

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Appellate Case No. 2022-001326

The Honorable Kristi Curtis, Circuit Court Judge

RECEIVED

Mar 13 2023

S.C. SUPREME COURT

Stanley Moultrie.....Petitioner,

v.

The State of South CarolinaRespondent.

SUPPLEMENTAL APPENDIX

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SECOND POST-CONVICTION RELIEF HEARING,
HELD SEPTEMBER 9, 2022.....001

1 State of South Carolina) **TRANSCRIPT OF RECORD**
2 COUNTY OF GEORGETOWN) CASE NO. : 2019-CP-22-00684

3 -----

4 September 9, 2022

5 **BEFORE:** The Honorable Kristi F. Curtis

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7
8 Stanley D. Moultrie,)
9 Applicant,)
10 vs.)
11 State of South Carolina,)

12 -----

13 APPEARANCES:

14 Chelsey F. Marto, Esquire
15 Attorney for the State of South Carolina

16 Elizabeth Franklin-Best, Esquire
17 Attorney for the Defendant.

18 James K. Falk, Esquire-Appeared via video

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Julie A. Kevish
Official Court Reporter

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September 9, 2022

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P-R-O-C-E-E-D-I-N-G-S

4 MS. MARTO: Your Honor, this is the matter of Stanley
5 Moultrie versus State of South Carolina, 2022-CP-22-0684. He
6 was indicted May, 2015 for a kidnapping and armed robbery and
7 represented by Jeffrey Lucas. He went to trial August 22, 2016
8 before Judge Brown and was acquitted of kidnapping but found
9 guilty of armed robbery August 24, 2016 and sentenced to life
10 imprisonment pursuant to an LWOP notice. He filed a notice of
11 appeal. The convictions were affirmed and the Remittitur
12 issued January 9, 2019. His first application was filed
13 April 17, 2019. An evidentiary hearing was held June 23, 2021
14 before Judge Seals. He was denied relief and the order of
15 dismissal signed July 31, 2021 and he did not appeal from that
16 first PCR action. The second application was filed August 10,
17 2022 and the only issue he's raising is that PCR counsel failed
18 to file a notice of appeal, so he's requesting Austin relief.
19 And with that, I'll turn it over to Ms. Franklin-Best.

20

THE COURT: Thank you. Yes, ma'am?

21

22 MS. FRANKLIN-BEST: Good afternoon, Your Honor.
23 That's exactly right. The claim here is very simple, that Mr.
24 Moultrie had James Falk as his attorney who represented him at
25 the evidentiary hearing for his PCR. Mr. Moultrie wanted to
appeal the denial of relief but his counsel failed to file that

1 Notice of Intent to Appeal, and so I would offer Mr. Moultrie's
2 testimony to say that he wished to go forward on that appeal
3 and that he did not knowingly, voluntarily, intelligently waive
4 that right.

5 THE COURT: Sure. I can call you to the stand.

6 **STANLEY D. MOULTRIE WAS DULY SWORN AT THIS TIME AND**
7 **TESTIFIED AS FOLLOWS:**

8 MS. MARTO: Your Honor, before we begin, Mr. Falk
9 just e-mailed me letting me know that he's looking to sign in
10 to the virtual courtroom.

11 THE COURT: Okay. I'll pull it up. I've got it up,
12 I'll just turn my computer so he can hear the testimony.

13 MS. FRANKLIN-BEST: You just let me know when you're
14 ready, Your Honor.

15 THE COURT: I'm just waiting for him to pop up here.
16 We are starting the hearing on Stanley Moultrie. Mr. Falk, can
17 you hear us?

18 MR. FALK: Yes, Your Honor.

19 THE COURT: We're just about to put Mr. Moultrie on
20 the stand. He's been sworn. Go right ahead.

21 MS. FRANKLIN-BEST: Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 BY MS. FRANKLIN-BEST:

24 Q. Good afternoon, Mr. Moultrie. So after you were
25 convicted and your appeal was denied, did you file an

1 application for post-conviction relief?

2 A. Yes, ma'am.

3 Q. And were you appointed Mr. James Falk to represent you
4 in your PCR action?

5 A. Yes, ma'am, I was.

6 Q. And was there a hearing on that case on June 23, 2021?

7 A. Yes, ma'am.

8 Q. And on that date Mr. Falk represented you at the
9 hearing?

10 A. Yes, ma'am.

11 Q. And there was an Order of Dismissal denying PCR Relief.
12 On July 31, 2021. Did you receive a copy of that?

13 A. No, ma'am.

14 Q. But at some point you found out that that case had been
15 dismissed?

16 A. Yes, ma'am, I did.

17 Q. And did you seek to appeal that denial?

18 A. Yes, I was trying to appeal it, yes.

19 Q. Okay. So what did you do in order to appeal that?

20 A. Well, I contacted Mr. Falk and at that time that's when
21 he told me that he didn't file the appeal for me and to do an
22 Austin brief.

23 Q. And so when you received this Order of Dismissal, when
24 you found out about it, you were an incarcerated inmate at that
25 point?

1 A. Yes, ma'am.

2 Q. So you were relying on your attorney to perfect that
3 appeal or to file that notice of intent to appeal?

4 A. Yes, I was.

5 Q. And did you want to go forward challenging your life
6 sentence?

7 A. Yes, I do.

8 Q. Okay. Did you knowingly, intelligently and voluntarily
9 waive your right to the appeal?

10 A. I did not wave it at all.

11 MS. FRANKLIN-BEST: I think there are no other
12 questions, Your Honor.

13 THE COURT: Ms. Marto?

14 MS. MARTO: Yes, briefly, Your Honor.

15 **CROSS-EXAMINATION**

16 BY MS. MARTO:

17 Q. Do you recall when you asked him to file that appeal,
18 was it right after the hearing?

19 A. No. We was quarantined at the time. I happened to call
20 Mr. Falk during quarantine and at that time he let me know then
21 that he did not file the appeal and that it was his fault and
22 he would say that he told me to file an Austin brief but at the
23 time I told him I couldn't because we were quarantined and
24 wasn't able to move out on it at all and so he said he would do
25 the, I guess, the motion for me, but he didn't, and at that

1 time as time went on that's when I decided to -- went to get an
2 attorney to help me.

3 Q. Do you recall how long after the hearing you were in
4 quarantine and asking him to did that?

5 A. This was probably maybe four or five months later.

6 Q. So you didn't ask him to -- did you ask him to file one
7 before that?

8 A. No. I was trying to contact him and could not reach him
9 at the time, calling, letters, calling him, didn't receive
10 anything until one day when I called, like one evening, and he
11 answered the phone and as we were talking he said, Mr.
12 Moultrie, hold on for a second. I guess he was going through
13 his files in the computer, or whatever, and then he came back
14 and told me, Mr. Moultrie, I'm sorry, you know, I didn't file
15 the appeal on you on the dismissal.

16 Q. Did Mr. Falk tell you you had a right to file an appeal?

17 A. Yes, he did. He said you have the right to file an
18 appeal. He said it was my fault, but he was going to do a, I
19 guess, a motion for me, but he didn't. You know, and I didn't
20 hear anything after that for another three, four months, and so
21 I kept trying to call, kept trying to call, kept trying to
22 call, leaving message after message and didn't receive
23 anything, so I decided I to needed to hire an attorney.

24 Q. Did he tell you you had that right before the PCR
25 hearing?

1 A. To file an appeal?

2 Q. Yes, sir.

3 A. If it was denied?

4 Q. Yes, sir.

5 A. I mean, I don't remember the proceedings back then. I
6 wanted to find out what was the decision from the PCR hearing,
7 and that's when I found out what the decision was then and then
8 he said he didn't file the appeal.

9 Q. So to the best of your knowledge, the only conversation
10 you had about filing an appeal was maybe four or five months
11 after that order was issued?

12 A. After I went to court last June, I heard nothing about
13 the case until I called him when we were quarantined. That's
14 when he advised me that he did not give me any kind of response
15 as to what the disposition was on the case and when he searched
16 it that's when he realized he didn't file an appeal. That's
17 when he put me on notice that I need to have an appeal, I have
18 the right to an appeal, and nothing was done after that.

19 MS. FRANKLIN-BEST: No further questions.

20 THE COURT: Anything on Redirect?

21 MS. FRANKLIN-BEST: I don't believe so, Your Honor.

22 THE COURT: Thank you, ma'am. Sir, you can step
23 down.

24 MS. MARTO: Your Honor, we would call Mr. Falk.

25 THE COURT: Mr. Falk, were you able to hear the

1 testimony, sir?

2 MR. FALK: Yes, I did.

3 THE COURT: Somebody just call you as a witness. Ms.
4 Marto, that was you?

5 MS. MARTO: Yes, Your Honor.

6 **JAMES FALK, ESQUIRE WAS DULY SWORN AT THIS TIME AND**
7 **TESTIFIED AS FOLLOWS:**

8 THE COURT: I'm going mute mine here, and let's see
9 how this is working. Let me turn my volume down here.

10 **DIRECT EXAMINATION**

11 BY MS. MARTO:

12 Q. Good afternoon, Mr. Falk. So you represented Mr.
13 Moultrie in his PCR matter, correct?

14 A. That's correct.

15 Q. And did you talk to him about his right to file a Notice
16 of Appeal from that action?

17 A. I'm pretty sure I told him what I told everybody, is
18 that, you know, as soon as the judge issues the order, if you
19 don't win I'll file an appeal.

20 Q. So you would have done that before the PCR Hearing,
21 correct?

22 A. No, right at the end, that's usually what I do at the
23 end of the PCR Hearing.

24 Q. That date?

25 A. That day, yeah.

1 Q. And a Notice of Appeal wasn't filed in this case, right?

2 A. I dropped the ball.

3 Q. But you told him that you would file the notice?

4 A. Yes.

5 Q. Did you get any indication from Mr. Moultrie that he
6 didn't want to appeal?

7 A. Not at all. I mean, I thought we had -- you know, we
8 filed an amendment to the PCR application. I thought we raised
9 some issues that were meritorious and it's completely my fault,
10 I apologize.

11 MS. MARTO: No further questions.

12 MS. FRANKLIN-BEST: No questions, Your Honor, and no
13 further witnesses.

14 THE COURT: Thank you, Mr. Falk. I'm going to mute
15 the session. Ms. Franklin-Best?

16 MS. FRANKLIN-BEST: Yes, Your Honor.

17 THE COURT: Anything else on behalf of the Applicant?

18 MS. FRANKLIN-BEST: No, Your Honor, just maybe brief
19 argument.

20 THE COURT: Sure.

21 MS. FRANKLIN-BEST: Just that I think the record is
22 pretty unrefuted, that, in fact, Mr. Moultrie did want to
23 appeal the denial of his PCR. His attorney has candidly
24 admitted that he failed to do that, he dropped the ball.
25 Respectfully, Your Honor, we're just asking that you grant him

1 the right to the Austin appeal in this matter.

2 MS. MARTO: And we'll consent to relief, Your Honor.

3 THE COURT: I'm going to grant the belated appeal.

4 MS. MARTO: Thank you, Your Honor.

5 MS. FRANKLIN-BEST: Thank you, Your Honor.

6 THE COURT: And who's going to do the order?

7 MS. MARTO: I'll do it.

8 THE COURT: Thank you, Ms. Marto.

9 CERTIFICATE

10 STATE OF SOUTH CAROLINA

11 COUNTY OF GEORGETOWN

12 I, Julie A. Kevish, Official Court Reporter for the
13 State of South Carolina, do hereby certify that the foregoing
14 is a true, accurate and complete Transcript of Record of the
15 proceedings had and evidence introduced in the Court of Common
16 Pleas for Georgetown County, South Carolina, on the 9th of
17 September, 2022.

18 I do further certify that I am neither of kin,
19 counsel, nor interest to any party hereto.

20 September 9, 2022

21

22

Julie Kevish

23

JULIE A. KEVISH
OFFICIAL COURT REPORTER

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