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**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  
SOUTH CAROLINA COURT REPORTERS MANUAL § XIII(B)(C)**

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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 the South Carolina Court Reporters Manual § XIII(B)(C) and Rule – 607(i), SCACR. A challenge to 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, was made. Whereas, Petitioner hereby objects to the review and findings of that PCR transcript, made by Karama T. Bailey, Deputy Director, Court Reporting/Court Interpreting of the South Carolina Court Administration, on May 4, 2021.

## **FACTS OF THE CASE**

The Petitioner adopts the Facts of the Case as stated in his Memorandum of Law in Support of his Motion for Access to Disciplinary Information, his Motion for Request to Listen to Audio Recordings and to Read Steno Notes, and his Motion to Supplement the Record, that was submitted to this Court by Petitioner as if set forth at length herein. The Petitioner, however, reserves the right to supplement the Facts of the Case in Legal Argument, *infra*.

## **STANDARD OF REVIEW**

“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.

“[A] Court reporter[ ] shall [only] grant [a] request to listen to audio recordings or to read steno notes [upon] [a] requestor [having] received written authorization from the presiding judge or, in his/her absence, the Chief judge for administrative purposes in that circuit.” “Rule 607(i), SCACR governs the retention of tapes.... When there is a challenge to the accuracy of a transcript, the court reporter will respond to the challenger in writing. The court reporter will then review the record and report the findings in writing to the challenger with a copy to all parties and Court administration. Any inaccuracies will be corrected and the pages forwarded to the Challenger at no cost.... [Any] [f]urther review of the record maybe permitted by the presiding judge upon written request with good cause shown. See South Carolina Court Reporters Manual § XIII(B)(C).

## ARGUMENT

### I.

#### **THIS COURT SHOULD GRANT PETITIONER'S MOTION FOR REQUEST TO LISTEN TO AUDIO RECORDINGS AND READ STENO NOTES, PURSUANT SOUTH CAROLINA COURT REPORTERS MANUAL § XIII(B)(C) AND 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 (4<sup>th</sup> Cir. 1999).

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 Post-Conviction relief 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.

Petitioner states that he wrote the Court Reporter, Linda D. Moffitt, about challenging the accuracy of the PCR transcript on March 18, 2021. Whereas, she would refer him to get in contact with Karama T. Bailey, Deputy Director, Court Reporter/Court Interpreting at the Office of South Carolina Court Administration on April 4, 2021.

On March 23, 2021, Petitioner would write a letter to the Presiding Judge of that PCR hearing, J. Derham Cole, who is now the Chief Administration Judge, for the Spartanburg County Court of Common Pleas, about a request to listen to the PCR audio recordings. Whereas, Judge Cole, has fail to even respond to Petitioner's request. On May 6, 2021, Petitioner would write a letter to Karama T. Bailey, about Petitioner's desire to challenge the accuracy of Court Reporter, Linda D. Moffitt's transcription of the PCR transcript in question.

On May 6, 2021, Petitioner would write a letter to Karama T. Bailey, about his desire to challenge the accuracy of Court Reporter, Linda D. Moffitt's transcription of the PCR transcript in question. Petitioner states that he has challenged the accuracy of Court Reporter, Linda D. Moffitt's, transcription of his July 19, and July 31, 2019, PCR Motion hearing and evidentiary hearing, pursuant to the South Carolina Court Reporters Manual § XIII(B)(C) and Rule – 607(i), SCACR.

The PCR transcript was reviewed by Karama T. Bailey, Deputy Director, Court Reporting/Court Interpreting of the South Carolina Court Administration. On June 4, 2021, Karama T. Baily, made her review and findings of errors within the PCR transcript. On June 15, 2021, Petitioner received from her, her finding of errors via Lieber Correctional Institution internal mail staff. (See Exhibit – A).

Petitioner hereby objects to her review and findings of errors within the PCR transcript, which was less than adequate and fails to fully report all of Linda D. Moffitt's transcript errors as a whole. Insomuch as, further review of the Audio Recordings of the PCR hearing, will show that there are far more errors in the PCR transcript then Ms. Bailey is actually reporting and that there are several inconsistencies in her finding that don't coordinate with the page number of the errors that Ms. Bailey is claiming to have found.

Ms. Bailey's report and finding state that there are thirty (30) errors that she found within the PCR transcript, but eighteen (18) of those errors was not where she stated it would be, thus, several inconsistencies within Ms. Bailey's finding that don't coordinate with the actual page number and the numbered line of the errors that she is stating. (See Exhibit – A). Petitioner states that there are still over ninety-two (92) errors within the transcribed portions of the PCR transcript, by Court Reporter, Linda D. Moffitt, that are distorted and omits questions that was asked by

Petitioner of witnesses, Scott D. Robinson, Esquire; Asst. Solicitor, James E. Hunter; and SLED Agent, Ashley Asbill, that's not presented in the transcript 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, Court Reporter, Linda D. Moffitt's, transcription of the PCR hearing transcript and 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 the 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 and further review of the PCR transcript is needed due to the inconsistencies of Karama T. Bailey's report and finding. (See Exhibit – A). Petitioner states that on page 127, line 13 – 15, right after Counsel Robinson admitted that he failed to appear, Petitioner asked him a question about, was his failure to appear, be considered negligence on his part for failing to appear at Petitioner's October 25, 2012, preliminary hearing. Whereas, Counsel Robinson admitted on record that he was negligent for failing to appear. And on page 143, line 1 – 2, right after Counsel Robinson admitted that there was a meeting in the Judge's chambers, he was asked what was talked about in the Judge's chamber between himself, Asst. Solicitor, James E. Hunter and Judge McIntosh.

Petitioner has simultaneously presented this motion before the Spartanburg County Court of Common Pleas before the presiding judge, J. Durham Cole, of that PCR hearing and before the Supreme Court of South Carolina. The Petitioner makes this Motion for Request to Listen to Audio

Recordings and to Read Steno Notes, with good cause to correct the transcript errors and any such deficiency within the July 19, and July 31, 2019, PCR hearing transcript.

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:

### ERRORS WITHIN PCR TRANSCRIPT

Page #	Line #	Change(s) That Need To Be Made
12	5	"the" should be "to"
15	20	"impartial" should be "partial"
16	13	"was" should be "is"
16	24	"Social" should be "socially"
21	19	Remove "this"
22	13	"was" should be "is"
23	6	Assistance misspelled
24	13	Add "was false" after "that"
24	13	"first" should be "Fredrick"
25	7	"was" should be "is"
25	8	"a" should be "the"
27	13	Add "an" before "extrajudicial"
27	20	"extrigent" should be "extrinsic"
37	16	"actually" should be "adequately"
37	23	"before my trial" should be "for my appeal"
46	8	"convenient" should be "color"
47	9, 10	Remove "- - excuse me - - State grand jury procedures"
47	21	Add "year" before "2012"
47	22	"17" should be "170"
48	7	"2013" should be "2012"
48	17	"causal" should be "cause of"
49	2	"constitutional" should be "constitution"
49	6	"a" should be "above are"
49	7	"permissibly" should be "impermissibly"
49	11	"the prior" should be "deprived"
49	13	Remove "they"
49	24	"2013" should be "2012"
60	13	Add "It was filed?" before the question "Is that the one you filed on July 5 <sup>th</sup> ?"
61	23	"voluntary" should be "involuntary"
64	2	"voluntary" should be "involuntary"
64	11	"judge" should be "jury"
64	25	"boasting" should be "bolstering"
68	20	"2016" should be "2013"

71	1	Add "complaint." After "that"
71	12	"with him" should be "against them both"
71	13	"hab [sic]" should be "district court"
74	6	"April" should be "August"
74	11	"April" should be "August"
74	16	Add "appear at" before "that"
75	23	"in" should be "at"
76	23	"presidicial" should be "prejudicial"
78	25	"they" should be "it"
81	19	"there" should be "that"
84	10	"at" should be "under"
84	10	"and" should be "as"
84	13	Add "my case" after "try"
84	14	"That's as" should be "That"
86	1	"a" should be "the"
87	21	"Beck v. Abraham" should be "Brecht v. Abrahamson, 507 U.S. 619"
90	23	"provided" should be "proved"
91	10	"a" should be "the"
92	14	"cure" should be "colloquy"
94	8	"appears" should be "abused"
101	19	"me" should be "him"
117	14	"your" should be "the"
117	20	"if" should be "is"
125	19	"noticed" should be "notified"
127		A question that was asked and the answer is missing from the transcript.
128	25, 1-2	The question that was asked is distorted.
129	15-19	The question that was asked is being distorted and is missing Counsel Robinson's answer.
133	5-7	The question that was asked is being distorted.
135	22	"it's not" should be "it is"
143		The question that was asked and the answer is missing from the transcript.
150	6	"traction" should be "transaction"
160	14	Add "meaningful" before "adversarial testing"
160	17	Add "meaningful" before "adversarial testing"
160	25	Misspelled "astringent" should be "extrinsic"
162	12	Misspelled "astringent" should be "extrinsic"
163	4	Misspelled "astringent" should be "extrinsic"
196	14	Misspelled "astringent" should be "extrinsic"
196	13	"Esquire" should be "conspire"
196	14	"and" should be "for the"
196	15	"subort - - force" should be "submit suborn"
196	22	"Howso" should be "How so"
197	19	"That's" should be "what's"
199	13	"isn't" should be "is"

201	2	“what” should be “that”
213	4	Add “Rule – 60(b)(2)(3)(4) and S.C. Code Ann. § 17-27-20(A)(4)” after “under”
214	14	“he gave” should be “he is”
215	10	“astringent” should be “extrinsic”
220	2	“knew me and that I was” should be “knows me as”
236	24-25	This is not what Agent As I’ll Stated on the record.
237	17	Add “him” before “my”
239	12	Add “last” before “name”
239	13	Add “and” before “with”
240	9	“The Court:” should be “Mr. James:”
240	12	“The Applicant:” should be “Mr. James:”
286	8	“Perez” should be “him”
293	18	“knee me as Unk” should be “knows me as an Uncle”
295	18	Add “it” after “write”
299	1	“till” should be “until”

A copy of the Court reporters primary and back up audio recording are needed to correct the PCR transcript errors as mentioned above. This request to receive a copy of the primary and backup tapes is according to the South Carolina Court Reporters Manual § XIII(B)(C) and Rule – 607(i), SCACR.

Moreover, the South Carolina Court Reporters Manual Petitioner to seek further review of the record with permission from the presiding judge upon a written request with good cause shown. And being that the presiding judge has failed to even respond to Petitioner’s request. Petitioner seeks permission from this Honorable Court.

### CONCLUSION

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

**DATED:** June 24, 2021  
**Ridgeville, South Carolina**

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