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Jul 21 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions
R. Ferrell Cothran Jr., Circuit Court Judge

Appellate Case No. 2019-000292

The State,Respondent,

v.

Shawn Douglas Custer,Appellant.

MOTION TO RECALL THE REMITTITUR

Shawn Custer moves this Court for an order recalling the remittitur because this Court mistakenly dismissed this appeal because Mr. Custer did not order the transcript, when Mr. Custer, in fact, did order the transcript.

I. PROCEDURAL HISTORY.

On February 15, 2019, following a conviction by a jury for receiving stolen goods, value greater than \$10,000.00, the Honorable R. Ferrell Cothran Jr. sentenced Mr. Custer to seven years, provided on the service of time served, the balance is suspended with probation for three years. On February 20, 2019, through trial counsel, Mr. Custer appealed his conviction to this Court.

On March 22, 2019, the Appellate Defense Division of the South Carolina Commission on Indigent Defense moved to extend time to order the trial transcript. On March 27, 2019, this Court granted that motion.

On April 17, 2019, Appellate Defense notified this Court it had not received an Affidavit of Indigency from Mr. Custer.

On April 29, 2019, this Court wrote Mr. Custer's trial counsel, informed him he remained counsel of record, and allowed ten days to order the transcript. On May 8, 2019, Mr. Custer's trial counsel moved to be relieved as counsel. Also on May 8, 2019, Mr. Custer's trial counsel provided evidence that Mr. Custer had ordered the transcript on March 5, 2019, along with correspondence from the court reporter to Mr. Custer regarding payment for the transcript. Exhibit A.

On June 3, 2019, Court Administration granted the court reporter an extension of time to complete the transcript. On July 3, 2019, the court reporter certified the transcript. Exhibit B.

On June 28, 2019, the Court requested Mr. Custer's trial counsel provide an update on Mr. Custer's status of completing the Affidavit of Indigency. On July 8, 2019, Mr. Custer's trial counsel provided an update and informed this Court Mr. Custer "intends on eventually retaining private counsel for his appeal."

On July 31, 2019, this Court granted Mr. Custer's trial counsel's motion to be relieved and allowed Mr. Custer thirty days to retain counsel. By written orders dated October 28, 2019 and November 19, 2019, this Court extended the deadline for Mr. Custer to retain counsel.

On January 11, 2020, this Court wrote Mr. Custer, informed him the Court considered him to be *pro se*, and allowed him ten days to order the transcript. Mr. Custer, however, had already ordered the transcript on March 5, 2019 (Exhibit A), and the court reporter certified the transcript on July 3, 2019 (Exhibit B).

By written order dated April 24, 2020, this Court dismissed Mr. Custer's appeal because he had "failed to timely order the transcript, as required by Rule 207(a) of the South Carolina Appellate Court Rules and this Court's letter dated January 22, 2020." The remittitur issued on June 8, 2020. Mr. Custer, however, states he never received the order of dismissal or remittitur. Exhibit C.

II. DISCUSSION.

This Court has discretion to "exercise[e] the unusual power of recalling the *remittitur* after it has been sent down" based on "a very strong showing would be required that the *remittitur* was sent down through some mistake or inadvertence on the part of this court or its officer." *State v. Barnes*, 413 S.C. 1, 4, 774 S.E.2d 454, 456 (2015) (citing *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893)). Here, this Court dismissed this appeal because Mr. Custer did not order the transcript, even though this Court's records reflect he did order the transcript.

Mr. Custer acknowledges his role in the miscommunication between him and this Court. He has made provisions to retain undersigned counsel to represent him in this appeal, if this Court exercises its discretion to recall the remittitur.

Additionally, when deciding whether to exercise its discretion to recall the remittitur, Mr. Custer respectfully requests this Court consider the ongoing ramifications of the COVID-19 pandemic.

(conclusion on next page)

III. CONCLUSION.

For the foregoing reasons, Shawn Custer respectfully requests this Court exercise is discretion and issue an order recalling the remittitur.

IT IS SO MOVED.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Appellant Shawn Custer

July 21, 2020
Greenwood, South Carolina

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The State,Respondent,

v.

Shawn Douglas Custer,Appellant.

Certificate of Service

I certify that I have served the Initial Reply Brief of Appellant on the State of South Carolina by email, on the date reflected below, addressed to:

William M. Blicht, Jr. , Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
wblitch@scag.gov

s/E. Charles Grose, Jr.
E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
E-mail: charles@groselawfirm.com

July 21, 2020

Exhibit A

McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)
S. Randall Hood
John G. Felder, Jr.
W. Jones Andrews, Jr.
Russell T. Burke
Jordan C. Calloway
Susan F. Campbell
Deborah Casey (NC)*
Ashley White Creech
Shawn B. Deery
Chance M. Farr (SC,NC)
Eve S. Goodstein



Whitney B. Harrison
Richard A. "Trey" Jones III
Patrick M. Killen
Anna S. Magann
Robert V. Phillips
Ranee Saunders
James L. Ward, Jr. (SC,NC)
James Stephen Welch (SC,OK)*
Jay F. Wright
Joseph G. Wright, III*
*Of Counsel

May 6, 2019

V. Claire Allen
Deputy Clerk of Court, SCCA
PO Box 11629
Columbia, SC 29211

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MAY 08 2019

SC Court of Appeals

RE: Shawn Custer vs. The State of South Carolina
Case No.: 2019-000292

Dear Ms. Allen:

In response to your correspondence of February 26, 2019 regarding the above matter (the copy of your letter is enclosed for reference), enclosed find copies of a transcript request form dated March 5, 2019 in a response from the Court Reporter, Frances B. Ray, dated March 9, 2019. I provide copies of these items to demonstrate that my client did, on a timely basis, order the transcript of the proceeding from which he appeals.

If you have any further questions or comments, do not hesitate to call.

Sincerely,

Patrick M. Killen
Attorney at Law

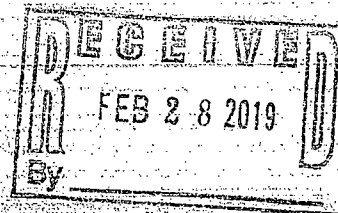
PMK/sls

Enclosures

cc: John Benjamin Aplin, Esq.
Edgar R. Donnald, Jr., Esq.
Shawn D. Custer

1 Law Range, Suite B, Sumter, SC 29150 • Tel: 803.774.5026 • Fax: 803.774.5028
Rock Hill • Columbia • Greenville • Sumter • Pawleys Island • Charleston

www.mcgowanhood.com



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

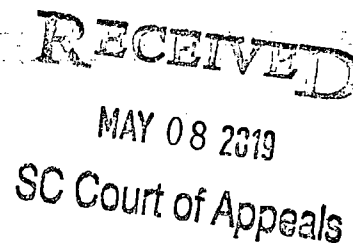
V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 26, 2019

Mr. Patrick McFadden Killen, Esquire
1 Law Range
Suite B
Sumter SC 29150

Re: The State v. Shawn D. Custer
Appellate Case No. 2019-000292



Dear Counsel:

This Court has received a notice of appeal filed by your client, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review

filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

The State, Respondent,

v.

Shawn Douglas Custer, Appellant.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Shawn D. Custer
Alan McCrory-Wilson, Esquire
John Benjamin Aplin, Esquire
Edgar R. Donald, Jr., Esquire
Robert Michael Dudek, Esquire



State of South Carolina
The Circuit Court of the Third Judicial Circuit

Frances B. Ray
Registered
Professional
Reporter

2216 Timberlane Drive
Florence, SC 29506

March 9, 2019

Mr. Shawn Custer
2960 Ben Sanders Road
Dalzell, SC 29040

RECEIVED

MAY 08 2019

Re: State of SC v. Shawn D. Custer

SC Court of Appeals

Dear Mr. Custer,

I have received your request for the transcript of the above hearing . The transcript you request is approximately 400 pages. The cost of the transcript is \$4.25 a page. The total amount due is \$1700. Pursuant to Rule 607 the total amount indicated above is due for the transcript you have requested. Upon receipt of the amount due, the remaining balance due or to be refunded will be settled. Under the South Carolina Court Rules a court reporter has 60 days from the date of request to complete the transcript. In this instance, the 60 day period will be determined based on the date the total amount due has been received. You will be notified if any extensions are approved by Court Administration beyond 60 days.

Payment of \$1700 is to be made to me by MONEY ORDER ONLY mailed to the above address. NO checks are accepted. Once payment is received, your request will be placed in line for production.

Kindly,

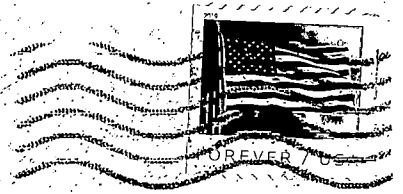
Frances B. Ray, RPR



MCGOWAN, HOOD & FELDER, LLC
 WWW.MCGOWANHOOD.COM
 1 Law Range - Suite B
 Sumter, SC 29150

COLUMBIA SC 290

05 MAY 2019 PM 2 L



V. Claire Allen
 Deputy Clerk of Court, SCCA
 PO Box 11629
 Columbia, SC 29211

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 SC Court of Appeals

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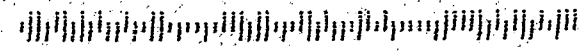


Exhibit B

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
STATE,)

v.)

TRANSCRIPT OF RECORD
16-GS-43-0911

SHAWN D. CUSTER,)
DEFENDANT.)

February 13-15, 2019
Sumter, South Carolina

B E F O R E :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE;
AND JURY

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

EDGAR R. DONNARD, JR., ESQ.
Assistant Solicitor

PATRICK M. KILLEN, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 3rd day of July, 2019.

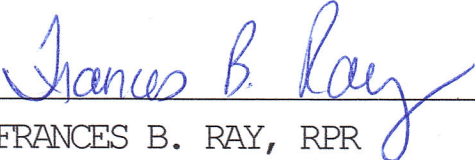

FRANCES B. RAY, RPR

Exhibit C

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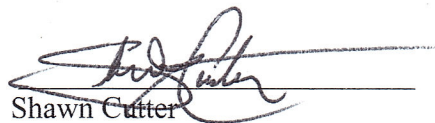
Shawn Douglas Custer,Appellant.

Affidavit of Shawn Cutter

Shawn Cutter, being first duly sworn, swears and affirms that the following is true to the best of my knowledge:

- 1) I am the appellant in this matter.
- 2) I never received copies of the order of dismissal or remittitur in the mail or by email. I was not aware the Court of Appeals dismissed my appeal until Mr. Grose informed me the appeal had been dismissed and the remittitur had been sent.
- 3) I have made provision for Mr. Grose to represent me in this appeal if the Court of Appeals recalls the remitter and reinstates the appeal.

Further affiant sayeth naught.


Shawn Cutter

Sworn to and subscribed before me

this 21st day of July, 2020


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: July 12, 2026

