

The Supreme Court of South Carolina

Alonzo Tarell Jones, Petitioner,

v.

State of South Carolina, Respondent.

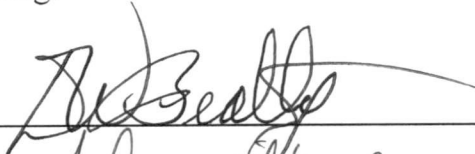
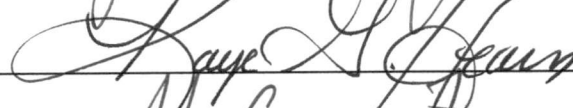
Appellate Case No. 2022-000158

ORDER

This matter is before the Court by way of a notice of appeal from an order of the circuit court finding Petitioner is entitled to a belated appellate review of the order issued in Petitioner's first post-conviction relief (PCR) action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 396 (1991). However, Petitioner's counsel states the record of Petitioner's first PCR hearing is not available. Accordingly, counsel asks this Court to hold this matter in abeyance and remand the case to the circuit court for reconstruction of the record of the PCR hearing. The State has not filed a return to the motion.

We hereby hold this matter in abeyance and remand the matter to the circuit court to reconstruct the record of the evidentiary hearing on Petitioner's first PCR application. *See Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (holding where a transcript has been lost or destroyed, this Court may remand the matter to have the record reconstructed), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). The circuit court may consider affidavits of trial counsel, the Assistant Attorney General who represented the State at the hearing, the court reporter, retired Judge G. Thomas Cooper, Jr., and any other person who may assist in determining what transpired at the hearing. *China v. Parrott*, 251 S.C. 329, 333–34, 162 S.E.2d 276, 278 (1968) (holding the trial court properly considered affidavits of the plaintiff's counsel and the court reporter in determining what transpired at a hearing). Petitioner's counsel shall contact counsel for the State and the circuit court within ten days of the date of this order to schedule such hearings as the circuit court deems appropriate. Petitioner's counsel shall provide an update to the Clerk of this Court not later than thirty days

from the date of this order, and every thirty days thereafter, with copies of the updates provided to counsel for the State. If the circuit court determines reconstruction is not possible, the court shall immediately notify this Court and the parties of that determination. If the record is reconstructed, Petitioner's counsel shall notify this Court, and the matter will proceed on Petitioner's receipt of the transcript from the reconstruction hearing.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
August 23, 2022

cc:
D. Russell Barlow, II, Esquire
Sarah Elizabeth Shipe, Esquire