

The Supreme Court of South Carolina

Edward Kirk, Jr., Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2022-001823

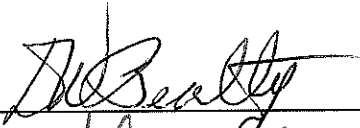




ORDER

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 direct appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). Because the record of Petitioner's guilty plea is not available, Petitioner asks this Court to hold this matter in abeyance and remand the case to the circuit court to reconstruct the record of Petitioner's guilty plea hearing. The State has filed a letter stating it does not object to Petitioner's motions.

We hereby hold this matter in abeyance and remand the matter to the circuit court to reconstruct the record of Petitioner's plea hearing. *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 plea counsel, the Assistant Attorney General who represented the State at the hearing, the court reporter, the plea judge, and any other person who may assist in determining what transpired at the hearing. *See 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 update 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 reconstructed hearing.

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

Columbia, South Carolina
April 21, 2023

cc:
D Russell Barlow, II, Esquire
Taylor Davis Gilliam, Esquire