



ALAN WILSON
ATTORNEY GENERAL

July 26, 2013

Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: **Frederick Jermaine Harris v. State**
Appellate Case No. 2011-194532

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JUL 26 2013

SC Court of Appeals

Dear Ms. Kitchings:

I am in receipt of a letter from this Court, dated July 11, 2013, requesting a memorandum for the above-captioned case which addresses whether the Court should remand this case for a reconstruction of the 2005 post-conviction relief (PCR) hearing.

I.

Harris was found guilty after a jury trial on charges of conspiracy, first-degree burglary, and two counts of armed robbery. On December 3, 2002, the Honorable John W. Kittredge levied a twenty-seven (27) year sentence. This Court dismissed his appeal (filed pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967)) on March 30, 2004.

II.

Harris filed his first PCR application on September 10, 2004 (2004-CP-23-5954). A hearing was held on April 8, 2005 and the Honorable Larry W. Patterson issued an order of dismissal that was filed on May 18, 2005. Neither a post-trial motion nor a notice of appeal were filed.

Harris filed his second PCR application on August 17, 2010 (2010-CP-23-6750). A hearing was held on May 12, 2011 and the Honorable G. Edward Welmaker issued an order granted a review of the issues related to the first PCR application pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). This order was filed on June 16, 2011.

III.

On February 8, 2012, opposing counsel filed the following documents with the South Carolina Supreme Court: (1) a petition for writ of certiorari and (2) a Johnson^a petition for writ of certiorari pursuant to Austin v. State.

IV.

The State submits the matter does not need to be remanded in order to reconstruct the 2005 PCR hearing. Initially, it should be noted that opposing counsel filed a Johnson petition from the order in the 2005 PCR hearing. As such, the implication is that there were no meritorious issues in the order of dismissal from that case. In addition, as a motion to alter or amend judgment pursuant to Rule 59(e), SCRPC was not filed, the presumption must be that the order of dismissal addressed all of the issues raised at the PCR hearing. As the order of dismissal contains both a recitation of the testimony from the hearing and rulings upon the issues, it should be viewed to be the best evidence of what transpired at the PCR hearing.

As the PCR hearing was held more than eight (8) years ago, it is doubtful either that the parties and witness would recall what transpired at the hearing or would have notes documenting the hearing. Further, the issues addressed in the order of dismissal are extremely straightforward and, in large part, refuted by the trial transcript and various statutes. The State submits a reconstructed transcript would not be beneficial in determining whether there was merit to these issues.

Accordingly, the State's position is that this matter should not be remanded to reconstruct the April 8, 2005 PCR hearing. If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,


Karen C. Ratigan
Assistant Deputy Attorney General

cc: Robert M. Pachak, Esquire

^a Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).