettles, Circuit Court Judge, for the term of the Court of Common Pleas in Spartanburg County, pursuant to S.C. Code Ann. §§ 17-3-310(G), 330(A) and 360(C).

This said Motion will be made on the grounds that a copy of the February 21, 2018, PCR Motion Hearing transcript is needed to insure that the proposed order submitted by the Respondent's, covers all the facts raised at that motion hearing and that the Order ultimately entered by the Court is an accurate and complete statement of the facts. See Rule-52(a), SCRPC; also see *Marlar v. State*, 375 S.C. 407, 653 S.E.2d 266 (2007).

Petitioner-Appellant's Motion is made and based on this the attached motions, the affidavit of John Garvin, copies of which are served with this motion, and on the pleadings, papers, records, and files in this action.

DATED: June 25, 2018



John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472

SHIRLEY G. BROOM
16TH CIRCUIT COURT REPORTER
502 UNITY STREET
FORT MILL, SC 29715

June 10, 2018

Mr. John Garvin - #355509
Lieber Correctional Inst.
136 Wilborn Ave
Ridgeville, SC 29472

Re: John Garvin vs State of South Carolina
2015-CP-42-4699
Before Honorable Michael Nettles

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JUN 28 2018
SC Court of Appeals

This is to acknowledge that on June 9, 2018 I received your letter dated May 24, 2018 from South Carolina Court Administration which was dated June 5, 2018 requesting the transcript of record in the above-referenced matter.

Rule 607 provides that \$ 75 per page shall be charged per page for a copy of a transcript I have previously received a request for same from The Office of the Attorney General's office. Based on the current rate, the estimated cost for a copy could/will be \$37 50 plus priority fee of \$6 70 If knowing this information you still would like a copy, I will be able to provide same upon completion which I estimate to be on or before July 16th, 2018 upon receipt of a postal money order in the sum of \$44 20 Should the transcript be less than this, I will refund the difference Should it be more the balance will be due prior to mailing same, also by way of postal money order

Under our rules, I have sixty days in which to complete the transcript, after receipt of the deposit In addition, I am allowed to request from Court Administration thirty days extensions, if necessary, to complete the transcript You will be notified if extensions are granted

If you desire to cancel the request for the transcript, a cancellation request must be made in writing. You will be responsible for payment of any portion of the transcript that has been completed

Please forward all correspondence to the address referenced above

Thank you for your request in this matter

Shirley G. Broom
Official Court Reporter

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Hon. Michael G. Nettles, Circuit Court Judge

Case No. 2015-CP-42-4699

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JUN 28 2018
SC Court of Appeals

John Garvin Petitioner/Appellant,

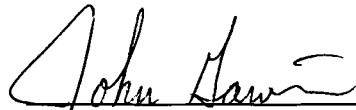
v.

State of South Carolina Respondant-Appellee.

CERTIFICATE OF SERVICE

I, John Garvin, certify that I have serve a **DECLARATION OF INMATE FILING, A NOTICE OF APPEAL, A MOTION TO PROCEED IN FORMA PAUPERIS UPON APPEAL, A MOTION FOR AUTHORIZATION TO HAVE THE EXPENSE OF OBTAINING TRANSCRIPT** on the Court by depositing a copy of it in the Institutional Mailbox to be delivered via United States First Class Postage Certified Mail on June 25, 2018, addressed to the Spartanburg County Clerk of Court, Hon. M. Hope Blackley, Clerk, 180 Magnolia Street, Spartanburg, South Carolina 29304; and United States First Class Postage mail addressed to the South Carolina Court of Appeals, Hon. Jenny A. Kitching, Clerk, 1015 Sumter Street, Columbia, S.C. 29201, and delivered via SCDC Intra-Agency Mail to the South Carolina States Attorney General Office, Ms. Jordan A. Cox, 1000 Assembly Street, Columbia, S.C. 29201

DATED: June 25, 2018
Ridgeville, South Carolina


John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472

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JUL 02 2018

**John Garvin
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 29472**

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JUN 28 2018
SC Court of Appeals

ATTN: Hon. Jenny A. Kitching, Clerk
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, S.C. 29201

RE: John Garvin v. State, 2015-CP-42-4699, Notice of Appeal

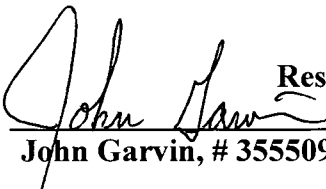
Dear Hon. Kitching:

Enclosed please find for filing a **DECLARATION OF INMATE FILING**, and a **NOTICE OF APPEAL**, in the above case, together with a copy and a self-postage paid stamped return envelope for returning a clock stamped copy. Also enclosed are the following:

- 1.) A Certificate of Service of the Notice of Appeal on Respondent.
- 2.) A copy of the Order that is to be challenged on Appeal.
- 3.) A Motion to Proceed Informa Pauperis on Appeal, with Supporting Affidavit.
- 4.) A Motion for Authorization to have the Expense of Obtaining the Transcript.

To be filed on the date as given to the institutional internal mailroom, pursuant to Rule-262(a)(2), SCACR and *Moses v. State*, 420 S.C. 500, 803 S.E.2d 718 (2017).

Dated: June 25, 2018


Respectfully,
John Garvin, # 355509, Pro-se.

Enclosure
cc: Hon. M. Hope Blackley, Spartanburg County Clerk of Court
Jordan A. Cox, Asst. Att'y. General

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

John Garvin, # 355509,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2015-CP-42-4699

ORDER ON APPLICANT'S
PRO SE MOTIONS

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN -4 AM 11:54
S. HOPE BLACKLEY

This matter is before the Court from an application for post-conviction relief filed November 13, 2015. A hearing was convened February 21, 2018 at the Spartanburg County Courthouse to address a number of outstanding motions filed by Applicant *pro se*. Applicant was present and represented himself. Respondent was represented by Valerie Garcia Giovanoli of the Office of the Attorney General.

At the start of the hearing, the court inquired into whether Applicant was asserting his right of self-representation knowingly and voluntarily. Applicant confirmed he previously relieved two court appointed attorneys. Applicant indicated he was aware of his right to counsel and the dangers of proceeding *pro se*. Applicant also indicated it was his wish to represent himself in his PCR action. Applicant proceeded to put his motions before the court. The court rules as follows on Applicant's motions:

I. *Motion for entry of default and judgment in default*

Applicant moved for an entry of default and judgment in default. Applicant argued the State failed to respond to his PCR application within the 90 days required by the rules. However, Applicant failed to show how he was prejudiced by the delay. For an applicant to be granted default judgment in post-conviction relief, he must show prejudice from

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SC Court of Appeals

the State's delay in failing to timely answer his application. Kneece v. State, 269 S.C. 177, 236 S.E.2d 745 (1977); Herring v. State, 262 S.C. 597, 206 S.E.2d 885 (1974). The mere passage of time, alone, is not prejudicial. Having failed to show how he has been prejudiced, Applicant's motion is **denied**.

II. *Motion for leave to amend petition*

Applicant moved for leave to amend his PCR application. Respondent did not oppose the motion. This Court finds Applicant is entitled to amend his application. Therefore, Applicant's motion is **granted**.

III. *Motion to inspect grand jury documents and challenge array of grand jury*

Applicant moved to inspect and challenge grand jury documents and proceedings. Applicant claimed he believes no grand jury ever convened to indict him and that the State has conspired against Applicant. Respondent agreed a PCR applicant may be entitled to grand jury documents, but only upon a showing of good cause. Respondent argued Applicant's conspiracy claim was pure conjecture and not the basis for good cause. Respondent also informed the court that upon her investigation, she does not believe the documents Applicant seeks (impanelment documents including the sex, age, race of grand jury members, minutes of grand jury proceedings, etc) even exist. This court finds Applicant is entitled to copies of his indictment which bears the true bill stamp and the signature of the Grand Jury Foreperson. Therefore, the motion is **denied in part and granted in part**.

IV. *Motion for leave to file requests for production, interrogatories, and requests for admissions*

Applicant moved for leave to file requests for production, interrogatories, and requests for admissions. Attached to Applicant's motions were the actual requests and interrogatories, which are extremely specific and detailed in nature. However, Applicant could not articulate his need for or the

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CLERK OF COURT
STANTON COUNTY
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M. HOPE BRADLEY

relevancy of such information and therefore cannot demonstrate good cause to invoke these discovery tools. Therefore, these motions are **denied**.

V. *Motion to compel defense attorney to produce defense file*

Applicant moved to compel his trial counsel, Scott D. Robinson, to supply him with a copy of his defense file. Respondent did not oppose the motion, but expressed concern regarding how many times trial counsel must supply a copy of his defense file to Applicant. Trial counsel is ordered to provide a copy of his defense file from Applicant's criminal case to Applicant within ten (10) days of service of this order upon him. In the event trial counsel has previously provided a copy of his defense file to Applicant, trial counsel should submit to the Attorney General an affidavit swearing to such. The Attorney General shall then file his affidavit in this action with the Spartanburg County Clerk of Court. This motion is **granted**.

VI. *Motion for a pre-trial hearing*

Applicant moved for a pre-trial hearing to resolve issues prior to his evidentiary hearing. This motion is **granted** and the hearing held on February 21, 2018 shall constitute pre-trial hearing.

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CLERK OF COURT
SPARTANBURG COUNTY
2018 JUN 14 AM 11:54
M. HOPE BLANKLEY

VII. *Motion to subpoena witnesses for evidentiary hearing*

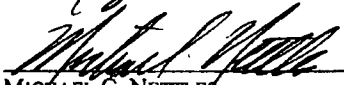
Applicant orally moved for leave to subpoena law enforcement officers involved in his criminal case to testify at his PCR evidentiary hearing. This Court finds Applicant is entitled to subpoena witnesses he intends to call during his PCR evidentiary hearing. Therefore, the motion is **granted**.


Applicant further indicated all of his outstanding motions have been resolved and no other matter is pending before the court.

Respondent requested Applicant be ordered to serve copies of any subpoenas he issues for a

witnesses' appearance at the hearing in order to provide proper notice to the State. Respondent's request is granted. Applicant must serve a copy of any subpoena issued for a witness to testify at the evidentiary hearing.

AND IT IS SO ORDERED this 29 day of May, 2018.


MICHAEL G. NETTLES
Presiding Judge
Seventh Judicial Circuit

, South Carolina

FILED
CLERK OF COURT
CHARLESTON COUNTY
2018 JUN -4 AM 11:55
M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

May 4, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

John Carwin # 355509

CASE # 2015CP42-4699

Applicant

CERTIFICATE OF SERVICE

VS
State
Respondent

I certify that, on this date, I served a copy of the Notice on Applicant's Pro Se Motions
In this action dated 5-29 2018 on 6-4-18

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

John Carwin
Megan Jamison

6-5-18
(Date)

Cecilia King
(Signature)

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JOHN GARVIN, #355509,

Applicant,

v

STATE OF SOUTH CAROLINA,

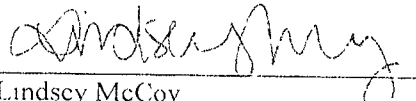
Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order on Applicant's pro se Motions** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to.

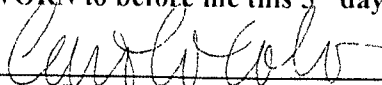
John Garvin, #355509, SA-0028-B
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

This 5th day of June, 2018



Lindsey McCoy
Legal Assistant

SWORN to before me this 5th day of June, 2018.



Notary Public for South Carolina.

My Commission Expires: 5/20/2025

John Garvin - #355509
Lieber Correctional Institution
136 Wilborn Ave.
Ridgeville, S.C. 29472

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SC Court of Appeals

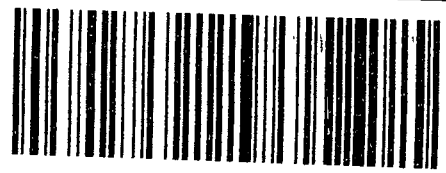
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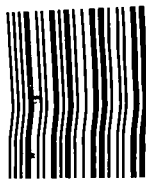


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PIREY BOWES



Attn: Hon. Jenny A. Kitching, Clerk
The South Carolina Court of Appeals
1015 Sumter Street
Columbia, S.C. 29201



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