

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 28 2023

S.C. SUPREME COURT

ROOSEVELT DOCTOR, #186661,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR LEAVE OF COURT
TO FILE
AMENDED PETITION FOR REHEARING
AND
REQUEST FOR PCR APPEAL TO BE REINSTATED

On May 1, 2023, Undersigned Counsel for Petitioner filed a Petition to Stay the deadline for filing the Petition for Writ of Certiorari and Appendix in the above captioned PCR appeal due to irregularities in the digital transcript of the PCR hearing record provided to counsel by the Court Reporter. Counsel had double check the hard copy of this record found in her file and it matched the version sent to Counsel digitally. Counsel subsequently discovered another hard copy in a separate folder in her file in a separate carrier in her file. That copy was properly formatted however the index to the exhibits was incomplete and with record to Applicant's Ex. No. 4, it failed to adequately identify the "documents" comprising that exhibit. In addition, it failed to reference the page references for where that exhibit was admitted into evidence.

Counsel subsequently obtained certified copies of Applicant's Ex. No. 1, 2 and 3. In addition she obtained a certified copy of *one* document marked Applicant's Ex. No. 4. The fact that the index to exhibits referenced that exhibit as "documents" plural and the fact that PCR Counsel referenced

Exhibit No. 4 as a packet of documents, lead Counsel to believe that exhibit was supposed to be contain multiple documents. What exactly those documents were supposed to be was not clear from the PCR record. When provided the certified copy of Applicant's Ex. No. 4, Counsel's paralegal asked if that was everything and was handed a stack of other documents and was told, words to the effect, "then there is this stuff." None of those documents were marked as being part of Applicant's Exhibit No. 4. Since that time Counsel has been trying to determine exactly what Applicant's Ex. No. 4 was intended to include. While to other problems with the transcript of this PCR hearing were resolved by the second hardcopy sent to Counsel, the failure of the Court Reporter to properly mark the documents comprising Applicant's Exhibit No. 4 has created a problem that Counsel has yet to be able to resolve.

One June 8, 2023, this Honorable Court dismissed this PCR Appeal by Order forwarded to Counsel by email at 10:58 A.M. on June 8, 2023. Unfortunately, Counsel was in Ridgeland, South Carolina on June 8, 2023, working on preparations for an upcoming murder trial. Counsel spent much of that day with her client at the Jasper County Detention Center and did not see the email from the Court until she left that facility.

Counsel had oral surgery on April 25, 2023, after developing an abscess around two molars. After that surgery she remained in almost constant pain. On Wednesday, June 21, 2023, Counsel had a second oral surgery which included removal of a third molar and having her gum cut open for the oral surgeon to grind down bone spikes that had been left at the sight of a major molar extraction and which required repair during the second surgery. Counsel was in a lot of pain between the two procedures. On June 23, 2023, the last day for Counsel to file for rehearing, Counsel drafted and filed a Petition for Rehearing/ Reconsideration that afternoon. Counsel was very sick at that time, but did the best she could to explain the circumstances to this Honorable Court. Ultimately, Counsel took some OTC pain medication and resorted to a brief rest at her office. Counsel redrafted the petition and

added some attachments she believes were necessary to illustrate what happened in this PCR appeal. That second version was filed at 11:45 P.M. on June 23, 2023; a mere two days after Counsel's second oral surgery. Counsel initially felt better after the second surgery, but within a couple days she began to feel very sick once more. Counsel apologizes to the Court for her delay in seeking Leave of Court to Amend the Petition for Rehearing she filed first on June 23, 2023. Although she moved forward with filing the second draft, captioned her Amended Petition for Rehearing and Request for PCR Appeal to e Reinstated, she was too ill to go to the office to file a formal Request for Leave of Court to File her Amended Petition. Fortunately, Counsel's oral surgeon put her back on antibiotics Monday afternoon, and by this afternoon, and Counsel was feeling sufficiently improved to come to the office and prepare this petition.

For all the reasons set forth in her pleadings, Counsel respectfully asks this Honorable Court to grant her request to reconsider the Order of Dismissal, allow her request to Amend her original Petition for Rehearing on the Order of Dismissal and grant her prayer that the Court to reinstate this PCR appeal.

Respectfully submitted,

S/ *Tara D. Shurling*

Tara Dawn Shurling
Attorney at Law
S.C. Bar No. 5099

ATTORNEY FOR PETITIONER

This 28th day of June, 2023

Cc: Julianna E. Battenfield, Esquire