

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS

THE HONORABLE R. LAWTON MCINTOSH  
CASE NO. 2017-CP-42-04446  
APPELLATE CASE NO: 2019-001130

Stephanie Leigh Howard,  
S.C.D.C. No. 371295

Appellant,

versus

State of South Carolina,

Respondent.

-----  
**RETURN TO RESPONDENT'S MOTION TO COMPEL  
SUPPLEMENTATION OF APPENDIX**  
-----

Noel Turner, Esquire  
William H. Rhodes, Esquire  
Burts Turner & Rhodes  
260 North Church Street  
Spartanburg, S.C. 29306  
Attorneys for Appellant

Date: January 30, 2020

Other Counsel of Record:

Jacob A. Isenberg, Esq.  
Alan Wilson, Esq.  
S.C. Attorney General's Office  
Rembert C. Dennis Building  
1000 Assembly Street  
Columbia, SC 29201

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**FEB 03 2020**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE SUPREME COURT

Stephanie Leigh Howard, )  
S.C.D.C. No. 371295 )

Appellant, )

vs. )

State of South Carolina, )

Respondent )

**RETURN TO RESPONDENT'S  
MOTION TO COMPEL  
SUPPLEMENTATION  
OF APPENDIX**

Appellate Case No.: 2019-001130  
2017-CP-42-04446

The Appellant would respectfully show the Court:

1. Respondent's counsel contacted Appellant's Counsel the day that the Respondent filed this Motion and asked whether the Appellant would consent to amend the Appendix to include the transcript of the Motion to Reconsider, which had been inadvertently omitted [**copy attached as Exhibit I**].

2. Appellant's counsel indicated that he had no objection, and that he would provide the Court with a Supplemental Appendix in order to add the transcript. This is reflected in the Respondent's Motion.

3. The Respondent has sought, and has been granted, multiple extensions to file a Return to the Appellant's Petition for Writ of Certiorari, which was filed and served in September 2019.

4. The Appellant is seeking Post Conviction Relief; the Appellant respectfully submits that she has a meritorious case; and the Appellant remains incarcerated while this appeal is pending.

5. Respondent's counsel informed Appellant's counsel that he would wait and file his Return to the Petition for Writ of Certiorari after the Court issued an Order on his Motion, and after Appellant's counsel had filed and served bound copies of the Supplemental Appendix.

6. Appellant's counsel informed Respondent's counsel that he was strongly opposed to further extensions on the filing of Respondent's Return, as the Respondent has had more than adequate time to draft and submit a Return, and the Appellant is incarcerated during this appeal.

7. Appellant's counsel further informed Respondent's counsel that there was no need to file a "Motion to Compel" because the Appellant consented to supplement the Appendix; Respondent's counsel only needed to file a "Motion to Supplement the Appendix" and inform the Court that the parties were in agreement.

8. Respondent's counsel has asked this Court to hold Respondent's obligation to file his Return to the Appellant's Petition for Writ of Certiorari in abeyance.

9. Under Rule 243(f), SCACR, the transcript of the Motion to Reconsider should be included in the Appendix; however, in an effort to timely get this case before the Court, the transcript was inadvertently omitted, and the Appellant is willing to submit a Supplemental Appendix.

10. Because Certiorari has not been granted at this time, under Rule 243(d), SCACR, the Appellant's procedural obligations are only to submit two (2) copies of the Appendix to the Court, one of which is to be professionally bound. If Certiorari is granted, the Appellant will then be required to submit an additional thirteen (13) copies. Rule 243(j), SCACR.

11. Rule 240(b), SCACR, specifically provides that the filing of a Motion or a Petition shall not stay the time periods set by the Appellate Court Rules unless otherwise provided by the Rules or unless the Motion is for a dismissal or for substitution of counsel. Rule 243, SCACR, does not provide for any stay of the thirty (30) day time-period for the Respondent to file and serve a Return to the Petition for Writ of Certiorari. Appellant's counsel specifically brought these Rules to the attention of Respondent's counsel before the Respondent filed its Motion.

12. The Appellant respectfully submits that the Respondent is requesting an extension of time that is not authorized by the South Carolina Appellate Court Rules, and that the request for the stay of Respondent's obligation to file its Return is solely for the purposes of causing delay.

In light of the foregoing, the Appellant respectfully asks the Court to deny the Respondent's request to be allowed a stay or a period of "abeyance," and that the Respondent be compelled to immediately submit its Return, which is already late in violation of the Court's Rules.

Respectfully submitted,

BURTS TURNER & RHODES  
Attorneys for the Appellant  
260 North Church Street  
Spartanburg, SC 29306  
(864) 585-8166

By: *Noel Turner*  
Noel Turner  
William H. Rhodes

January 30, 2020

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S.C. SUPREME COURT

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF SPARTANBURG ) COURT OF GENERAL SESSIONS

3  
4 STATE OF SOUTH CAROLINA, ) TRANSCRIPT  
5 PLAINTIFF, ) OF  
6 vs. ) RECORD  
7 STEPHANIE LEIGH HOWARD, ) 2016-GS-42-4433  
8 DEFENDANT. )

9  
10 February 2<sup>nd</sup>, 2017  
11 Spartanburg, South Carolina

12  
13 B E F O R E :

14 THE HONORABLE ROGER L. COUCH, Judge.

15  
16 A P P E A R A N C E S :

17 TIMI POULOS  
18 ASSISTANT SOLICITOR  
Attorney for the State

19 WILLIAM H. RHODES and NOEL TURNER  
20 ESQ.  
Attorneys for the Defendant

21  
22  
23 PAMELA E. GREEN  
24 Circuit Court Reporter  
Seventh Judicial Circuit

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

1 P R O C E E D I N G S

2  
3 THE COURT: All right. We're on the record in the case  
4 of the state of South Carolina versus Stephanie Leigh  
5 Howard.

6 Ms. Howard pled guilty to bank robbery in front of me I  
7 believe last week.

8 SOLICITOR POULOS: Yes, sir.

9 THE COURT: At that time I issued a sentence. Since  
10 that time, I have received a motion to reconsider that  
11 sentence filed by Mr. Rhodes. Mr. Turner is here with Mr.  
12 Rhodes. The State is represented by Ms. Poulos.

13 Your motion. So, I'll be happy to hear from you, Mr.  
14 Rhodes.

15 MR. RHODES: May it please the Court?

16 MR. TURNER: And if we could pass up---

17 THE COURT: You want to pass up something?

18 MR. TURNER: It's medical records that were---

19 THE COURT: Okay. Thank you.

20 MR. TURNER: ---part of the Public Defender's file.

21 THE COURT: Any objection to those?

22 SOLICITOR POULOS: No, sir, Your Honor.

23 THE COURT: All right. You may proceed.

24 MR. RHODES: If it please the Court, judge.

25 THE COURT: Yes, sir.

1 MR. RHODES: Yes, Your Honor.

2 Ms. Howard entered a plea before you last week. She  
3 was given a 12 year sentence on a charge of entering into a  
4 bank with intent to steal, and we, we filed on her behalf --  
5 essentially the issue for us, judge, is that we wanted to  
6 make sure the Court was given all relevant facts for the  
7 Court's consideration. I wish I had the benefit of a  
8 transcript to see exactly what you were told in the plea,  
9 but from, from recollections of everyone who was there,  
10 it -- I understand that you were not given all the  
11 information that you really needed to---

12 THE COURT: Well, you can tell me whatever facts you  
13 think I was not told, and I'll certainly---

14 MR. RHODES: Yes, Your Honor.

15 THE COURT: ---consider those if they would -- if that  
16 would have any bearing on my changing any decision that I  
17 made.

18 MR. RHODES: Okay. Thank you, judge.

19 We've handed up a packet of -- it's an order from  
20 Family Court and also some medical records. It would  
21 probably help to give a little bit of a chronology.

22 You were told at the plea that Ms. Howard had a history  
23 of some mental problems and some suicide attempts.

24 THE COURT: I was told what?

25 MR. RHODES: You were told at the plea that Ms. Howard

1 has a history of some mental problems---

2 THE COURT: Uh-huh. (Affirmative).

3 MR. RHODES: ---and some suicide attempts but I wanted  
4 to give you a little more detail with that, judge.

5 A lot of these -- a lot of her problems stemmed from an  
6 abusive relationship that she had. She separated from her  
7 husband in 2009/2010. The -- in fact, a Decree of Separate  
8 Maintenance was issued in April of 2011. She got custody of  
9 the party's minor child. She is living on her own. So, of  
10 course, it's a pretty substantial change in her life-style.

11 She's -- didn't have the benefit of his income anymore.  
12 She's, she's disabled and so she's living off disability.  
13 He -- she was able to get child support at \$800.00 a month,  
14 which helped pretty much paying the bills.

15 Well, in December of 2012 is when you had the first, I  
16 guess, noted suicide attempt. She was having a anxiety  
17 attack, which is why she's disabled. It's for anxiety and  
18 fibromyalgia. She went to the ER and she, she couldn't take  
19 it anymore. No one would, would see her. She was waiting  
20 and waiting. So, she went to her car and she  
21 self-medicated, and, of course, they're calling that an  
22 attempt at suicide by overdose but that really is kind of  
23 the facts of what happened there.

24 She's just---

25 THE COURT: Now, when was that did you say?

1 MR. RHODES: That was in December of 2012.

2 THE COURT: All right.

3 MR. RHODES: It's April the 14<sup>th</sup>. She -- well, she's  
4 having a lot of trouble raising her daughter. Her  
5 daughter's bigger than she is. She's got a temper. And so  
6 there's a lot of stress at home.

7 April 2014, she gets her divorce from her husband.  
8 Shortly after that, August of '14, it shows another suicide  
9 attempt and we've handed these records up to the Court as  
10 well. The records reflect that she cut her wrists and her  
11 neck but the records also show that the, the cuts were  
12 superficial. It makes it look a lot more like a cry for  
13 help than a real attempt to kill herself.

14 She was discharged from the psych unit in September of  
15 '14 with diagnosis of bipolar, depression, borderline  
16 personality disorder, and they did a lot of psychosocial  
17 stressors such as parenting issues, finances, inadequate  
18 social network.

19 So, at this point, she's got a lot going on. The  
20 ex-husband now steps forward and files an action to change  
21 custody to try to take possession -- take her child from  
22 her. And then, in April of '15, the final hearing, she  
23 loses custody of the child. Now, the child did stay in  
24 Spartanburg until the end of 2014/2015 school year but then  
25 moved out to Alabama.

1           So, she's lost her child---

2           THE COURT: In this packet of papers you've given me,  
3 is there any of the records from the Family Court hearing  
4 where she lost custody of her child?

5           MR. RHODES: Yes, Your Honor. That's, that's the very  
6 first document.

7           THE COURT: All right.

8           MR. RHODES: So, she's, she's lost custody of her  
9 child. She's lost the Social Security, her Social Security  
10 income because now it's been signed over to her husband.  
11 She's also lost the \$800.00 a month in child support and  
12 she's trying to pay her bills. And so she's already got  
13 anxiety and now it's just increased that much more.

14           So, in -- around June, she, of '15, the daughter moved  
15 down to Alabama. In November of '15, she tries to get her  
16 act together. So, she gets a job working as a home  
17 caregiver, and this job's been great because it keeps her  
18 busy. Her work schedule was eight and a half hours a day  
19 six days a week working with a paraplegic and three to four  
20 nights a week she's doing 12 hour shifts caring for an  
21 elderly lady who has terminal cancer.

22           She does this, this job over six months. She is given  
23 a car by the employer that she can use to get to her home  
24 and to the patients.

25           Well, in April of '16, as we get closer now to the time

1 of this robbery, she has an accident, breaks the car. The,  
2 the elderly lady -- the lady dies. They tell her, if you  
3 want to get more work, you got to go buy a car. So, she  
4 goes down -- she gets a contract to buy a car. Then the  
5 employer says well, no, we're not gonna give you any work  
6 anymore.

7 So now she has a debt for a car. She has to pay her  
8 apartment. She doesn't have the income. So, she's,  
9 she's -- a lot of stressors and then we come to May and  
10 she's, she's lost her daughter, the elderly lady has died.  
11 She has no income except for her Social Security. So, she  
12 can't pay rent. She can't pay for the vehicle.

13 She went to the bank earlier that day, not this bank, a  
14 different one, trying to get a loan and she was, she was  
15 turned down and she, she finally lost. She was just kind of  
16 at the end, very end of her rope.

17 The robbery itself, judge, it was not violent. There  
18 were no weapons that were used. No threats were made. She  
19 went in. She did something very stupid. She went in. She  
20 asked for money. She just said give me your money. She put  
21 her pocketbook on, on the table and that was it. There was  
22 no violence. In fact -- well, I won't go to that part of  
23 it.

24 After the arrest, she went -- she was admitted back to  
25 the hospital again, and we've included those records too.

1 She remained admitted there from May 2016 to around June.  
2 She's, you know, worked a lot with Doctor Nowatka, her  
3 physician, trying to get her medications sorted out and she  
4 is -- she is now stable. She got her job working at Waffle  
5 House and everything was going great. She was trying to  
6 prove herself so that she could show the Court that she  
7 really wants to move forward positively and, of course, when  
8 she was sentenced, that was the end of her job.

9 Your Honor, she, she really would like for you to  
10 please take into consideration all these events that  
11 happened that led up to this point where she made this dumb  
12 decision. Also, judge, at the plea, her aunt was here but  
13 was not given opportunity to speak. She wanted to address  
14 the Court as well if that's okay with the Court.

15 THE COURT: Did she ask to address the Court?

16 MR. RHODES: Well, she did not because she was un --  
17 she was not told that she could. So, she was -- she sat in  
18 the back.

19 THE COURT: Well, if she were here, I would suspect  
20 that there were many pleas taken that day and she would of  
21 probably seen that people were allowed to speak at any  
22 hearing and I don't think I've ever refused anyone the right  
23 to speak during a plea. So, I doubt that she asked to  
24 speak.

25 MR. RHODES: She didn't ask, Your Honor. She just

1 didn't know that she could.

2 THE COURT: All right.

3 MR. RHODES: But if you're willing, she would like to  
4 address---

5 THE COURT: I understand.

6 Anything further?

7 MR. RHODES: No, Your Honor.

8 THE COURT: Ms. Poulos.

9 SOLICITOR POULOS: Thank you, Your Honor.

10 Your Honor, our position is simply that we see no error  
11 or mistake in your original sentence that would warrant a  
12 reduction in the sentence. I believe that Ms. Price did an  
13 excellent job of giving Your Honor an idea of both the  
14 depression, the mental state, the suicidal thoughts, and  
15 here simply what Mr. Rhodes and, you know, I commend him  
16 for, for the effort, but all he's simply doing is just  
17 elaborating a little bit on that.

18 We see -- Your Honor went through all the questions and  
19 the colloquy that you do with everyone pleading before you  
20 as you have done hundreds and thousands of times through  
21 your whole course and career as a judge, Your Honor. We  
22 believe that she fully understood what she was doing. She  
23 fully understood that she faced up to 30 years, and, at this  
24 point, Your Honor, the punishment did fit the crime. Your  
25 Honor had a full understanding of, of everything, and, and,

1 Your Honor, this is just another bite at the apple and we  
2 don't see any reason for you to, to---

3 THE COURT: I recall that she had some prior record.  
4 Could you give me that again just to refresh my memory?

5 SOLICITOR POULOS: Yes, Your Honor.

6 THE COURT: I, this morning, I was thinking in terms of  
7 exactly what it was and I couldn't recall exactly but I do  
8 recall there was a prior record.

9 SOLICITOR POULOS: Yes, Your Honor.

10 She had a 1994 DUS, a 2014 shoplifting, and, from  
11 Georgia, a 1993 DUI.

12 THE COURT: Okay.

13 SOLICITOR POULOS: And just for the record, Your Honor,  
14 both victims are present as you remember them from, from  
15 last week. Both officers, they're here standing with me and  
16 joining me in asking that you deny the defense's motion and  
17 allow your original sentence to stand.

18 THE COURT: well, they did speak last time---

19 SOLICITOR POULOS: They did.

20 THE COURT: ---and quite graphically---

21 SOLICITOR POULOS: Yes.

22 THE COURT: ---informed the Court of their fear for the  
23 situation---

24 SOLICITOR POULOS: Yes.

25 THE COURT: ---and the distress that the, the case had

1 put them under. And so I recall that discussion with them  
2 at that time.

3 SOLICITOR POULOS: Thank you, Your Honor.

4 THE COURT: And the officers did speak about what  
5 happened in this, this situation.

6 SOLICITOR POULOS: Yes, sir.

7 THE COURT: Mr. Rhodes, when I considered the sentence,  
8 I do believe her attorney did make me aware of the, the  
9 issues that she had, not in the detail that you have, but I  
10 was aware of those factors when I issued the sentence, and,  
11 quite frankly, one of the things that concerned me about  
12 this case was the degree of preparation she apparently went  
13 to in, in carrying this out.

14 The picture that was shown to me from the bank's  
15 cameras indicated that she went to a great deal of trouble  
16 to try to conceal her identity, which anyone, I guess doing  
17 what she was doing, would try to do except that I didn't  
18 take this as a spur of the moment thing or something that  
19 she had simply panicked at that point in time and done  
20 because of the degree of preparation she went to.

21 As I recall, she went to a great deal of trouble to  
22 cover herself completely. She had larger glasses on. She  
23 had a, a large hat on. It looked like someone who was aware  
24 that there were cameras in the bank and went to a great deal  
25 of, of preparation to try to conceal themselves, and I think

1 more of, if someone commits a spontaneous act that is a, in  
2 a panic mode, they would of gone to less preparation in  
3 doing that. Anytime we try a case, you know, when someone  
4 goes through preparation to commit the crime, they've  
5 thought about it and they're, they're preparing for it and  
6 they're proceeding to do it.

7 It's not like she just was in the bank that day and  
8 suddenly said I need some money and I'll try to get it from  
9 the bank.

10 Do you follow what I'm saying?

11 And that's one of the considerations that I thought  
12 about in, in issuing the sentence. And, in issuing the  
13 sentence, quite frankly, the, the, the offense carries a  
14 possible 30 year sentence and I, and I certainly considered  
15 that, considered her age. I realized that it's a, a  
16 sentence from which she will have to serve most of the  
17 sentence that I gave but I set it up in such a fashion so  
18 that it would not -- I don't think it will deprive her of  
19 the rest of her life. I think there will be time, after  
20 this sentence is finished, for her to reenter society and,  
21 and, and do better than she did in this particular case.

22 So, I gave her a sentence what I considered in the  
23 lower end of the range. If it were 30, I gave 12. So,  
24 we're looking at about a third, maybe even less than a third  
25 of -- as far as what I could of given her in the situation.

1           So, I did take into consideration the fact that she had  
2 these issues, she had these problems. She's not your  
3 typical bank robber. I agree with you on all those things.  
4 That's the reason I gave her as low a sentence as I did.

5           Had someone been a hardened criminal who had gone to a  
6 great deal of preparation and had carried a weapon, that  
7 sentence would of been in the upper reaches of the range.  
8 And so I did not do that in this case.

9           So, I appreciate your client's feeling that perhaps I  
10 didn't consider everything but I can assure you I've  
11 considered the factors that you've talked about today.  
12 Again, I didn't have the detail that you gave me but I  
13 certainly did consider the fact that she was under a great  
14 deal of stress, that she was at a bank she normally traded  
15 at.

16           MR. RHODES: Yes, Your Honor.

17           THE COURT: I considered all of those factors but the  
18 one thing that stuck with me is that, had this been a  
19 spontaneous act, I don't think she would of gone to the  
20 degree of preparation that she went to in order to carry the  
21 act out. So, I feel like she took some time to think about  
22 it.

23           When someone does something with aforethought, they've  
24 thought about it. They prepared for it. I consider that to  
25 be more serious than a spontaneous act.

1 MR. TURNER: May I ask her a question, Your Honor?

2 THE COURT: Certainly.

3 (Pause.)

4 MR. TURNER: Your Honor, if I -- I know it's two  
5 attorneys. If I could just briefly address that on the  
6 preparation.

7 what she tells me is that she was wearing the pink and  
8 white shirt when she was in the bank earlier that morning  
9 that she's a customer in. That after she left there and  
10 could not get the loan, then she went to the drug store and  
11 got the surgical mask and the gloves. The hat and the  
12 glasses I believe was already in the car and---

13 THE COURT: Well, again, that shows a degree of  
14 preparation to do the, do the act, as I thought it did. I'm  
15 gonna leave the sentence as it is. The motion is denied.

16 SOLICITOR POULOS: Thank you, Your Honor.

17 THE COURT: I did consider those factors.

18 MR. TURNER: Thank you.

19 THE COURT: Thank you though.

20 MR. RHODES: Thank you, judge.

21 THE COURT: Appreciate it.

22 And, Mr. Rhodes, these are the medical records. I'll  
23 let you have those back.

24 MR. TURNER: Thank you, judge.

25

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\* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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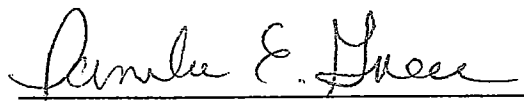
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 2<sup>nd</sup> day of February, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 17<sup>th</sup>, 2017



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS

THE HONORABLE R. LAWTON MCINTOSH  
CASE NO. 2017-CP-42-04446  
APPELLATE CASE NO.: 2019-001130

Stephanie Leigh Howard,  
S.C.D.C. No. 371295

Appellant,

versus

State of South Carolina,

Respondent.

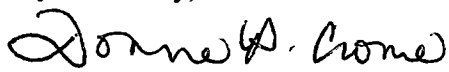
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PROOF OF DELIVERY  
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This is to certify that on the 31<sup>st</sup> day of January, 2020, the undersigned, secretary to William H. Rhodes, Esq., and M. Noel Turner, III, Esq., served a copy of the **RETURN TO RESPONDENT'S MOTION TO COMPEL SUPPLEMENTATION OF APPENDIX** by depositing a copy of the same into the United States Mail, postage pre-paid and in the correct amount to the following:

Jacob A. Isenberg, Esquire  
Assistant Attorney General  
S.C. Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211

  
JO ANN CHAMPION

SWORN to before me this 31<sup>st</sup>  
day of January, 2020.

 (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 4-19-2021

RECEIVED

FEB 08 2020

S.C. SUPREME COURT