

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Honorable Thomas A. Russo, Circuit Court Judge

Appellate Case No: 2012-207966

RECEIVED

MAY 13 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA,

Respondent,

vs.

JIMMY L. DUNCAN,

Appellant.

**RETURN TO PETITION FOR ORDER TO RECONSTRUCT THE RECORD OF
APPELLANT'S TRIAL TRANSCRIPT OR, IN THE ALTERNATIVE, AN ORDER
SETTING ASIDE APPELLANT'S CONVICTION AND ORDERING A NEW TRIAL**

Respondent, making Return to Appellant's petition for an order to reconstruct the trial record or, in the alternative, to set aside his conviction and moving for an order permitting transcription and payment if Court Administration determines that duplicate records are available, would show unto this Court:

1. Appellant was convicted of failure to register on the sex offender registry, second offense. He asserts that he was convicted after a bench trial on January 31, 2012.
2. Counsel for Appellant indicates that she requested the trial transcript and received the transcript of a motion hearing but that the entire transcript of the bench trial is missing. The records and notes of the trial were taken by Court Reporter Deborah Everett who is no longer employed by the judicial department. It appears from the certificate prepared by the court

reporter employed by Court Administration to prepare that transcript that the records Ms. Everett delivered to Court Administration do not contain the materials to produce any portion of the transcript of the trial in this case.

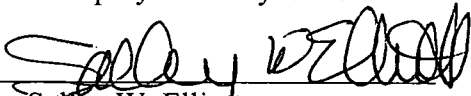
3. Counsel for Appellant states that she cannot adequately address appellate issues in the absence of the trial transcript and moves this Court to remand the matter to the court of general sessions for a hearing to reconstruct the record. Counsel for Appellant moves in the alternative for a new trial because Appellant is without fault in causing the unavailability of the trial transcript and will be deprived of meaningful appellate review without it.

4. Respondent opposes Appellant's request for a new trial at this time but has no objection to the request for a remand to reconstruct the trial transcript. However, Respondent also submits that if the Office of Court Administration communicates with the original court reporter, it might be able to determine whether the court reporter present at trial might have additional records that would allow for the transcription of the trial transcript. Respondent also submits that, if additional records were retained by the original court reporter, she might be able to transcribe the trial transcript if she is provided permission to do so by order of this Court and if she is permitted by order of this Court to receive compensation for the transcription. Therefore, Respondent moves herein to hold the motion of Appellant in abeyance pending a determination by Court Administration whether additional records to produce the trial transcript are available and for an order of this Court permitting the court reporter to prepare the transcript and to be compensated for the transcript preparation at the rate designated for court reporters employed by South Carolina Court Administration when transcript requests are made of them from State agencies or entities.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

By: 
Salley W. Elliott
S.C. Bar No: 1871

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ATTORNEYS FOR RESPONDENT

May 13, 2013

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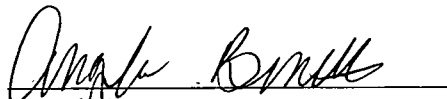
CERTIFICATE OF SERVICE

I, Angela Bennett, certify that I have today served the Return to Petition for Order to Reconstruct the Record of Appellant' s Trial Transcript or in the Alternative, an Order Setting Aside Appellant's Convictions and Ordering a New Trial on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 13th day of May, 2013.



Angela Bennett

Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211