

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Patrick C. Fant, III, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

RONALD TYRONE DOWNS, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2025-001171

MOTION TO REMAND FOR RECONSTRUCTION OF
POST-CONVICTION RELIEF HEARING

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order requiring the parties to reconstruct petitioner’s post-conviction relief hearing originally held before the Honorable Daniel D. Hall on February 19, 2015. While this motion is pending, petitioner asks this Court to hold the timelines for filing his petition for writ of certiorari and appendix in abeyance.

In support of his motion, petitioner would present the following:

1. The undersigned represents petitioner in his appeal before this Court.

2. The transcript from petitioner's post-conviction relief hearing cannot be produced or ascertained by the Court Reporter, Michael R. Watts. (See correspondence with Court Reporter Manager Tammie Holmes dated September 8, 2025, attached as Exhibit A).

3. To allow for meaningful appellate review, the record must be reconstructed.

PROCEDURAL HISTORY

4. Petitioner was indicted by a Greenville County grand jury in January 2013 for kidnapping (2012-GS-23-10568), armed robbery (2012-GS-23-10569), and first-degree assault and battery (2013-GS-23-0087A).

5. Petitioner's case was called to trial on August 14, 2013, before the Honorable Eugene C. Griffith and a jury. Petitioner was represented by Clifford F. Gaddy, Jr., Esquire, and L. Mark Moyer prosecuted for the state. On August 15, 2013, the jury acquitted petitioner on the kidnapping charge and found Petitioner guilty of armed robbery and first-degree assault and battery.

6. Judge Griffith sentenced petitioner to a term of twenty-five (25) years' imprisonment for armed robbery and ten (10) years' imprisonment for first-degree assault and battery, to be served concurrently with credit for time served.

7. Petitioner did not pursue a direct appeal of his convictions.

8. Petitioner filed his first *pro se* application for post-conviction relief on May 2, 2014.

9. The state filed its Return on October 21, 2014.

10. An evidentiary hearing was held before the Honorable Daniel D. Hall on February 19, 2015, at the Greenville County Courthouse. Brian P. Johnson, Esquire, was appointed to represent petitioner, and Karen C. Ratigan appeared on behalf of the state.

11. Defense counsel Clifford F. Gaddy, Jr. was the only witness to testify at the evidentiary hearing except for Petitioner.¹ Mr. Gaddy has since died.

12. According to an Order of Dismissal signed by Judge Hall on March 2, 2015, relief was denied on all claims.

13. PCR Counsel Brian P. Johnson did not file an appeal on petitioner's behalf.

14. Petitioner filed another *pro se* application for post-conviction relief on July 5, 2025, seeking a belated appeal from his first PCR action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

15. The state filed its Return on February 28, 2024.

16. An evidentiary hearing was held before the Honorable Patrick C. Fant, III, on October 9, 2024, at the Greenville County Courthouse. Isaac L. Johnson, Jr., Esquire was appointed to represent petitioner, and Tommy Evans, Jr., appeared on behalf of the state.

17. On May 6, 2025, the Honorable Patrick C. Fant, III, signed an Order of Dismissal denying relief on all claims.

18. PCR Counsel Isaac L. Johnson, Jr. filed a Notice of Appeal with this Court on June 12, 2025.

19. This case is now on appeal before this Court.

20. The Office of Appellate Defense requested the transcript from the February 2015, hearing on September 3, 2025. The court reporter was unable to produce the transcript because he had retired and because the five-year window for retaining tape recordings under Rule 607, SCACR, had closed. The court reporter advised "it has all been destroyed." See Exhibit A.

¹ The March 19, 2015, Order of Dismissal only references testimony by defense counsel and Petitioner. The undersigned is unaware of any other witnesses.

ARGUMENT

When a trial transcript has been lost or destroyed, the Court may vacate the conviction and sentence and remand for a new trial if meaningful appellate review is not possible. *See Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002); *Deaton v. Leath*, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983); *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968); *Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); *State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007).

In *Deaton, supra*, the defendant's convictions were set aside, and a new trial had where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing *Deaton*, this Court denied a request for reconstruction in *State v. Serrette*, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) where the reason for the lack of transcript was due to the defendant's absence for a ten-year period, which this Court explained was "not a situation where the court reporter's equipment malfunctioned at trial leading to a loss of the trial transcript." In the matter at hand, petitioner was not at fault for any of the difficulties in his case; rather, the transcript is not available from the court reporter due to matters outside petitioner's control. Petitioner's prior PCR counsel did not perfect the appeal following the denial of that application. Petitioner initially believed that he was unable to file a subsequent PCR application. Upon realization that he could, Petitioner followed the proper procedure and filed another application under *Austin*.²

² The court reporter's tapes from Petitioner's post-conviction relief hearing were presumably available until July 2020, based on the timelines set forth in Rule 607(i), SCACR. In future cases, either PCR counsel or counsel for the state could request the tapes in cases involving belated review under *Austin* to keep the deadline from passing and the tapes being destroyed.

The case which first provided a remedy in the form of delayed appellate review, *Austin v. State*, saw this Court reverse the summary dismissal of a second PCR application and remand for an evidentiary hearing, where the petitioner alleged in his second application that his first PCR counsel was ineffective for failing to seek appellate review. 305 S.C. 453, 409 S.E.2d 395 (1991). Specifically, this Court stated: “Because petitioner is entitled to the assistance of appellate counsel on PCR, and because we must craft a remedy to correct the unfairness which has occurred, we find his allegation that counsel failed to seek review in this case sufficiently states a claim for ineffective assistance.” *Id.* at 454, 409 S.E.2d at 396. Thus, “[u]nder *Austin*, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review or did not knowingly and intelligently waive the right to appeal.” *Odom v. State*, 337 S.C. 256, 260, 263, 523 S.E.2d 753, 755, 756 (1999) (“The one-year statute of limitations for PCR applications is not applicable to appeals filed pursuant to *Austin v. State*.”); *see also Whitehead v. State*, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002) (“We have held that the PCR statute of limitations found in S.C. Code Ann. § 17-27-45(A) (Supp.2001) does not apply to *Austin* claims”).

Petitioner respectfully requests an order for the remand of this matter and subsequent reconstruction of petitioner’s PCR hearing to perfect the certiorari appeal in this case. A reconstruction hearing is appropriate because the absence of the PCR hearing transcript prevents this Honorable Court from conducting a meaningful appellate review. *Ladson* at 325, 644 S.E.2d 271, 274. *See also In re D.W.*, 171 N.C. App. 496, 615 S.E.2d 90, 94 (2005); *State v. Chanze*, 211 W.Va. 257, 565 S.E.2d 379, 382-83 (2002) (finding criminal defendant is entitled to meaningful

appellate review of his lower court proceedings, and if this is not possible from a reconstructed record, a new trial is appropriate).

In the present case, the entire PCR hearing transcript cannot be produced. A reconstructed transcript of his PCR hearing is necessary for appellate counsel to represent him effectively and for this Court to give meaningful appellate review of his conviction. Petitioner also respectfully requests that the Order remanding this matter contain language giving the trial court the option to conclude that the record cannot be reconstructed with the specificity to support meaningful appellate review. “It is simply unrealistic and unreasonable to think that a trial judge and counsel can—under these circumstances—reconstruct a proper record that will permit meaningful appellate review, especially in light of our issue preservation rules.” *Ladson*, 373 S.C. at 326, 644 S.E.2d at 274.

The undersigned called counsel for the state, Tommy Evans, Jr., regarding this matter on September 8, 2025, and Mr. Evans informed the undersigned that the state takes no position on whether the case should be remanded for reconstruction.

While this motion is pending, Petitioner asks this Court to hold the timelines for filing the petition for certiorari and appendix in abeyance. The undersigned discovered this predicament early and endeavored to prepare this motion before taking any extensions in petitioner’s case.

Respectfully submitted,



W. Chandler Norville
Appellate Defender
ATTORNEY FOR PETITIONER

This 9th day of September, 2025.