

Feb 28 2025

S.C. SUPREME COURT

FILED FOR RECORD
STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
2025 FEB 21 PM 2:01)

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

Alonzo T. Jones,

GINGER H. FARMER
CLERK OF COURT
KERSHAW COUNTY, SC
Applicant,

) Case No: 2017-CP-28-00226
) Appellate Case No: 2022-000158
)

v.

) **ORDER FINDING PCR EVIDENTIARY**
) **HEARING RECORD HAS BEEN**
) **ADEQUATELY RECONSTRUCTED**
)

State of South Carolina,

Respondent.

This matter comes before the Court by way of the South Carolina Supreme Court's instruction that a reconstruction hearing be held in the matter of Alonzo T. Jones vs. State of South Carolina, a Post-Conviction Relief action (2014-CP-28-00302). On July 16, 2015, an evidentiary hearing was held at the Richland County Courthouse before the Honorable Thomas Cooper; however, the transcript for that hearing could not be produced by the court reporter. As a result, a reconstruction hearing was scheduled to determine whether or not the record supporting Judge Cooper's December 9, 2015, Order of Dismissal could be adequately recreated to allow Applicant, Alonzo T. Jones, to proceed with a belated appellate review of Judge Cooper's Order of Dismissal.

On December 17, 2024, a reconstruction hearing was held before the Honorable Daniel Coble via the Webex platform. Applicant was represented by Appellate Defender Sarah Shipe of the South Carolina Commission on Indigent Defense. The State was represented by Senior Assistant Deputy Attorney General D. Russell Barlow, II.

PROCEDURAL HISTORY

On April 19, 2013, appeared before the Honorable DeAndrea G. Benjamin and pled guilty to Unlawful Carrying of a Pistol and Resisting Arrest. Judge Benjamin sentenced Applicant to concurrent terms of one year suspended to six months of probation on each charge. Applicant was

represented by Cornelius J. Riley, Esquire¹ (Plea Counsel). Fifth Circuit Deputy Solicitor Brett A. Perry prosecuted the case.

Applicant did not appeal his convictions or sentences.

On April 8, 2014, Applicant filed his first PCR application (2014-CP-28-00302) with the assistance of retained counsel Ronald W. Moak (Counsel Moak).² Subsequent to the filing of this action, Applicant was incarcerated on federal charges. A hearing on the PCR action was held on July 16, 2015, before the Honorable G. Thomas Cooper, Jr. Counsel Moak represented Applicant at this hearing, but Applicant was not present because he was in federal custody. Plea Counsel was present and testified. On December 9, 2015, Judge Cooper dismissed Applicant's application with prejudice by filed order. Counsel Moak did not file an appeal on Applicant's behalf.

Applicant ultimately filed a complaint with the Office of Disciplinary Counsel concerning Counsel Moak's representation of him, alleging that Counsel Moak never attempted to call or explain what was happening regarding his PCR action, failed to respond to emails requesting status updates and other communications, failed to inform Applicant his PCR hearing was scheduled and arrange a means by which Applicant could participate, and failed to advise Applicant that his application was denied at the end of the hearing. Counsel Moak's representation of Applicant was cited as one of the bases for discipline imposed on Counsel Moak. Matter of Moak, 417 S.C. 73, 789 S.E. 2d 42 (2016). In that opinion, the Supreme Court found that Counsel Moak violated Rules 1.3 and 1.4, South Carolina Rules of Professional Conduct, Rule 407, SCACR, because he

¹ Counsel Riley has since passed away and was not available to testify at the reconstruction hearing.

² Respondent informed the Court that Mr. Moak had been located but was not available till January for testimony. The Court decided to proceed with just Counsel Mitchell's testimony as Respondent could not guarantee Mr. Moak would appear in a later proceeding.

did not act with reasonable diligence in his representation of Applicant, and did not keep Applicant reasonably informed about the status of the matter or comply with requests for information.

In November 2016, Applicant filed a petition for Writ of Habeas Corpus in the original jurisdiction of the South Carolina Supreme Court. On December 1, 2016, the Supreme Court issued an order holding that habeas relief was not proper as applicant had not exhausted all other available remedies pursuant to Gibson v. State, 329 S.C. 37, 495 S.E. 2d 426 (1998). Accordingly, the South Carolina Supreme Court denied the petition without prejudice and advised Applicant to file a subsequent application in the circuit court asserting these claims.

Applicant filed his second PCR action (2017-CP-28-00226) on March 15, 2017. An evidentiary hearing was held on January 24, 2022, to determine if Applicant was entitled to belated appellate review of the dismissal of his prior PCR application (2014-CP-28-00302). On February 2, 2022, the Honorable D. Craig Brown filed an Order Granting Belated Appeal Pursuant to Austin v. State³. On February 22, 2022, Applicant filed his Notice of Appeal. The South Carolina Office of Indigent Defense requested the initial PCR hearing transcript on June 1, 2022, and was informed that the court reporter could not produce the transcript because the five (5) year window under Rule 607, SCACR, had closed. On August 23, 2022, the South Carolina Supreme Court issued an order remanding the case to the circuit court for a reconstruction hearing.

On December 17, 2024, this Court held a reconstruction hearing to attempt to reconstruct the initial PCR evidentiary hearing. The only witness available to testify was former Assistant Attorney General J. Clayton Mitchell, Esquire (Counsel Mitchell), who represented the State at Applicant's initial PCR evidentiary hearing. Counsel Mitchell testified to his recollection of the matter and had his notes from the hearing, which were entered as an exhibit.

³ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

**SUMMARY OF TESTIMONY ADDUCED AT RECONSTRUCTION
HEARING**

Counsel Mitchell

Counsel Mitchell testified that he took notes during the original PCR evidentiary hearing, and the Order of Dismissal primarily reflected his notes on what transpired. (Reconstruction Tr. p. 12). Counsel Mitchell testified that the Applicant was not present at the hearing, but efforts were made to include him. (Reconstruction Tr. p. 13). Counsel Mitchell testified that Counsel Moak called Plea Counsel, who represented the Applicant in his guilty plea, to testify.

Counsel Mitchell testified that during direct examination, Counsel Riley provided a background stating that he pled in April 2013. Counsel Mitchell indicated that Counsel Riley mentioned Applicant was initially charged with being a felon in possession of a weapon; however, since he did not have a felony, the charge was changed to unlawfully carrying a pistol. Counsel Mitchell further testified that Counsel Riley said he advised Applicant of any collateral consequences, but Counsel Riley was unaware that federal agents were investigating the Applicant.

Counsel Mitchell testified that Counsel Riley stated he did not investigate whether the gun was processed or reviewed. Counsel Mitchell indicated that Mr. Riley mentioned there was no dispute over whether a gun was present. Counsel Mitchell also testified that Mr. Riley remarked that Applicant was satisfied with the one-year sentence. Furthermore, Counsel Mitchell testified that Counsel Riley noted Applicant was eager to accept the guilty plea and he believed Applicant would still have taken the plea offer.

Counsel Mitchell testified that during cross-examination, he questioned Counsel Riley about the reduction of charges and the concept of dual sovereignty, specifically whether it was appropriate for federal law enforcement to pursue charges. Counsel Mitchell further testified that

Counsel Riley testified that he believed it was appropriate for federal law enforcement to pursue charges, but he was unaware of any other investigation. Additionally, Counsel Mitchell testified that Counsel Riley mentioned he did not inform Applicant about any potential theoretical investigation that could exist. Counsel Mitchell also testified that Counsel Riley noted it was his practice to advise about collateral consequences.

Counsel Mitchell testified that Mr. Riley stated he is usually contacted before any state charges are upgraded to federal. Counsel Mitchell also testified that Mr. Riley was unaware of any federal interests. Additionally, Counsel Mitchell reported that Mr. Riley indicated that Applicant had a pending drug charge in a different jurisdiction.

Counsel Mitchell testified that during redirect, Counsel Moak asked Counsel Riley about the procedure when federal charges are involved. Counsel Mitchell noted that Counsel Riley stated the solicitor usually takes a hands-off approach, waits for the federal charges to resolve, and then typically dismisses the state charges.

Counsel Mitchell testified that he recalled the case had appeared on previous rosters and was continued in an effort to find a way to make Applicant available for testimony.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony of Counsel Mitchell who represented the State in the original PCR evidentiary hearing on July 16, 2015. This Court has further had the opportunity to observe the witness presented at the hearing, closely pass upon his credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law concerning the reconstruction of Applicant's July 16, 2015, PCR evidentiary hearing.

The Record Has Been Successfully Reconstructed

This Court finds that the reconstruction hearing has successfully recreated the record in this matter. A new PCR hearing is not necessary in light of the reconstructed testimony provided by the witness. Applicant should be permitted to proceed with a PCR Appeal based upon this reconstructed record, the existing Order of Dismissal, and the admitted exhibit.

Discretion in determining how to proceed with a reconstruction of an unavailable transcript lies with the trial court. Adams v. H.R. Allen, Inc., 397 S.C. 652, 658, 726 S.E.2d 9, 13 (Ct. App. 2012). This Court acknowledges that a reconstruction hearing will never be so effective as to provide a verbatim recreation of every question and response elicited during the original hearing. Nor is such a reconstruction necessary to avoid reversal or rehearing. See State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). Instead, it is the burden of the Applicant to demonstrate prejudice stemming from the condition of the reconstructed record. Id. The Court is convinced that the recollection of the witness of this matter was sufficient when combined with the PCR exhibit and the Order of Dismissal. This Court finds that there has not been a showing of prejudice by Applicant.

There is limited case law concerning the reconstruction of prior hearings. Appellate Counsel for Applicant noted her pessimism toward the ability to recreate the record in this matter and cited State v. Ladson to support her reasoning. In State v. Ladson, the trial court endeavored to reconstruct the three-day trial of the defendant, who had been convicted of first-degree burglary a little over a year prior. State v. Ladson, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007). However, the only participants in the reconstruction were the trial court, the solicitor, the defense attorney, and the defendant. None of the original witnesses were present or examined, nor were any of the

exhibits or evidence discussed during the hearing. Instead, two witnesses' affidavits were presented, and the attorneys summarized the remaining testimony. Id. at 322. The Court of Appeals found numerous and significant discrepancies in the recollections of the judge and the parties involved. Id.

The Ladson court found the information provided by the state to be conclusory, noting that it was often characterized or prefaced by statements such as "his testimony generally would be," "he testified generally to the following," and "the next witness. . . will be by summation." Id. Without access to his notes, the trial court merely and repetitively conceded that the State had presented an accurate summation of the testimony. Id. Additionally, discrepancies were identified in the incorrect recollection of the court as to the expert qualification of the witness and the unchallenged chain of custody for certain evidence, the failure by the State to recall that certain witnesses testified at all, and even dispute amongst the parties as to whether Ladson testified in his own defense. Id. at 322-23.

In summary, the Court of Appeals noted that the trial court's conclusions and findings were repeatedly found to be inaccurate compared to the recollections of the other individuals and the available reference materials. The Court of Appeals also noted that despite the good faith efforts of those involved, "the reconstructed record is largely conclusory, with testimony, objections, and the like recalled only in summary fashion." Id. at 323.

The facts of Ladson are distinguishable from the case at hand. Here, this Court did not have a three-day trial to reconstruct; rather, it was a PCR hearing where two issues were presented. Also, this Court has the Order of Dismissal that was drafted to coincide with the evidence that was presented, and the Court had the witness from which testimony was taken and was able to evaluate the substance of their testimony as it was memorialized in the Order.

It is important to note that the Court of Appeals in Ladson was attempting to reconstruct a three-day trial, complete with original testimony, objections, and evidence. Applicant's PCR evidentiary hearing lasted less than one day, and was based upon two issues raised by Applicant. While Ladson is instructive in the sense that it demonstrates the potential pitfalls that can accompany a reconstruction hearing, the availability of the original witnesses, their successful recollections, and the differing nature of a trial versus a PCR hearing all greatly distinguish Ladson from Applicant's reconstruction. The facts of Ladson are simply too dissimilar to serve as a legal precedent in this matter.

Nothing in the reconstructed record leads this Court to believe that significant omitted testimony pertinent to the Applicant's claims still exists. Likewise, this Court is well satisfied that the limited scope of Applicant's first PCR action, alongside the witness testimony and Order of Dismissal, is sufficient, and the records have been reconstructed.

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

Based on the foregoing, this Court finds and concludes that the PCR evidentiary hearing record has been successfully reconstructed.

IT IS THEREFORE ORDERED:

1. That the South Carolina Supreme Court be notified that the record has been reconstruction successfully; and
2. That Applicant's PCR Appeal should no longer be held in abeyance.

AND IT IS SO ORDERED this 21 day of Feb, 2025.



DANIEL COBLE
Presiding Judge

Richland, South Carolina