

RECEIVED

MAY 24 2021

S.C. SUPREME COURT

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

May 6, 2021

Attn.: Hon. Donald W. Beatty, Chief Justice
South Carolina Supreme Court, Chief Justice of Spartanburg
P.O. Box # 3543
Spartanburg, S.C. 29304

RE: John Garvin v. State, Appellate Case No.: 2020-001418, Requesting
to Listen to Audio Recording and to see Steno Notes

Dear Hon. Chief Justice Beatty:

Enclosed with this letter is a copy of a Motion Requesting to Listen to Audio Recording and to see Steno Notes, pursuant to Rule - 607(i), SCACR. For which, I have been trying to submit before the South Carolina Supreme Court on two occasions, that was sent by certified mail, (Please see attached copies of the funds that was debited from my inmate account for Certified Mail), once on March 24, 2021 and again for a second time on April 23, 2021.

My Brother, Bernard Garvin has called and spoke to your executive assistance and has called to the South Carolina Supreme Court Clerk's Office on my behalf in regards, as to why the Court has yet to placed my motion before the Supreme Court to be heard. Whereas, the certified mail receipts tracking number states that it was delivered and receive at the front desk of the Supreme Court on

April 27, 2021. I, hereby ask that you please look into this matter as to why my motion is not making it to the court to be filed and heard before the court. Please place the copy of the motion that I have mail to the court on two occasions to be filed and heard.

Respectfully,
John Law

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

ATTN: Hon. Donald W. Beatty, Chief Justice
The South Carolina Supreme Court
1231 Gervais Street
Columbia, S.C. 29201

RE: John Garvin v. State, Appellate Case No.: 2020-001418, Motion Requesting to Listen to Audio Recording and to See Steno Notes, Pursuant to Rule – 607(i), SCACR

Dear Hon. Chief Justice Beatty:

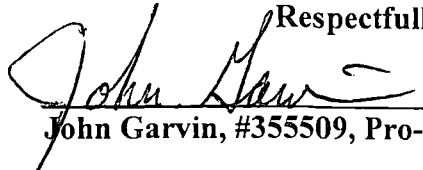
Per your March 9, 2021, signed order. I am notifying this court that I have written Court Reporter, Linda D. Moffitt, that I had received my PCR transcript from Appellant Defense on February 8, 2021, via Lieber Correctional Institution's internal mail staff. Whereas, her transcription of my July 19th, and July 31st, 2019, PCR hearing was not a true, accurate, and complete transcription of my PCR hearing. I have requested from her the audio recording to listen to and correct the transcript errors, pursuant to Rule – 60(a), SCRPC and Rule – 607(i), SCACR.

Enclosed with this letter is a copy of the letter that I've sent to her and a motion requesting to listen to audio recording and to see steno notes, pursuant to Rule – 607(i), SCACR, with supporting affidavit, a memorandum of law, along with a certificate of service.

By copy of this letter, I am informing William H. Ray, Esquire, of the Office of the S.C. State Attorney General, of my filing of this motion.

I thank you for your cooperation and assistance in this matter.

Dated: April 23, 2021

Respectfully,

John Garvin, #355509, Pro-se

JG/

Enclosures

cc: William H. Ray, Asst. Att'y. General
J. Derham Cole, Chief Admin. Judge
Desiree Allen, Court Reporter Manager

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

ATTN: Ms. Linda D. Moffitt, Cir. Ct. Rptr.
800 Belcher Road
Spartanburg, S.C. 29316

RE: John Garvin v. State, Case No.: 2015-CP-42-4699, Requesting Audio Recording of PCR Hearing to Challenge Accuracy of PCR Transcript Due to Errors, Pursuant to Rule – 607(i), SCACR.

Dear Ms. Moffitt:

On February 8, 2021, I received my PCR transcript from Appellant Defense via Lieber Correctional Institution's internal mail staff. I write this letter in regards to challenging the accuracy of your transcription of my July 19th, and July 31st, 2019, Post-Conviction Relief (PCR) hearing that you transcribed.

Whereas, your transcription of my PCR hearing for the above-mention dates, is not a true, accurate, and complete transcription of my PCR hearing. The transcribed portions of the PCR hearing, by you are distorted 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, that are substantial and significant alterations and omissions to the testimony giving by the aforementioned witnesses at the PCR hearing.

The omissions distort the facts within your transcription of the PCR hearing transcript, which deprives me of a statutory "right to produce witnesses and proofs in [my] favor," pursuant to S.C. Code Ann. § 17-23-60, your transcription specifically prejudices my ability to perfect my appeal and to prove that my constitutional rights were violated on my issues that I presented at that PCR hearing.

Now, due to the transcript errors within my PCR transcript. I am asking that you send me the audio recording and your steno notes of my July 19th, and 31st, 2019, PCR hearing, to correct the transcript errors, pursuant to Rule – 60(a), SCRCP and Rule – 607(i), SCACR.

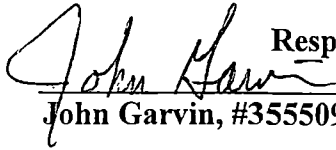
In addition, I also would like to know why I did not receive any notice of the request for the PCR transcript or any correspondences between you and the Respondents, concerning the transcription of the July 19th, and 31st, 2019, PCR hearing, pursuant to Rule – 207(a)(1) and Rule – 607(b), SCACR.

Because the failure of you and the Respondent to put me on notice of a request for the transcript, deprives me of notice and opportunity to object to the accuracy of the PCR transcript.

By copy of this letter, I am informing William H. Ray, Esquire, of the Office of the S.C. State Attorney General; the Court Reporter Manager, Desiree Allen; and Daniel E. Shearouse, Clerk of South Carolina Supreme Court, of my position to challenge the accuracy of my PCR hearing transcript.

I thank you for your cooperation and assistance in this matter.

Dated: March 18, 2021

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

JG/

cc: William H. Ray, Asst. Att'y. General
Hon. Daniel E. Shearouse, Clerk of S.C. Supreme Court
Desiree Allen, Court Reporter Manager

LINDA D. MOFFITT
Circuit Court Reporter
800 Belcher Road
Spartanburg, SC 29316

April 4, 2021

John Garvin
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, SC 29472

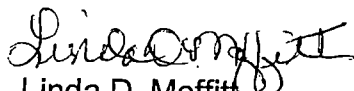
Dear Mr. Garvin:

In reference to your letter stating the transcript of your hearing is not a true, accurate and complete transcript, you will need to contact Karama Bailey at the Office of Court Administration.

As for your question concerning the request for the PCR transcript or correspondence, you would need to contact Johnny James in the Attorney General's office as to why he wouldn't have notified you.

Thank you.

Sincerely yours,


Linda D. Moffitt
Circuit Court Reporter

cc: Karama T. Bailey, Esquire
Office of Court Administration

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

**FROM SPARTANBURG COUNTY
Court of Common pleas
J. Derham Cole, Circuit Court**

Case No. 2020-001418

John Garvin..... Petitioner-Appellant,

v.

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

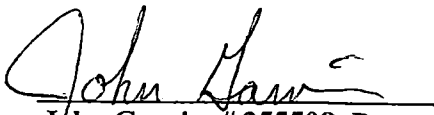
**NOTICE AND MOTION FOR REQUEST TO LISTEN
TO AUDIO RECORDINGS AND TO READ STENO
NOTES, PURSUANT TO RULE – 607(i), SCACR**

To: Mr. William H. Ray, Asst. Att’y. General, Attorney for Respondent.

YOU WILL PLEASE TAKE NOTICE, that upon the affidavit of John Garvin, sworn to on the 23rd day of March, 2021, proceeding as pro-se and can be heard, will move before the Honorable Justices of the South Carolina Supreme Court, for an Order granting this Motion for Request to Listen to Audio Recordings and to Read Steno Notes in this matter, pursuant to Rule – 607(i), SCACR. As grounds for this Motion, Petitioner would state the following: That Court Reporter, Linda D. Moffitt’s, transcription of Petitioner’s Court Proceedings are not a true, accurate and a complete transcript. Whereas, I challenge the accuracy of the July 19, and the July 31, 2019, Post-Conviction Relief (PCR) motion hearing and evidentiary hearing transcript, pursuant to Rule – 607(i), SCACR, and the South Carolina Court Reporter Manual.

Petitioner's Motion for Request to Listen to Audio Recordings and to Read Steno Notes is made and based on this notice, the attached motion, the affidavit of John Garvin, and memorandum of law in support of this Motion, copies of which are served with this notice, and on the pleadings, papers, records, and files in this action.

DATED: April 23, 2021


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

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

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

Case No. 2020-001418

John Garvin..... Petitioner-Appellant,

v.

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

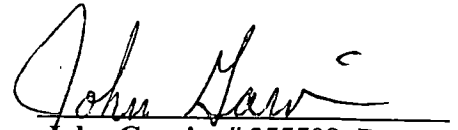
**MOTION FOR REQUEST TO LISTEN TO AUDIO
RECORDINGS AND TO READ STENO NOTES,
PURSUANT TO RULE – 607(i), SCACR**

TO: THE HONORABLE JUSTICES OF THE SOUTH CAROLINA SUPREME COURT

The Petitioner, John Garvin, proceeding as pro-se, moves this court for an Order granting a Request to Listen to Audio Recordings and to Read Steno Notes in this matter, pursuant to Rule – 607(i), SCACR. As grounds for this Motion, Petitioner would state the following: That Court Reporter, Linda D. Moffitt, transcription of Petitioner’s Court Proceedings are not a true, accurate and complete transcript. Whereas, I challenge the accuracy of the July 19, and the July 31, 2019, Post-Conviction Relief (PCR) motion hearings and evidentiary hearing transcript, pursuant to Rule – 607(i), SCACR, and the South Carolina Court Reporter Manual.

This Motion is made and based on the attached Notice, the affidavit of John Garvin, the memorandum of law in support of the Motion, copies of which are served with this motion, and on the pleadings, records, and papers on file in this action.

DATED: April 23, 2021


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

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

**FROM SPARTANBURG COUNTY
Court of Common pleas
J. Derham Cole, Circuit Court**

Case No. 2020-001418

John Garvin..... Petitioner-Appellant,

v.

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

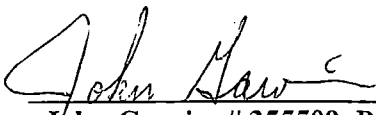
**AFFIDAVIT IN SUPPORT OF JOHN GARVIN'S
MOTION FOR REQUEST TO LISTEN TO AUDIO
RECORDINGS AND TO READ STENO NOTES,
PURSUANT TO RULE -607(i), SCACR**

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

1. I am the Petitioner in the above – entitled action proceeding as pro-se and makes this affidavit in support of my Motion for Request to Listen to Audio Recordings and to Read Steno Notes, pursuant to Rule – 607(i), SCACR.
2. I am entitled to a copy of the primary and backup tapes according to Rule – 607(i), SCACR, to challenge the accuracy of Court Reporter, Linda D. Moffitt, transcription of my July 19, and July 31, 2019, PCR Motion hearing and evidentiary hearing.
3. On July 19, and July 31, 2019, a motion hearing and evidentiary hearing, was held at the Spartanburg County Courthouse to address outstanding motions and issues within a Post-Conviction Relief (PCR) application that was filed by Petitioner, John Garvin.
4. At that hearing Circuit Court Judge, J. Derham Cole, heard and ruled on Petitioner's eight (8) pro-se motions and issues within his PCR application.

5. The Court Reporter, Linda D. Moffitt, transcribed the July 19, and July 31, 2019, motion and evidentiary PCR hearing on June 16, 2020, at the request of the Respondent's, attorney, Johnny E. James, Jr., Asst. Att'y. General.
6. 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 his PCR hearing.
7. The transcribed portions of the PCR hearing, by Court Reporter, Linda D. Moffitt, are distorted 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, that are substantial and significant alterations and omissions to the testimony giving by the aforementioned witnesses at the PCR hearing.
8. The omissions ~~and the distortion~~ of the facts within, Court Reporter, Linda D. Moffitt's, transcription of the PCR hearing transcript deprives me of a statutory right to produce witnesses and proofs in my favor, pursuant to S.C. Code Ann. § 17-23-60, her transcript errors, specifically prejudices 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.
9. 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.
10. The Petitioner makes this Motion for Request to Listen to Audio Recordings and to Read Steno Notes, to correct the transcript errors and any such deficiency within the July 19, and July 31, 2019, PCR hearing transcript.

WHEREFORE, based upon the forgoing the Petitioner prays that the Court grants his Motion for Request to Listen to Audio Recordings and to Read Steno Notes, pursuant to Rule – 607(i), SCACR and due administration of justice. Executed on this 23rd day of March, 2021.


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

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

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

Case No. 2020-001418

John Garvin..... Petitioner-Appellant,

v.

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

**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**

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 19th and the 31st 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 19th and the 31st 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), SCRCF.

"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), SCRCF 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 (4th 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 19th and the 31st 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.

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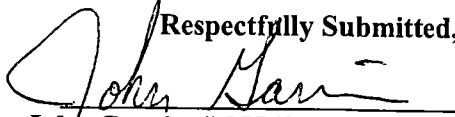
and backup tapes according to Rule-607(i), SCACR and the South Carolina Freedom of Information Act (FOIA).

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: April 23, 2021
Ridgeville, South Carolina

Respectfully Submitted,

John Garvin, # 355509, Pro-se.
Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, S.C. 2947

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

**FROM SPARTANBURG COUNTY
Court of Common pleas
J. Derham Cole, Circuit Court**

Case No. 2020-001418

John Garvin..... Petitioner-Appellant,

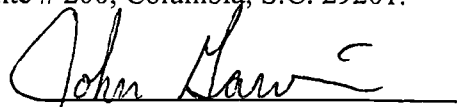
v.

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

CERTIFICATE OF SERVICE

I, John Garvin, certify that I have serve a **NOTICE AND MOTION FOR REQUEST TO LISTEN TO AUDIO RECORDINGS AND TO READ STENO NOTES with Supporting Affidavit and Memorandum of Law** 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 April 23, 2021, addressed to the Hon. Daniel E. Shearouse, Clerk of S.C. Supreme Court, 1231 Gervais Street, Columbia, S.C. 29201, and United States First Class Postage mail addressed to Mr. William H. Ray, Asst. Att’y. General, 1000 Assembly Street, Rm. № 519, Columbia, S.C. 29201, and to; Ms. Desire Allen, Court Reporter Manager, 1220 Senate St., Suite # 200, Columbia, S.C. 29201.

DATED: April 23, 2021


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

