

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Jan 11 2024**

S.C. SUPREME COURT

—————  
Certiorari to Berkeley County

Honorable Diane Schafer Goodstein, Circuit Court Judge  
—————

FRED FREEMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001221  
—————

MOTION TO UNSEAL PORTION OF  
POST-CONVICTION RELIEF HEARING TRANSCRIPT  
—————

After the notice of appeal was filed, the Division of Appellate Defense assumed representation of Petitioner and undersigned counsel was ultimately assigned to represent Petitioner. Upon reviewing the transcript of the evidentiary hearing held on April 16, 2021 in Petitioner's post-conviction relief (PCR) action, counsel discovered the judge sealed a portion of the transcript in which Petitioner's motion to relieve counsel was heard. Counsel now moves to unseal this portion of the transcript.

A Berkeley County grand jury indicted Petitioner on December 15, 2015 for first degree burglary and possession of a weapon during the commission of a violent crime. His case was called to trial on August 28, 2017 before the Honorable Maite Murphy, and a jury. Assistant

Solicitors Bryan Alfaro and Benjamin Dennis represented the state. John Church and Keisha White represented Petitioner. On August 29, 2017, the jury found Petitioner guilty as indicted. He was sentenced to forty-five years for burglary and five years concurrent for the weapons offense.

The Court of Appeals dismissed Petitioner's appeal after a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Freeman, 2019-UP-200 (S.C. Ct. App. filed June 5, 2019). On October 15, 2019, Petitioner filed an application for post-conviction relief (PCR). The state filed a return to this application on July 20, 2020. An evidentiary hearing was convened on April 16, 2021 before the Honorable Diane Goodstein. Assistant Attorneys General Samantha Weidauer and Benjamin Limbaugh represented the state. Christopher Murphy represented Petitioner.

At the beginning of the evidentiary hearing, Petitioner moved to relieve counsel stating he was discontent with counsel's representation. Judge Goodstein held an ex parte hearing on Petitioner's motion. At the conclusion of the ex parte hearing, Judge Goodstein denied Petitioner's motion to relieve counsel and the evidentiary hearing proceeded with Christopher Murphy representing Petitioner. Regarding the ex parte hearing, Judge Goodstein stated that "that part of this record has been sealed and it certainly can be unsealed in the event that that issue is appealed and the Court needs that part of the record." The judge did not provide any reasoning for why she sealed this portion of the record. See Exhibit A.

By order filed June 22, 2023, Judge Goodstein denied Petitioner relief. Petitioner filed a notice of appeal with the Court of Appeals on July 28, 2023. By order dated August 1, 2023, the Court of Appeals transferred the appeal to this Court pursuant to Rule 204(a), SCACR.

The Division of Appellate Defense assumed representation of Petitioner on appeal and ordered the transcript of the April 16, 2021 evidentiary hearing. Upon receipt of the transcript, the case was assigned to undersigned counsel. Counsel reviewed the hearing transcript and discovered the sealed portion of the record. Undersigned counsel now moves to unseal the record.

The public's right of access to the courts dates back to English law and was firmly established in the United States when the Bill of Rights was adopted. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 9, 630 S.E.2d 464, 468 (2006). The South Carolina Constitution guarantees public access to the courts. S.C. Const. art. I, § 9. "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." Id. Court proceedings are presumptively open in South Carolina. Ex parte Cap. U-Drive-It, Inc., 369 S.C. at 10, 630 S.E.2d at 469.

Courts restricting access to records "must make specific factual findings, on the record, which weigh the need for secrecy against the right of access. The burden is on the party who seeks to overcome the presumption of access to show that the interest in secrecy outweighs the presumption." Id. at 12, 630 S.E.2d at 470. The factors a court must consider include:

- (1) ensuring the parties' right to a fair trial or hearing;
- (2) the need for witness cooperation;
- (3) the reliance of the parties upon expectations of confidentiality of the proceeding;
- (4) the public or professional significance of the proceeding;
- (5) the perceived harm to the parties from disclosure;
- (6) why alternatives other than sealing the documents are not available to protect legitimate private interests; and
- (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents. . . .
- (8) public interest in the proceeding;
- (9) the private or public status of the litigants and case generally;
- (10) whether release would enhance the public's understanding of an important historical event;
- (11) whether the public already has access to information contained in the records;
- (12) whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors.

Id. at 12, 630 S.E.2d at 470.

Undersigned counsel would like to review the sealed portion of the record for purposes of Petitioner's appeal and include it in the Appendix to be filed with this Court. See Rule 243(f)(1),

SCACR (stating the entire lower court record shall be included in the Appendix). Notably, Judge Goodstein did not make any specific factual findings, on the record, weighing the need for secrecy against the right of access as required by Ex parte Cap. U-Drive-It, Inc.

This motion is filed in good faith, and not for purposes of delay. Counsel has spoken with opposing counsel, Danielle E. Dixon, and is authorized to state that Respondent does not oppose this motion.

WHEREFORE, undersigned counsel respectfully moves this Court unseal the portion of the transcript containing the ex parte hearing in which Petitioner's motion to relieve counsel was heard so that it may be reviewed by counsel and included in the Appendix to be filed with this Court. Counsel also respectfully requests this Court hold the case in abeyance until the Court rules on Petitioner's motion.

Respectfully submitted,



Lara M. Caudy  
Appellate Defender

ATTORNEY FOR PETITIONER

January 11, 2024.