

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
M. Rita Metts, Circuit Court Judge
Appellate Case No. 2022-000679

RECEIVED

Jun 23 2023

S.C. SUPREME COURT

ROOSEVELT DOCTOR, #186661,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**PETITION FOR REHEARING/RECONSIDERATION.
OF ORDER OF DISMISSAL
AND REQUEST FOR POST-CONVICTION RELIEF APPEAL
TO BE REINSTATED**

The time limits for preparing the Petition for Writ of Certiorari and Appendix in the above captioned PCR Appeal were continued multiple times prior to today's date. Counsel for Petitioner acknowledges that those documents are now due for service and filing on today's date; May 1, 2023. Undersigned counsel for Petitioner further acknowledges that this Court's order granting her last extension request stated that there would be no further extensions in this matter. Counsel asks that this Honorable Court note that she was substituted as counsel of record in this matter by order entered on January 11, 2023.

Counsel's last extension request was filed on April 13, 2023. She requested an additional thirty (30 Day extension at that time. Counsel noted at that time that she had been experiencing unusual problems with her allergies and sinuses and had unfortunately been out sick a good bit. Her extension request was granted but she was only given until May 1, 2023 to serve and file the Certiorari Petition and Appendix. As noted in her extension request filed on May 1st, Counsel was in Court in Spartanburg on April 17, 2023. As noted in that filing, it turned out that the pain

I had attributed to sinus trouble turn out to be an infection around the roots of two molars. After being on pre-op antibiotics for a week, I oral surgery on April 25, 2023.

I came in to my on May 1st with every intention of finishing the Certiorari petition due in this matter. There are relatively few issues in this case and I could have finished everything today. Unfortunately, in putting the Appendix together Counsel discovered there are some real problems with the transcript of the PCR sent to me digitally by the Court Reporter. That transcript included the following formatting errors and omissions.

- The entire transcript in single spaced;
- The pages of the transcript are not numbered and ***neither are the lines on each page. Petitioner asserts that these formatting errors would make it virtually impossible to properly cite to this record as provided.*** ;
- Some lines are indented beyond normal indentation at the beginning of a paragraph;
- The PCR Hearing transcript has NO headers at all;
- ***The entire transcript is typed in 10 pt font***; new courier to be exact and the required font size is, as I understand it, must be at least 12 pt.;
- ***It appears that the pages of this transcript have more than fifty single spaced lines on each page; Between there being no page numbers, the font being too small and the single spacing of the content of each page, it would be impossible to correctly cite to the text found on each page.***
- Throughout the PCR Hearing Transcript, the left margin is 0.92, and the right margin is also 0.92. I believe for bound documents, the left margin is actually supposed to be slightly larger than the 1" margins required on all four sides on unbound documents;
- The entire transcript is left hand justified, ***but it is not justified on the right side***;
- The ***Index*** begins on the ***COVER*** page below the information called for on a transcript cover under the rules.

On May 1, 2023, Counsel filed a Motion to Stay the deadlines for filing in this matter until she was able to obtain a properly formatted transcript of the PCR hearing record. Before emailing that request, Counsel checked her file and determined that the copy found on file as identical to the one downloaded from the email sent to counsel. Counsel sent that Petition

to stay in to the Court the evening of May 1, 2023. Some time later, while looking for an Applicant's Exhibit in this file she discovered another copy of the transcript that had apparently been mail to Counsel's Office and put in the file. Counsel had originally only ordered a digital copy of this record since the original had been ordered and paid for before she was substituted as Counsel. She was told by the Court reporter that she had to pay for a copy and the digital copy. That copy obviously came in and was filed. As I have previously noted, I do not recall when it first became possible to get a digital copy of records from Court Reporters, but in my forty-four years as an appellate lawyer, I have never received a digital copy of any record that was not identical to the hard copy sent to me by the Court reporter. Unfortunately, when I tried to complete the Appendix I discovered yet another problem with the Appendix. The Court Reporter had properly indexes Applicant's exhibits 1-3, however, she reference Applicant's Exhibit No. 4 only as "Documents" and did not reference the location in the transcript where that Exhibit was discussed and ultimately introduced. When I read the transcript again and located the discussion it was not at all clear what comprised Applicant's Exhibit No. 4. I subsequently sent my part-time paralegal, who worked for this Honorable Court for approximately fourteen years before retiring, to the Richland County Clerk of Court's Office to obtain certified copies of all the exhibits including Applicant's Ex. No. 4. There was no problem with Exhibits 1-3, However, the paralegal was handed *a single document* marked Applicant's No. 4 along with a small stack of other documents which the employee from the Clerk of Court's office referenced by saying words to the effect, "then there is this stuff" that was not marked in any fashion as part of Applicant's Ex. No. 4. Those exhibits did not appear to line up with the vague description of Applicant's Ex. No. 4 found in the PCR transcript.

Counsel's Motion to stay was not ruled upon until June 8, 2023. I spent June 8 in Jasper, SC visiting with my client in a murder case scheduled for trial in that County. I had been checking the Appellate Case management System regularly to watch for a decision on my Motion filed May 1, 2023. When I exited the Jasper County Detention Center late that afternoon I check my email before I even left the parking lot of that facility. When I saw that the Motion had been denied and this appeal denied at the same time, I sat in that parking lot and began a response. When it took longer than I expected, I went back to my hotel room and checked back into my hotel room, unpacked my car and filed a response by email at 9:30 P.M.

Since June eighth I have tried diligently to resolved the question of what documents comprised Applicant's Exhibit No. 4. I contacted opposing counsel to see if she by any chance had a copy of that exhibit or if she recalled what it contained. It was obviously not her responsibility to insure the Applicant's Exhibits were properly described in the record and properly indexed in the PCR hearing record. I simply hoped she would recall something that might help solve the mystery. Tommy Tomas, Applicant's PCR lawyer and I have been in frequent contact. He does not have a copy of this exhibit in his file. He is still trying to assist me in figuring out what documents were submitted as his Exhibit No. 4. In the mean time I had oral surgery again two days ago and am currently recovering from that. I most respectfully ask that the Dismissal of this PCR Appeal be reconsidered and this PCR be reinstated with PCR Counsel given a brief opportunity to complete this Certiorari Petition and Appendix.

Respectfully submitted,

s/ *Tara D. Shurling*

Tara Dawn Shurling

Attorney at Law

SC Bar No. 5099

ATTORNEY FOR PETITIONER

Date : May 1, 2023

Cc: Julianna E. Battenfield, Esquire