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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Honorable G. Thomas Cooper, Circuit Court Judge

SHAWNDELL Q. MCCLENTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2025-001385

MOTION FOR ABEYANCE AND REMAND OF PETITIONER'S TRIAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order holding this appeal in abeyance and remanding this matter to the trial court with an order requiring the parties to reconstruct petitioner's evidentiary hearing from December 6, 2018.

Appellant was indicted for burglary in the first degree and breaking and entering a motor vehicle by a Charleston County grand jury in May of 2012. (Ex.1 Indictments). An additional indictment for burglary in the first degree followed in June of 2012. (Ex. 1 Indictments). On April 21, 2014, petitioner appeared before the Honorable Judge Clifton Newman for trial with the jury

returning a guilty verdict on all three indictments. On April 23, 2014, Judge Newman sentenced petitioner to concurrent terms of twenty-four years' imprisonment on the two counts of burglary and five years' imprisonment on the breaking and entering count. (Ex. 2 Sentence Sheets). Petitioner was represented during trial by Benjamin Lewis and Christine Parnall, with Timmy Finch and Greg Voigt appearing on behalf of the state. Petitioner appealed raising error regarding the sufficiency of evidence supporting burglary in the first degree and the admission of unreliable identification testimony. The South Carolina Court of Appeals affirmed the conviction in an unpublished opinion. State v. McClenton, No. 2014-000978 (S.C. Ct. App. June 22, 2016). Petitioner filed for post-conviction relief initially on May 21, 2014. (Ex. 3 Original PCR application). A subsequent PCR filing on November 4, 2016, was merged with the original application on May 12, 2017, by the Honorable Diedre L. Jefferson.

Petitioner was represented during his original PCR by Thurmond Brooker. An evidentiary hearing was held on December 6, 2018, before the Honorable G. Thomas Cooper, Jr. Judge Cooper signed an order denying relief on February 8, 2019. (Ex. 4 Order of Dismissal). PCR counsel filed a notice of appeal, however the appeal was administratively dismissed for failure to file a timely petition for writ of certiorari. (Ex. 5 Remittitur).

Petitioner filed a subsequent application for post-conviction relief alleging original PCR counsel was ineffective for failing to perfect the appeal. By consent of the State, Judge Carmen T. Mullen granted petitioner a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) for review of Judge Cooper's February 8, 2019, order of dismissal.

Counsel for petitioner has confirmed that no recordings or transcripts exist of the original evidentiary hearing held before Judge Cooper on December 6, 2018. See (Ex. 6 Confirmation from Court Administration).

The trial court has the authority to set the record for appeal. State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). "[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal." Id. (internal citations omitted). "Where a trial transcript has been lost or destroyed, a court may remand to have the record reconstructed." Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); *see also* Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (holding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed).

In order for the record to be reconstructed, it must be done in a manner that provides for meaningful appellate review and complies with the constitutional guarantees of procedural due process. Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274; *see also* Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012). Moreover, a "new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review." Ladson, 373 S.C. at 325, 644 S.E.2d at 274 (internal quotations omitted).

In Ladson, after the reconstruction hearing, the Court was "left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multi-day and fact-intensive trial that resulted in a non-parolable, twenty-five-year person term." Id. at 327, 644 S.E.2d at 274. The record before the Ladson Court contained only "a few gratuitous references to generic motions and objections" without any information concerning "the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence." Id. In concluding the record was insufficient for meaningful appellate review, this Court also noted the record "would effectively foreclose any collateral challenge

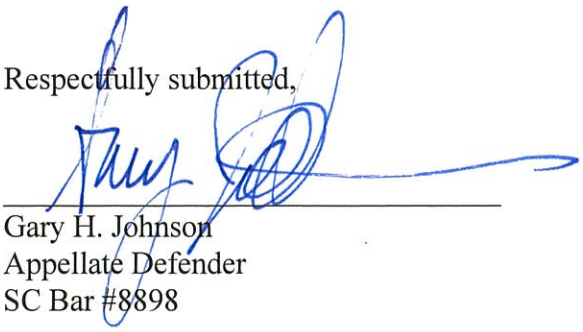
through post-conviction relief or otherwise." Id. at 327, 644 S.E.2d at 275. Thus, this Court concluded, Ladson had demonstrated "clear prejudice." Id.

In Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983), 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, the Court of Appeals 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."

Here, Judge Cooper's order of dismissal indicates petitioner and trial counsel Benjamin Lewis both testified. Judge Cooper's order acknowledged several allegations regarding ineffective assistance of counsel were raised in the application but waived during the hearing. According to the written order of dismissal, the sole issue addressed during the PCR hearing was petitioner's mental health problems. Absent a record of the testimony and potential other evidence presented during the hearing on December 6, 2018, this Court will be unable to conduct a meaningful appellate review of the issue ruled upon by Judge Cooper and whether the other allegations of ineffective assistance of counsel were in fact waived.

WHEREFORE, petitioner requests an order holding the present appeal in abeyance and remanding this matter to the original PCR court for the reconstruction of December 6, 2018, evidentiary hearing. While this motion is pending, petitioner asks this Court to hold the timelines for filing his petition for writ of certiorari.

Respectfully submitted,



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Attorney for Petitioner

This 12th day of November 2025.