STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

THE STATE,

VS.

JOHN WILLIE MACK
257219,
DEFENDANT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

PROSE INMATE:
STATE OF SOUTH CAROLINA
HABEAS CORPUS ACTION
17-17-10 - 17-17-200
CODE AND SECTION
OF SOUTH CAROLINA.

THE DEFENDANT WOULD RESPECTFULLY SHOW THE FOLLOWING:

THIS IS A ACTION FOR RELIEF PURSUANT TO THE HABEAS CORPUS ACT OF SOUTH CAROLINA. S.C. CODE SECTION 17-17-10 — 17-17-200. DEFENDANT HAVE EXHAUSTED ALL STATE LOWER COURT REMEDIES AND IN THE SOUTH CAROLINA APPEALLATE COURT CASE NO. 2022-000196. THERE HAS BEEN A VIOLATION WHICH IN THE SETTING CONSTITUTES A DENIAL OF FUNDAMENTAL FAIRNESS SHOCKING TO THE UNIVERSAL SENSE OF JUSTICE. DEFENDANT REQUEST THAT THE D.N.A ISSUE BE ADDRESS IN A HABEAS CORPUS ACTION IN THE SOUTH CAROLINA SUPREME COURT. ALL DOCUMENTS CONCERNING THIS HABEAS CORPUS FILING HAS BEEN ADDED FOR THE COURT INSPECTION.

IF MORE DOCUMENTS ARE NEEDED, PLEASE INFORM DEFENDANT.

DEFENDANT DECLARE (OR CERTIFY OR STATE) UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS PETITION FOR WRIT OF HABEAS CORPUS WAS PLACED IN THE PRISON MAILING SYSTEM ON 5/23/2023

SUBSCRIBED AND SWORN TO BEFORE,

NOTARY PUBLIC FOR SOUTH CAROLINA.

MY COMMISSION EXPIRES

JOHN WILLIE MACK
257219 PROSE INMATE.

SCCID
SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 15, 2023

John Willie Mack, #257219
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

Re: Your Case

Dear Mr. Mack:

Enclosed is a copy of the Order of the Court of Appeals. The Court of Appeals granted certiorari as to Question 1, your right to a belated appeal and they performed a review of the record. Based on their review the Court denied the petition for writ of certiorari as to Questions 2 and 3. This means that you have now exhausted your state court remedies.

When the Court of Appeals denies a petition for a writ of certiorari it means that the Court has declined to hear the appeal. Appeals from collateral attacks on a conviction, such as an appeal from a denial of an application under the DNA Act, are not appeals of right. Appeals of this nature are left to the sound discretion of the Court. A denial of certiorari ends the case as the denial is not subject to review by the Supreme Court. This means that you have now exhausted your state court remedies.

There is a **one-year statute of limitations for filing an application for a writ of habeas corpus in federal court.** However, please be aware that the time between your direct appeal becoming final, and the date your PCR application is filed **will count against your federal habeas statute of limitations in the future.** This statute of limitations is strictly enforced. I am closing your file with this letter. Please understand that it is **your obligation alone** to ensure that a federal habeas application is timely filed if you want to continue challenging your conviction. I do wish you the best in the future.

Sincerely,

Jessica M. Saxon
Appellate Defender

JMS/sp
Enclosure: Habeas Corpus Application

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 27, 2022

Mr. John Willie Mack, #257219
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

Re: Your Case

Dear Mr. Mack:

Enclosed please find a copy of the Petition for Writ of Certiorari Pursuant to *Mack v. State* which I have filed with the South Carolina Court of Appeals on your behalf.

Should you have any questions concerning this matter, please contact me.

Sincerely,

Jessica M. Saxon
Appellate Defender

JMS/kpw

Enclosure

The South Carolina Court of Appeals

John Mack, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2022-000296

ORDER

Petitioner's application for forensic DNA testing under the Access to Justice Post-Conviction DNA Testing Act[1] was denied by Judge J. Derham Cole, Sr. No notice of appeal was timely filed. Petitioner now seeks a writ of certiorari from an order issued by Judge Grace Gilchrist Knie granting him a belated review of Judge Cole's order pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

The panel voted to grant the petition for a writ of certiorari from Judge Knie's order, dispense with further briefing, and proceed with an *Austin* review of Judge Cole's order.

Based on the vote of the panel, the court denies the petition for a writ of certiorari from Judge Cole's order.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

cc:
Jessica M. Saxon, Esquire
David A. Spencer, Esquire
The Honorable Grace Gilchrist Knie

[1] S.C. Code Ann. §§ 17-28-10 to -120 (2014).

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

JOHN WILLIE MACK, SR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000296

PETITION FOR WRIT OF CERTIORARI PURSUANT TO MACK V. STATE

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR PETITIONER

STATEMENT OF THE CASE

In September of 2005, LaRhonda Moss went out of town for the Labor Day holiday weekend. App. 55, l. 22- App. 56, l. 4. When she returned home on September 6, 2005, she discovered her front door ajar, her personal items strewn about her home, and several electronics and pieces of personal property missing. App. 56, l. 5-App. 60, l. 25. Moss called 911 to report the break-in. App. 57, ll. 9-10.

Investigator John David Burgess and officer Eric Almond responded to the 911 call. App. 68, ll. 18-21; App. 69, l. 25-App. 70, l. 1. Almond dusted for fingerprints on various surfaces but did not recover any usable fingerprints. App. 70, ll. 5-6; App. 78, ll. 4-App. 79, ll. 2. Burgess searched the house for DNA evidence and found what he believed to be blood in three separate locations: on the entertainment center in the living room, on a bookshelf in the hallway, and by a light switch in one of the bedrooms. Burgess took swabs of the suspected blood from the three locations and sent the swabs to SLED for testing. App. 70, l. 8-App. 71, l. 15; App. 73, ll. 13-23. Burgess testified that the photographs showing the locations of the suspected blood were taken but that the photographs were subsequently lost[1]. App. 79, ll. 3-25.

Petitioner was arrested in February 2006 after the swabs taken from the scene were matched to him through a CODIS (combined DNA index system) hit. App. 184; App. 188; App. 322. The State obtained a confirmatory buccal swab from Petitioner in April 2009 that was sent to SLED for comparison. App. 3, l. 7-App. 4, l. 4; App. 10, ll. 5-17. SLED issued a report in October 2009 stating that the DNA from the scene and the DNA from the buccal swab of Petitioner were a match. App. 107, l. 7-App. 108, l. 7; App. 115, l. 5-App. 116, l. 7.

[1] Burgess testified at trial that the photographs were lost after being uploaded to a computer. Petitioner and defense counsel never saw the alleged photographs. App. 79-80; App. 254

A Spartanburg County grand jury indicted Petitioner for burglary, first degree, and grand larceny in April 2006. App. 181-82; App. 185-86. Prior to trial the state served Petitioner with notice of intent to seek a life sentence pursuant to S.C. Code § 17-25-45. App. 170, ll. 2-22. On February 22, 2011, the state represented by Barry J. Barnette and Anthony C. Leibert called the case to trial before the Honorable J. Derham Cole and a jury. App. 12. Petitioner was represented by Roger Poole. App. 12. Petitioner was found guilty as indicted. App. 166, ll. 14-25. Judge Cole sentenced Petitioner to life without parole on the burglary charge, pursuant to the life without parole notice, and five years imprisonment on the grand larceny charge. App. 177, ll. 14-25.

Direct Appeal and PCR

Petitioner appealed his convictions and sentences. While his direct appeal was pending, Petitioner filed a *pro se* application for retesting of the DNA in his case under the Access to Justice Post-Conviction DNA Testing Act (hereinafter referred to as the DNA Act) on September 27, 2012. App. 298-302. On April 17, 2013, the Court of Appeals affirmed Petitioner's convictions in an unpublished opinion. *State v. Mack*, Op. No. 2013-UP-161 (Ct. App. filed April 17, 2013). Petitioner then filed a PCR application on May 6, 2013. App. 189-201. The State filed a return dated March 18, 2014. App. 202-207. An evidentiary hearing to address Petitioner's PCR application was held on January 14, 2015. The Honorable Deadra Jefferson presided over the PCR hearing. The State was represented by Suzanne White. Petitioner was represented by Leah Moody. App. 208.

At the start of the hearing, Petitioner moved for a continuance, stating that he needed to obtain a ruling on the DNA Act application before proceeding with the PCR hearing as the outcome of the application could impact his PCR claims. App. 213; 271-273. The court denied

Petitioner's continuance request, stating that the results of the DNA Act application would have no bearing on Petitioner's burden of proving ineffective assistance of trial counsel. App. 214; 272. Further, the court stated that any rulings made on his PCR application would not impact any possible relief or rulings that would come from the adjudication of Petitioner's pending DNA Act application. App. 272-273.

Petitioner and trial counsel Roger Poole testified at the hearing. App. 209. At the conclusion of the PCR hearing the court denied Petitioner's PCR application. App. 263-265. An order of dismissal was filed on April 10, 2015. App. 268-297. Petitioner filed an appeal of the PCR court's decision. On February 1, 2018, our Supreme Court filed an order denying certiorari.

DNA Act Application and Second PCR

On October 31, 2014, two years after Petitioner had filed the application under the DNA Act, a hearing was convened before the Honorable J. Derham Cole. Barry Barnette and Anthony Leibert represented the State. Petitioner was again represented by Leah Moody. App. 303.

At the DNA hearing, Counsel Moody argued that Petitioner was requesting testing of the three tangible items where his blood was allegedly found. Petitioner did not want to retest the swabs but wanted to test the items where the State claimed his blood was found. Petitioner maintained he was innocent and had never been inside the home that was burglarized. Petitioner argued the testing of the actual items would show that his DNA was not present on them. Counsel Moody further informed the court that there was no corroborating evidence that the swabs submitted for DNA testing came from the home, as the pictures of the locations where the alleged blood was found were lost prior to trial. App. 308, l. 12-App. 310, l. 19.

The State argued that the items Petitioner wanted tested were never taken into custody and "to go back and get the actual items would be impossible" at this point in the case. App. 307, ll. 20-22; App. 311, ll. 4-9. The State informed the court that the items Petitioner sought to have tested no longer existed and that the method of DNA testing had not changed since Petitioner's original trial. App. 312, ll. 10-18. When questioned by the court as to whether the items were available for testing the State responded, "I would not think so, your Honor." App. 316, ll. 2-8. The State also argued that the items had already been tested because the swabs taken from the items were tested and matched to Petitioner's buccal swab. App. 307, l. 22-App. 308, l. 6; App. 311, ll. 10-18. 2-13.

In response, Counsel Moody argued that Petitioner had requested the tangible items for testing as part of his original Rule 5 motion, but the State had not complied with the request. App. 315, l. 7-App. 317, l. 18. Petitioner's position was that, at the time he filed the Rule 5 motion, the tangible items should have been turned over for independent testing because he believed there was exculpatory evidence on the items. App. 318, l. 3-App. 319, l. 2.

An order denying Petitioner's request for DNA testing was filed on May 19, 2015[2]. Judge Cole found that the items Petitioner wanted tested "were previously subjected to DNA testing and further testing would not provide a more probative result." App. 321-324. The order noted that the State did not take actual physical custody of the tangible items. App. 323. Counsel Moody, who had also been counsel for Petitioner during his initial PCR, did not file an appeal of the denial of Petitioner's application under the DNA Act. Petitioner filed a notice of

2 The order from the DNA Act hearing was filed one month after the initial PCR court's order of dismissal.

appeal of the DNA court's denial. On July 16, 2015, the Court of Appeals dismissed Petitioner's appeal as not timely served. App. 334; App. 337.

On September 10, 2015, Petitioner filed a second PCR application wherein he alleged that DNA counsel was ineffective for failing to appeal the decision of the DNA court and for failing to have Judge Cole, who had presided over Petitioner's trial, recuse himself from the DNA hearing when requested by Petitioner. App. 325-335. The State filed a return and motion to dismiss on March 23, 2017, arguing that Petitioner had failed to assert a cognizable claim under the PCR Act, that the application was not filed within the statute of limitations, and that the application was successive to Petitioner's initial PCR application. App. 336-343.

A hearing was held on June 29, 2017, before the Honorable Robin B. Stilwell, solely to address the State's motion to dismiss. App. 344-357. Petitioner was represented by Rodney Richey. The State was represented by Valerie Giovanoli. App. 344. The court heard argument from both parties before granting the State's motion to dismiss. The court reasoned that the law was "contrary to Petitioner's position" and that a PCR application was not the venue for challenging DNA counsel's performance. The court also stated that the appeal of the DNA court's decision would not be productive, as the items Petitioner sought to have tested had already undergone DNA testing. App. 354, l. 11-App. 355, l. 24.

An order denying Petitioner's second PCR application and dismissing it with prejudice was filed on July 7, 2017. App. 358-365. The order provided that Petitioner's PCR application had to be dismissed because Petitioner had failed to state a cognizable claim under the PCR Act, had filed the PCR application outside of the statute of limitations, and the application was successive in that Petitioner could have raised these claims in his prior PCR application. App. 361-365.

Petitioner's second PCR counsel, Rodney Richey, filed an appeal of Judge Stilwell's order. Counsel also provided a separate accompanying explanation which provided that Petitioner had filed the second PCR application as the only means to appellate review of the order issued by the DNA court. App. 366-368.

Former Appellate Defender LaNelle Durant filed a petition for writ of certiorari on March, 16, 2018, arguing that "[t]he PCR court erred in denying Petitioner Mack a belated appeal from the denial of his application for DNA testing and for failing to find his DNA attorney ineffective for not filing an appeal timely; instead, the PCR judge denied Petitioner's second PCR due to Petitioner's failure to state a cognizable claim under the Post-Conviction Procedure Act because Petitioner asked for a belated appeal; Petitioner's failure to comply with the statute of limitations; and as being successive which was prejudicial to Petitioner because this was his only avenue for the DNA appeal." The state filed its return on July 12, 2018.

The case was transferred to this Court on July 25, 2019, and certiorari was granted on March 6, 2019. Briefing by both parties was completed in August of 2019. This Court affirmed the second PCR court's decision in an unpublished decision. *State v. Mack*, Op. No. 2019-UP-386 (Ct. App. filed December 18, 2019). App. 369-370. Petitioner through counsel petitioned for rehearing on December 20, 2019. This Court denied the petition for rehearing on January 23, 2020. App. 371.

Our Supreme Court granted petitioner's writ of certiorari to the Court of Appeals on August 7, 2020. App. 372. Briefing was completed in October 2020. Oral argument was held in the case on March 3, 2021. In a published opinion issued on April 28, 2021, our Supreme Court reversed the second PCR court's dismissal and remanded the matter back to the circuit court for an evidentiary hearing consistent with the opinion. App. 373-380. A consent order

granting Petitioner a belated appeal of the denial of his DNA Act application was filed on March 7, 2022. App. 381-384. This petition for writ of certiorari pursuant to *Mack v. State*, 433 S.C 267, 858 S.E.2d 160 (2021), follows.

ARGUMENT

I.

The circuit court properly granted Petitioner relief pursuant to *Mack v. State*, 433 S.C 267, 858 S.E.2d 160 (2021), where Petitioner's DNA counsel failed to file a Notice of Appeal from the denial of Petitioner's application for post-conviction DNA testing and where the State agreed that Petitioner was entitled to belated review.

In *Mack v. State*, our Supreme Court extended *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), to applications filed under the DNA Act "to safeguard an applicant's statutory right to seek appellate review" and to ensure an applicant the assistance of appellate counsel. *Mack* at 274, 858 S.E.2d at 163. Our Supreme Court then set forth a procedure akin to the procedure established in *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991) to be followed when an applicant petitions for belated appellate review of a decision under the DNA Act:

> We hold that an applicant for post-conviction DNA testing may file a petition for belated review when he is prevented from seeking appellate review, such as when counsel fails to seek timely review. Because an application for post-conviction DNA testing under the DNA Act must be filed with the clerk of court of the court in which the conviction or adjudication took place, the petition for belated review must also be filed in that court and request an evidentiary hearing. The petitioner will be entitled to belated review if the circuit court judge affirmatively finds either: (1) the petitioner requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review was not knowingly and intelligently waived.
>
> If the circuit court finds the petitioner is entitled to belated review, the petitioner shall serve and file a petition for a writ of certiorari under Rule 247, SCACR. The first question in the petition shall address whether the circuit court properly found the petitioner is entitled to belated review. In addition, the petition shall raise and address the questions the petitioner seeks to have reviewed regarding the decision on the application for post-conviction DNA testing.
>
> If the circuit court finds the petitioner is not entitled to belated review, the petition for a writ of certiorari shall address only the question of whether the circuit court

erred in finding the petitioner is not entitled to belated review. However, the petition shall also include a statement of the questions the petitioner would raise regarding the decision on the application for post-conviction DNA testing if belated review is granted.

Regardless of the finding of the circuit court, the Appendix under Rule 247(e), SCACR, shall contain the entire record before the lower court, including the transcript of any hearing held and the orders issued by the court as to both the application for post-conviction DNA testing and the petition seeking belated review, along with an index.

Unlike the Austin review procedure, the petitioner will not be required to establish prejudice under the standard outlined in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Instead, prejudice will be presumed.

Mack at 274–77, 858 S.E.2d at 163–64 (2021) (internal citations omitted)

In Petitioner's case, the State consented to belated appellate review. App. 383. In the order granting belated appellate review, the circuit court found that Petitioner's DNA Counsel failed to timely file a notice of appeal from the order denying his DNA Act application, and due to that failing Petitioner was entitled to belated appeal. Therefore, the circuit court correctly granted Petitioner belated review of the denial of his DNA Act application in this matter.

II.

The circuit court erred in denying Petitioner's application for testing pursuant to the DNA Act where the State failed to prove that the items Petitioner sought to have tested no longer existed.

The State averred that the three items Petitioner sought to have tested no longer existed. However, at the evidentiary hearing, the State offered no proof that the items no longer existed and only presumed they were not available. The DNA Act places specific duties upon the State, the circuit court, and the custodian of evidence upon receipt of an application for DNA-testing to

preserve and inventory the evidence in the case. There is nothing in the record that shows these duties were met prior to the denial of Petitioner's application.

S.C. Code Ann. §17-28-50 requires the Solicitor to notify the custodian of the evidence that an application for DNA testing has been filed so that the evidence will be preserved. Similarly, S.C. Code Ann. §17-28-70 requires the circuit court to order the custodian of evidence to preserve all physical evidence and biological material related to an applicant's conviction. Section 17-28-70 further requires that the custodian of the evidence prepare a written inventory for the parties of the physical evidence and biological material related to the case.

When a custodian of evidence asserts that physical evidence or biological material has been lost or destroyed, the court shall order the custodian of evidence "to locate and provide the applicant and the solicitor or Attorney General, as applicable, with a copy of any document, note, log, or report relating to the physical evidence or biological material." S.C. Code Ann. 17-28-70(C). Additionally, "[i]f no physical evidence or biological material is discovered, the court may order a custodian of evidence, in collaboration with law enforcement, to search physical evidence and biological material in the custodian of evidence's possession that would reasonably be expected to produce relevant physical evidence or biological material." S.C. Code Ann. 17-28-70(D).

The requirements of sections 17-28-50 and 17-28-70 were not met in Petitioner's case. The record contains no indication that the State or the circuit court contacted the custodian of evidence to instruct them to preserve and inventory the evidence. Without the required inventory, neither Petitioner, the State, nor the circuit court knew if the items Petitioner sought to have tested existed. The court, instead of complying with the statute, adopted the State's assumption that the items were not taken into custody. App. 323. This was an error of law

because the statute specifically sets out that the custodian not only provide an inventory but provide logs or documents related to any evidence that was lost or destroyed.

III.

The circuit court erred in denying Petitioner's application for testing pursuant to the DNA Act where the court did not make findings of fact and conclusions of law on all seven factors enumerated in S.C. Code Ann. § 17-28-90.

To prevail on an application for post-conviction DNA testing, an applicant must prove each seven factors enumerated in S.C. Code Ann. § 17-28-90 by a preponderance of the evidence. The order in Petitioner's case does not address the seven factors in any meaningful way, but it concludes that the items Petitioner sought to have tested were previously tested and that further testing would not provide a more probative result. While the DNA Act does not specifically require a court to provide findings of fact and conclusions of law in an order granting or denying an application after a hearing, Petitioner asserts that such findings are necessary to ensure meaningful appellate review. Petitioner respectfully requests this Court hold that the circuit court must provide findings of fact and conclusions of law on each of the factors enumerated in S.C. Code Ann. § 17-28-90 after a hearing has been held on an application pursuant to the DNA Act to ensure that all parties have a complete record for meaningful appellate review.

The procedures to be followed when filing and reviewing an application under the DNA Act are set forth in S.C. Code Ann. §§ 17-28-40, 17-28-50, and 17-28-90. Section 17-28-40 provides that the application for post-conviction DNA testing be made on a form prescribed by our Supreme Court. The section then details eight requirements that must be included on the application. Among the required explanations are why the identity of the applicant was or

should have been a significant issue during the original court proceedings and how the requested DNA testing would provide a substantially more probative result than the evidence submitted at trial.

After an application has been filed, but before any judgment has been rendered, the court may issue orders for "amendment of the application and for any documents related to the application." S.C. Code. Ann. § 17-28-50(C). After review of the application, responses, and any motions by the parties, the court may determine that "the applicant is not entitled to DNA testing and no purpose would be served by any further proceedings, it may indicate...its intention to summarily dismiss the application and its reasons for so doing." If the court intends to dismiss the application without a hearing, the court "shall make specific findings of fact and expressly state its conclusions of law." *Id.* The applicant will be given an opportunity to reply to the proposed dismissal. "In light of the reply, or on default thereof, the court may order the application dismissed, grant leave to file an amended application, or direct that the proceedings otherwise continue." *Id.*

If the court determines that further proceedings are necessary, the "application must be heard in, and before a judge of, the general sessions court ... in which the conviction...took place. A record of the proceedings must be made and preserved." S.C. Code Ann. § 17-28-90(A). At the hearing, an applicant must prove each of the seven factors in S.C. Code Ann. § 17-28-90(B) by a preponderance of the evidence to obtain the requested testing.

The appellate courts of this state have repeatedly held that appellate review is frustrated when a lower court does not provide findings of fact and conclusions of law to support its decision. *See In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002) ("The absence of factual findings makes our task of reviewing the court order impossible

because the reasons underlying the decision are left to speculation.") (internal quotation omitted); *Atkinson v. Atkinson*, 279 S.C. 454, 456, 309 S.E.2d 14, 15 (Ct.App.1983) ("Proper appellate review is extremely difficult, if not impossible, where a lower court omits specific findings of fact to support its legal conclusions."). Admittedly, there is nothing in the DNA Act or in the Rules of Criminal Procedure that require a court to issue specific findings of fact and conclusions of law after holding a hearing on an application for post-conviction DNA testing. However, that does not mean the requirement should be waived.

In *State v. Rodriguez*, 302 Kan. 85, 305 P3d. 1083 (2015), the Supreme Court of Kansas analyzed whether the district court's order denying post-conviction DNA testing made sufficient findings of fact and conclusions of law to facilitate meaningful appellate review. The DNA testing statute in Kansas, much like the one in South Carolina, does not specifically require such findings[3] to be made. Even though the statute did not require such findings, the Supreme Court of Kansas noted that it had "repeatedly recognized that meaningful appellate review is precluded where a trial court's finding of fact and conclusions of law are inadequate to disclose the controlling facts or basis for the court's findings." *Id.* at 91, 350 P.3d at 1087. The Kansas Supreme Court ultimately held that there were adequate findings of fact and conclusion of law contained in the hearing record to allow meaningful appellate review. *Id.* at 92, 350 P.3d at 1088.

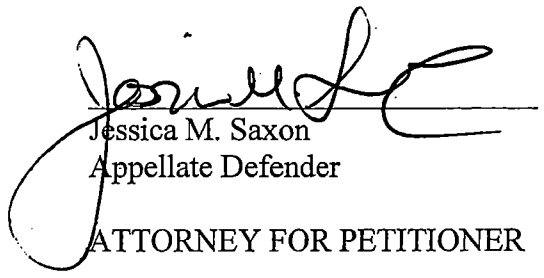
Rodriguez and the holdings of the appellate courts of this state make it plain that sufficient findings of fact and conclusions of law are necessary for meaningful appellate review. The court in Petitioner's case did not provide findings of fact and conclusions of law as to the

3 A Supreme Court Rule in Kansas, Supreme Court Rule 165, was observed to be applicable to orders from DNA hearings. The rule requires a lower court to provide findings of fact and conclusions of law to support its position when a contested matter is submitted to the court without a jury. *Rodriguez* at 91, 350 P.3d at 1087.

seven factors contained in S.C. Code Ann. § 17-28-90, and therefore this Court cannot adequately review its determination to dismiss the application. Petitioner requests this Court hold that the circuit court must provide findings of fact and conclusions of law on all of the factors in the DNA Act whether dismissing or granting an application and remand this matter back to the circuit court for an order containing the necessary findings.

CONCLUSION

For the foregoing reasons, Petitioner's respectfully request that this Court grant the writ of certiorari to allow further briefing on these issues.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 26th day of September, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

JOHN WILLIE MACK, SR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000296

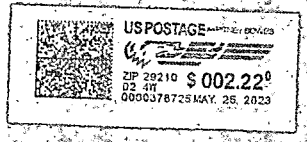
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case have been served upon Melody J. Brown, Esquire, at the primary email address listed within the Attorney Information System (AIS); and on John Willie Mack, #257219, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 26th day of September, 2022.

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

John W. Mack
#257219
Max A-Side, 222
Lieber C.I. PO Box 205
Ridgeville, South Carolina
Zip Code:
29472



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S.C. SUPREME COURT

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