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**May 19 2021**

**S.C. SUPREME COURT**

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

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**APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
J. Derham Cole, Circuit Court Judge**

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**Case No. 2020-001418**

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John Garvin..... Petitioner-Appellant,

v.

The State of South Carolina..... Respondent-Appellee.

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**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR REQUEST TO LISTEN TO AUDIO  
RECORDING AND TO READ STENO NOTES,  
PURSUANT TO RULE-607(i), SCACR**

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Petitioner, John Garvin, proceeding as pro-se, makes this Memorandum of Law in Support of his Motion for Request to Listen to Audio Recording and to Read Steno Notes, pursuant to Rule – 607(i), SCACR. I, hereby challenge the accuracy of Court Reporter, Linda D. Moffitt’s, transcription of Petitioner’s Post-Conviction Relief (PCR) motion and evidentiary hearing held on the 19<sup>th</sup> and the 31<sup>st</sup> July, 2019, and states that it is not a true, accurate and complete transcript of that PCR hearing.

**FACTS OF THE CASE**

Petitioner is a state prisoner incarcerated at Lieber Correctional Institution in Ridgeville, South Carolina. That is presently serving a twenty-five (25) year sentence for drug trafficking, imposed on May 23, 2013, by the Spartanburg County Court of General Sessions following his trial. A direct appeal was taken and the South Carolina Court of Appeals affirmed the conviction and sentence on November 26, 2014. See *State v. Garvin*, No. 2014-UP-414, 2014 WL 6721427 (Ct. App. S.C. Nov. 26, 2014).

Petitioner's initial application for post-conviction relief was dated October 28, 2015 and was filed on November 18, 2015. To challenge the constitutionality of the erroneous conviction and to vindicate Petitioner's rights that have actually been denied at trial.

On the 19<sup>th</sup> and the 31<sup>st</sup> of July, 2019, a motion and evidentiary hearing was held at the Spartanburg County Courthouse to address some outstanding motions and issues within Petitioner's PCR application that was filed in this matter. At that hearing Circuit Court Judge, J. Derham Cole, heard and ruled on Petitioner's pro-se motions and issues within his PCR application.

### **STANDARD OF REVIEW**

"Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellant court." See Rule – 60(a), SCRPC.

"In any proceeding which has been transcribed, the court shall retain the primary and backup tapes which have been transcribed for a period of at least one (1) year after the original transcript is sent to the requesting party, to allow any party to challenge the accuracy of the transcription." See Rule-607(i), SCACR.

### **ARGUMENT**

#### **I.**

#### **THIS COURT SHOULD GRANT PETITIONER'S MOTION FOR REQUEST TO LISTEN TO AUDIO RECORDINGS AND READ STENO NOTES, PURSUANT TO RULE – 60(a), SCRPC AND RULE-607(i), SCACR**

Under the Court Reporter Act (CRA), a certified transcript "shall be deemed prima facie a correct statement of the testimony taken and proceedings had." See 28 U.S.C. § 753(b). The Court Reporter Act requires a complete transcript of trial proceedings, and there is no doubt that "[a] criminal defendant has a right to a meaningful appeal based on a complete transcript." See *United States v. Huggins*, 191 F.3d 532, 536 (4<sup>th</sup> Cir. 1999).

Rule – 60(a) for South Carolina Rules of Civil Procedure allows Courts to correct clerical errors in judgments, orders, or other parts of the record or to correct errors “arising from oversight or omission.” Also, South Carolina Appellate Court Rules require court reporters to retain primary and backup tapes from circuit courts for five years after the proceedings and specifically allow “any party to challenge the accuracy of the transcription.” Rule – 607(i), SCACR; *Barnes v. Thueme*, No. 5:13-2349-RMG, 2013 WL 5781711, at \*4 (D.S.C. Oct. 25, 2013). In any proceeding that has been transcribed, the court reporter must retain the primary and backup tapes for a period of at least one (1) year after the original transcript is sent to the requesting party to allow any party to challenge the accuracy of the transcription. See Rule – 607(i), SCACR. If no challenge is received by the court reporter within that period, the tapes may be reused or destroyed. *Id.*

Rule-607(i), SCACR, allows any party the right to challenge the accuracy of a court reporters transcription of any court proceeding that the court reporter has transcribed within a period of at least one (1) year after the original transcript is sent to the requesting party. “[A] court may correct mistakes or clerical errors by its own process to make it conform to the record.” quoting *Ex parte South Carolina Dept. of Revenue*, 350 S.C. 404, 566 S.E.2d 196 (S.C. App. 2002); also see *Ex parte Strom*, 343 S.C. 257, 539 S.E.2d 699 (S.C. 200) (A “clerical error” in judgments, orders or other parts of the record arising from oversight or omission, may be corrected by the court at any time, there is a mistake or omission by a clerk, counsel, judge, [court reporter], or printer, which is not the result of exercise of judicial function.)).

Here in this case, on the 19<sup>th</sup> and the 31<sup>st</sup> of July, 2019, a motion and evidentiary hearing was held at the Spartanburg County Courthouse to address the outstanding motions and issues filed by Petitioner, John Garvin. At that hearing Circuit Court Judge, J. Derham Cole, heard and ruled on Petitioner’s pro-se motions and issues within his PCR application.

The Court Reporter, Linda D. Moffitt, transcribed the July 19, and the July 31, 2019, motion and evidentiary PCR hearing transcript on June 16, 2020, at the request of the Respondent’s Attorney,

Johnny E. James, Jr., Asst. Att’y. General. The Petitioner states that upon receiving the PCR hearing transcript on February 8, 2021, from Appellant Defense via Lieber Correctional Institution’s internal mail staff. That the transcript was not a complete full accurate account of what transpired in court at that PCR hearing.

The transcribed portions of the PCR hearing, by Court Reporter, Linda D. Moffitt, distort and omits certain key testimony of Scott D. Robinson, Esquire; Asst. Solicitor, James E. Hunter; Spartanburg County Sheriff Officer, Lt. Ken Hancock; Matt Hutchins, and SLED Agent, Ashley Asbill, were substantial and significant alterations and omissions to the testimony giving by those aforementioned witnesses at the PCR hearing.

The omissions distorted the facts within, Court Reporter, Linda D. Moffitt’s, transcription of the PCR hearing transcript and deprived me of a statutory right to produce witnesses and proofs in my favor, pursuant to S.C. Code Ann. § 17-23-60. The transcript errors, specifically prejudice my ability to perfect my appeal and to prove that my constitutional rights were violated on my issues that I presented at my PCR hearing.

The following transcript pages and lines that’s listed below are not a full complete and accurate account of what transpired during that PCR hearing: Tr.p. 27, Ln. 12; Tr.p. 28, Ln. 20; Tr.p. 32, Ln. 13, 16; Tr.p. 45, Ln. 9; Tr.p. 46, Ln. 8 – 9; Tr.p. 47, Ln. 6 – 10; Tr.p. 53, Ln. 6 – 19; Tr.p. 67, Ln. 17 – 25; Tr.p. 70, Ln. 5 – 8, 10 – 21; Tr.p. 71, Ln. 2 – 14; Tr.p. 72, Ln. 2 – 25; Tr.p. 73, Ln. 3 – 11; Tr.p. 75, Ln. 9 – 17; Tr.p. 76, Ln. 8; Tr.p. 94, Ln. 8 – 9; Tr.p. 125, Ln. 1 – 25; Tr.p. 126, Ln. 1 – 25; Tr.p. 127, Ln. 1 – 25; Tr.p. 128, Ln. 1 – 25; Tr.p. 133, Ln. 5 – 6; Tr.p. 147, Ln. 6 – 8; Tr.p. 148, Ln. 18; Tr.p. 152, Ln. 21 – 22; Tr.p. 165 – 166, Ln. 1 – 25, 1 – 7, 22 – 24; Tr.p. 167, Ln. 13 – 15; Tr.p. 177, Ln. 23 – 24; Tr.p. 196, Ln. 11 – 17; Tr.p. 199, Ln. 9 – 17; Tr.p. 221, Ln. 22 – 23; Tr.p. 256, Ln. 7, 12; Tr.p. 257, Ln. 1 – 4, 6 – 8; Tr.p. 293, Ln. 16 – 22. A copy of the Court reporters primary and back up audio recording are needed to correct the PCR transcript errors. Petitioner is entitled to a copy of the primary

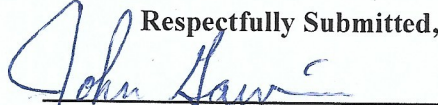
and backup tapes according to Rule-607(i), SCACR and the South Carolina Freedom of Information Act (FOIA).

Moreover, the Freedom of Information Act requires a governmental entity or other public body to disclose the type of public information requested by Petitioner Garvin. See S.C. Code Ann. § 30-4-30(A) (2007) (providing that any person has the right to copy or inspect a public record); S.C. Code Ann. § 30-4-50(A)(3) (2007) (defining as “public information” “final opinion, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases”). This statutory requirement removes any discretion on the part of the public body. Section 30-4-30 allows only 15 days for a response to a request for information. If the request is granted (in this case it must be) the information must be available for review.

#### CONCLUSION

For the reasons set out above, Petitioner respectfully request that this Honorable Court grants this Motion for Request to Listen to Audio Recordings and to Read Steno Notes.

DATED: May 19, 2021  
Ridgeville, South Carolina

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