

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable G. Edward Welmaker, Circuit Court Judge

FREDERICK JERMAINE HARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2011-194532

MOTION IN SUPPORT TO REMAND
PETITIONER'S CASE TO RECONSTRUCT
THE RECORD OF HIS FIRST PCR HEARING
HELD ON APRIL 8, 2005

On July 11, 2013, the Court requested the parties submit memoranda addressing whether it is necessary for the Court to remand this case to reconstruct the record of petitioner's first PCR hearing held on April 8, 2005, before Judge Larry R. Patterson. This PCR was denied and dismissed by order dated May 17, 2005. There was no appeal so no transcript was ever ordered.

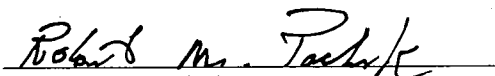
Petitioner filed a second PCR on August 17, 2010. After an evidentiary hearing held on May 12, 2011, before the Honorable G. Edward Welmaker, the Assistant Attorney General, Karen

C. Ratigan, consented to a belated appeal of the denial of petitioner's first application for post-conviction relief. On June 13, 2011, Judge Welmaker issued an order granting petitioner a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1996). Appellate counsel filed a petition for writ of certiorari on February 8, 2012, addressing the belated appeal issue. On that same date, appellate counsel also filed a Johnson petition pursuant to the Austin v. State grant of a belated appeal. Counsel noted that because of the delay in filing for a second PCR and the granting of the belated appeal, no transcript was available of the first PCR hearing. Generally, a record should be attempted to be reconstructed when the court reporter records are unavailable. China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002). However, in State v. Ladson, 373 S.C. 320, 326, 644 S.E.2d 271, 274 (Ct.App. 2007), this Court wrote:

“It is simply unrealistic and unreasonable to think that a trial judge and counsel can — under these circumstances [the passage of fourteen months] — reconstruct a proper record that will permit meaningful appellate review, especially in light of our issue preservation rules.”

In petitioner's case, it has been over eight years since his first PCR hearing. If this Court remands the case to reconstruct the record, local counsel should be appointed to represent petitioner. If the record cannot be reconstructed, a new PCR hearing should be held.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

Attorney for Petitioner

This 17th day of July, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable G. Edward Welmaker, Circuit Court Judge

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SC Court of Appeals

FREDERICK JERMAINE HARRIS,

PETITIONER,

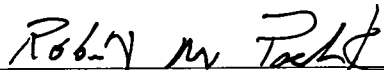
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

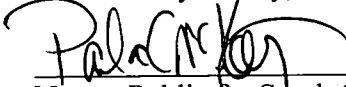
The undersigned attorney hereby certifies that a true copy of the Memorandum in Support to Remand Petitioner's Case to Reconstruct the Record of His First PCR Hearing Held on April 8, 2005 in the above referenced case has been served upon opposing counsel, Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Frederick Jermaine Harris, #267210 at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 17th day of July, 2013.



Robert M. Pachak
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 17th day of July, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022