

In The
United States Court of Appeals
For The Fourth Circuit

BRIAN DAVID HILL,

Appellant

v.

**UNITED STATES OF
AMERICA,**

Appellee.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA AT
GREENSBORO**

PETITION FOR REHEARING OR REHEARING EN BANC

U.S.W.G.O.

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I. INTRODUCTION AND RULE 35(b)(1) STATEMENT

This case involves an appeal from an inferior Court aka the U.S. District Court denying the motion to correct or modify the record from the transcript of the September 12, 2019 hearing on revocation of supervised release. The Appellant is Brian David Hill (“Appellant” or “Petitioner”). The Panel entered a decision to affirm the decision of the District Court under Appeal Dkt. #7, Appellant disagrees with that decision and files this Petition for Rehearing or Rehearing En Banc.

The Panel made a grave miscalculation and erred by affirming the decision of the District Court under the Hon. Judge Thomas David Schroeder.

First of all, the issues in this appeal involved a Transcript that was entered under Dkt. #215, that there were omissions from the official court transcript according to the multiple witnesses’ affidavits and other witnesses offered that did not present any affidavits as they were not subpoenaed. Those other witnesses happen to be United States Probation Officer Jason McMurray, and both the Defense Attorney and Prosecuting Attorney, as well as witness Sergeant Officer Robert Jones. A motion was entered under Dkt. 216 asking the U.S. District Court to correct the omissions from the Transcript in order to make sure that the record was accurate on appeal for case no. 19-4758, a pending appeal. The motion was denied under Dkt. #223.

An Informal Opening Brief was entered in Dkt. #5, in this pending Appeal.

An informal Joint Appendix was entered in Dkt. #4, in this pending Appeal.

The issue of this Petition for Rehearing was that the Panel made a decision affirming that the District Court is not going to correct omissions from the Transcript, which affect the integrity and credibility of the judicial machinery. Mistakes and errors are human, we are all human, but covering up mistakes should not be acceptable in our Judicial Branch of Government.

By affirming the decision to not modify or correct the record, not to add the notes about the omissions, not to do anything to make the omitted information part of the record for appeal, makes the Transcript of a hearing unreliable and incompetent. That means anytime something favorable to the defense is said verbally at any proceeding before the District Court, the Court Reporter could simply not type it up or remove that information at a later time, and thus it will permanently be omitted from Transcript as if it was never said at the hearing. That is morally wrong.

See Exhibit 1 — Document #216, Attachment #1, Exhibit 2 — Document #216, Attachment #2, Exhibit 3 — Document #216, Attachment #3, and Exhibit 4 — Document #216, Attachment #4. When four affidavits are entered on the record about things that were believed to have been verbally said at the court hearing dated September 12, 2019, but did not see those verbal statements in the official Transcript, this puts the District Court's credibility and competence into jeopardy. That motion also offered others as witnesses who were present at that hearing. None of them were ever subpoenaed or ordered to file their affidavits as to what they felt was not included in the official Transcript. This is a serious issue for judicial integrity as a potential cover-up of statements under oath by Officer Robert Jones regarding Appellant not being obscene. That statement was very important to Appellant as in

the state court the Commonwealth Attorney had now twisted his original facts to more recently making bazaar claims to appear that Petitioner may have been obscene when before they argued the opposite that Appellant was never charged with obscenity. It is funny how the very things omitted is that officer Robert Jones did not personally believe that Appellant had been obscene but then that was omitted from the Transcript before the Commonwealth Attorney has changed his facts to obscenity when he stated before that Appellant had not been obscene when Scott Albrecht argued that Brian had not been obscene at the General District Court trial of Martinsville, Virginia on December 21, 2018. All of this to benefit the U.S. Attorney as well. It is quite interesting that the District Court and the Panel both have allowed the Transcript to forever have these omitted statements that never should have been omitted and has an importance in Officer Robert Jones's statements that Brian wasn't being obscene, meaning that he may have referred to the fact that Brian David Hill never masturbated and never engaged in obscene conduct when obscenity is required in order to be legally guilty of indecent exposure. Usually when four affidavits are entered from four different people that it should be credible enough to consider modifying or correcting the record. One affidavit usually shows it may be true, two affidavits show it probably is true, three or four affidavits show that highly likely it is true. Any other witnesses offered that was present at the Federal Court hearing means the credibility of the claims made of omissions from the Transcript seems to be accurate and credible, a high probability that the statements omitted were omitted from the record for appeal.

The Panel's decision has endangered the integrity and credibility of Court

Reporter Briana Bell and of the District Court itself, as it is better for them to admit that they made human errors of omission rather than act as though they made no errors and covered it up (Dkt. #220) instead. Appellant practically begged his Attorney Renorda Pryor to ask Officer Robert Jones if Brian was being obscene and she had asked that as to Appellant's memory. This is a horrible, horrible mistake that the Panel made in allowing the omissions to be covered up from both appeal and covered up from the official transcript record. Of course affirming the decision of the District Court will never resolve the four affidavits and other witnesses suggested in that motion. The general public of the American people will never accept the validity and credibility of Federal Courts again if they rather cover up their mistakes than admit human error.

If this Court can reconsider its decision to affirm the decision of the District Court, then the Judge can be compelled to order a complete inquiry into those omissions, allow the other potential witnesses to testify or submit affidavits if necessary, and then decide whether it may be appropriate to amend to the Transcript to add the omitted information or transmit the omitted information separately as a separate document but transmitted to the Court of Appeals as part of the Record on Appeal for case no. 19-4758.

II. BACKGROUND

The Informal Opening Brief [Dkt. #5] will be attached to this Petition as attachment and informal Joint Appendix [Dkt. #4] is referenced as well, as to supporting documentation and will explain the background.

III. ARGUMENT

- i. Rehearing Is Warranted Because The Panel's Decision Does not resolve the deficiency in the record, does not resolve the omissions from the official Transcript on the Record for Appeal.**

The Panel's sweeping refusal to review over the deficiency in the Transcript due to the reported omissions in the four affidavits and other suggested witnesses who were all officers of the Court such as the attorneys, and U.S. Probation Officer Jason McMurray and then separately the witness Officer Robert Jones who testified at the hearing and admitted under oath that Brian David Hill had not been obscene. The Panel's sweeping refusal to review over the deficiency in the Transcript will make correcting such errors virtually unreviewable, and allow the omissions to forever be deleted from the record, missing from the record, disappeared, covered up, censored, and gone.

Citing opinion from KING, KEENAN, and FLOYD, Circuit Judges: *“Brian David Hill appeals the district court's order denying his pro se motion to correct or modify the record from his September 12, 2019 hearing on revocation of his supervised release. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court.”*

So without determining the merits of the four affidavits and asking the District Court to conduct an examination of the other witnesses offered within the Motion to Correct or Modify the record under Dkt. #216, they find no reversible error as the Panel claimed thus allowing a District Court to omit evidence and remove information from their records without ever accepting affidavits on information missing from the record that should not have gone missing.

That does not resolve the omissions and the omissions are kept off the record for the Direct Appeal. None of that makes any sense. When multiple people file affidavits that are valid under the Federal Rules of Evidence, which were never challenged under the Federal Rules of Evidence, and the Court should have taken those into consideration. Why did the Hon. Thomas David Schroeder take the word of his Court Reporter Briana Bell who filed no affidavit over the four affidavits and a suggestion that the officers of the Court should be compelled to produce affidavits or testify about the omissions from the Transcript?

The Panel's decision will only create less confidence in our Court Reporters, demonstrate that the Court Reports Act no longer holds any real value as the Courts will not hold Court Reporters accountable anymore, show that they may have a disregard to record all statements, and that when they make simple human errors like we all do, as human beings, the Court rather cover up and censor the evidence rather than admit that they made human errors and some screw ups which are normal human behaviors. We all make mistakes. It wouldn't hurt the Court Reporter to admit a mistake was made and simply allowed the affidavits to substitute the omissions and all would be fine, Appellant wouldn't hold it against the District Court for simply making a mistake if they would own up to it. Nobody is God in the Government. The Government is not comprised of angels but are comprised of men and women. We are of flesh and blood. We make human errors and it seems dishonest to treat the errors like they do not exist rather than correct such errors.

ii. The Panel's decision creates devastating consequences which will

affect the Integrity and Credibility of the Judicial Machinery of the U.S. District Court and is contradictory to Controlling Case Law.

Respectfully, the Panel had created devastating consequences with their decision that affect the integrity of the judicial machinery of the U.S. District Court by affirming the decision of the District Court as it does not resolve the four affidavits regarding the omissions which could have been easily corrected as simply a human error and everybody makes mistakes. Rather the Court Reporter and the Hon. Judge Thomas David Schroeder rather these omissions stay where they are permanently which again did not resolve the affidavits and did not resolve the issues of additional witnesses of those who were documented to have been present at the court hearing of the very Transcript at issue here.

The Court in U.S. v. Huggins had clearly conducted a hearing and did everything they could to fix the Transcript errors, to own up to their mistakes. Unlike the District Court under the Hon. Judge Thomas David Schroeder, who sat by and protected this Court Reporter from any embarrassment rather than simply fixing the error(s) which would have been better for the integrity and credibility of the U.S. District Court. If this Court of Appeals does not wish to correct the errors in the Transcript, then all credibility in the U.S. Court of Appeals is lost and such credibility will be lost and may no longer come back without new Congressional reforms to this Circuit. The Federal Courts will no longer have any credibility and nobody will believe the Federal Courts and won't take things they say at face value.

Even in the case of U.S. v. Huggins, that Court did everything they possibly could to correct the Transcript to make sure to perfect the appeal and correct the

errors of the Transcript, and that case is in the Fourth Circuit as precedent.

U.S. v. Huggins, 191 F.3d 532, 538 (4th Cir. 1999) (“Perhaps the most damaging counter to Huggins’ argument, however, is the fact that the district court gave Huggins ample opportunity to correct any remaining transcript errors and he declined to do so. In response to Huggins’ initial motion for a new trial, the district court held a hearing to discuss the sufficiency of the transcript. In an effort to correct alleged errors and omissions, the district court supplemented the transcript with copies of documents and trial notes retained by the court. The court then certified the record stating its complete satisfaction that after careful review the transcript provided Huggins with sufficient information to perfect an appeal. Convinced that all transcript errors had been corrected, the district court still invited Huggins to submit a proposed statement indicating what he believed remained missing from the transcript.”)

So the Panel’s decision conflicts with well-established case law precedent both the Fourth Circuit precedent and in regards to a Court’s inherit power, authority, and duty to correct errors in the record of a Court, when an error has been documented by multiple affidavits from multiple witnesses.

*U.S. v. Brown, 202 F.3d 691, 696 (4th Cir. 2000) (“**Brown is correct that 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.**” United States v. Huggins, 191 F.3d 532, 536 (4th Cir. 1999). However, omissions from a trial transcript only warrant a new*

trial if "the missing portion of the transcript specifically prejudices [a defendant's] appeal." United States v. Gillis, 773 F.2d 549, 554 (4th Cir. 1985); Huggins, 191 F.3d at 536. Indeed, we recently reaffirmed our rule that "to obtain a new trial, whether or not appellate counsel is new, the defendant must show that the transcript errors specifically prejudiced his ability to perfect an appeal." Huggins, 191 F.3d at 537.")

However, Appellant didn't even ask for a new trial, but only asked to correct the record on appeal as a matter of courtesy. Still the Panel's decision does conflict with the well-established case law of the Fourth Circuit as it allows the District Court to omit verbal statements from the Transcript rather than correct the record by simply adding the affidavits as part of the Record on Appeal in addition to the Transcript that would correct the record and fix the omissions. Other witnesses can submit their testimony as to the alleged omissions reported in four different submitted and signed affidavits.

United States v. Davis, 648 Fed. Appx. 295, 3 (4th Cir. 2016) ("**The Court Reporter Act requires a verbatim recording of "all proceedings in criminal cases had in open court."** 28 U.S.C. § 753(b) (2012). "*The public, including the parties to a suit, have a right of access to the records of a judicial proceeding.*" Smith v. U.S. Dist. Court Officers, 203 F.3d 440, 441 (7th Cir. 2000). *A defendant would have a right to access a tape that is an original record of the proceeding. Id. at 442. However, "audiotapes that merely back up the court reporter's stenographic record" are the "personal property of the reporter" and are not "judicial records, unless some reason is shown to distrust the accuracy of the stenographic*

transcript." Id.”)

Rushie v. Huseby Inc., 3:07CV301-03-MU, at *2 (W.D.N.C. Aug. 7, 2007) (“United States v. Gillis, 773 F.2d 549, 554 (4th Cir. 1985); see also, United States v. Huggins, 191 F.3d 532, 537 (4th Cir. 1999) (*when a transcript is less than complete, the "defendant must show that the transcript errors specifically prejudiced his ability to perfect an appeal"*).”)

The affidavits from four different people show that some statements were omitted from the Transcript. It is reasonable that Appellant only wanted the Transcript to be as accurate as possible and only to correct the record for appeal. The District Court did not do anything other than take his Court Reporter’s word for it and her word under Dkt. #220 was not under affidavit.

I thought Affidavits meant something in our Article III Courts? American people thought that affidavits meant something as evidence in our Courts?

What’s the point of affidavits if they are worthless in Court records? Do affidavits even have meaning anymore? Do affidavits even work anymore?

IV. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court grant this petition for rehearing or rehearing en banc. Petitioner respectfully requests that the Fourth Circuit U.S. Court of Appeals re-open the appeal case, accept the Informal Brief, and then order and remand that the U.S. District Court modify or correct the record to at least have the Transcript errors corrected to

perfect the appeal. Thank You!

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

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Dated: March 18, 2020 _____

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 18th day of March, 2020, I caused this Petition for Rehearing or Rehearing En Banc and attachment to be filed with the Clerk of the Court by mailing the foregoing (Certified Mail tracking no. 7019-1120-0002-2623-4163) with the Clerk of the Court then request that pursuant to 28 U.S.C. §1915(d) that the Clerk of the Court move to electronically file the foregoing using the CM/ECF system, which will send notice of such filing to the following registered CM/ECF users:

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