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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
Charles J. McCutchen, Circuit Court Judge

Appellate Case No. 2026-001096

Troy A. Burkhart,.....Petitioner,

v.

State of South Carolina,Respondent.

Motion to Reconstruct Record

Pursuant to Rule 240, SCACR, Troy Burkhart requests an order holding this appeal in abeyance and remanding this matter to the post-conviction relief (“PCR”) court with an order requiring the parties to reconstruct the motion hearing convened on October 20, 2021, which lead to the written order of Honorable Letitia H. Verdin, dated November 8, 2021, declaring that Mr. Burkhart is not indigent and denying him access to indigent funding for expert and investigative services. Mr. Burkhart’s Notice of Appeal identified this Order and one of the orders being appealed.¹

I. PROCEDURAL HISTORY.

¹ Prior to filing this motion, undersigned counsel contacted counsel for the State by email to discuss this motion. Counsel have not yet had an opportunity to talk.

The State tried Troy Burkhart twice, and Mr. Burkhart has been sentenced three times. Mr. Burkhart has consistently maintained his innocence because he was acting in self-defense.

The Honorable Donald W. Beatty presided over Mr. Burkhart's first capital trial in 2000. Following the trial, Judge Beatty, in accordance with the recommendation of the jurors, imposed three death sentences for three counts of murder. This Court reversed the convictions and sentences and remanded the case to the Court of General Sessions for a new trial. *State v. Burkhart*, 350 S.C. 252, 565 S.E.2d 298 (2002).

Following a second trial by jury in 2004, the Honorable J.C. "Buddy" Nicholson, Jr., in accordance with the recommendation of the jurors, imposed three death sentences for three counts of murder. This Court affirmed the convictions, vacated the three death sentences, and remanded the case to the Court of General Sessions for a new sentencing hearing. *State v. Burkhart*, 371 S.C. 482, 640 S.E.2d 450 (2007).

On July 27, 2007, Judge Nicholson sentenced Mr. Burkhart to three consecutive terms of imprisonment for life without the possibility of parole for three counts of murder on indictment numbers 1998-GS-04-00061, 1998-GS-04-00062, and 1998-GS-04-00063. In accordance with S.C. Code Ann. § 16-23-490, Judge Nicholson did not impose sentences for three counts of possession of a firearm during the commission of a violent crime on indictment numbers 1998-GS-04-00059, 1998-GS-04-00060, and 1998-GS-04-00067.

Mr. Burkhart appealed to the Court of Appeals of South Carolina. The Court of Appeals affirmed the sentences. *State v. Burkhart*, Unpublished Op. No. 2010-UP-131. Mr. Burkhart filed a petition for writ of certiorari in this Court, which was denied on March 2, 2011. The Remittitur issued on March 4, 2011.

Mr. Burkhart filed a PCR application on February 22, 2012. He amended the PCR application on January 31, 2020 and February 28, 2025. On January 31, 2020, Mr. Burkhart moved for approval of funding for expert and investigative services. Ex. A. The Honorable Letitia H. Verdin convened a hearing on this motion on October 20, 2021, via WebEx. Mr. Burkhart testified at this hearing. The State—through the Attorney General’s Office and the South Carolina Commission on Indigent Defense—opposed the motion. On October 26, 2021, Mr. Burkhart submitted a supplemental memorandum in support of his motion for approval of funding for expert and investigative services. Ex. B. On November 8, 2021, Judge Verdin denied the motion and ruled, “A finding of indigency here would frustrate the purpose of [S.C. Code Ann. § 17-3-5], which is to provide funding for defendants who are unable to hire a private attorney.” Ex. C.

On June 22, 2025, this Honorable Charles J. McCutchen convened an evidentiary hearing. Prior to the hearing Mr. Burkhart objected to convening the evidentiary hearing, moved to continue the case, and renewed his motion for approval of funding for expert and investigative services. Ex. D. The State opposed, and the PCR court denied the motion, accepting the State’s position that this Court does not have the authority “to go back and vacate prior judge’s orders and basically rewrite the record.” PCR Tr. 6-11 (Ex. E). The PCR Court heard testimony from John Delgado and Troy Burkhart. At the conclusion of the hearing the Court allowed both parties to submit proposed orders after obtaining the transcript of the evidentiary hearing.

By order dated January 22, 2025, filed February 2, 2026, the PCR court denied Mr. Burkhart’s PCR application and dismissed it with prejudice. Ex. F. Pursuant to Rule 59(e), SCRPC, on February 19, 2026, Mr. Burkhart ask the PCR court to alter or amend the

judgment. Ex. G. This motion expressly addressed the denial of indigent funding for expert and investigative services and moved the PCR court to “withdraw the Order of Dismissal, allow Mr. Burkhardt access to expert and investigative services, and convene a new PCR hearing.” *Id.*, at pp. 2-8.

Contemporaneously with filing the Notice of Appeal, Mr. Burkhardt requested the transcript of the October 20, 2021 hearing. Court Administration informed the parties that the court reporter does not have audio files of the hearing, and WebEx did not record the hearing. Ex. H.

II. LEGAL AUTHORITIES.

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).

The absence of October 20, 2021 hearing prevents a meaningful appellant review of the lower court's denial of Mr. Burkhart's motion for access to indigent funding for investigative and expert services.

III. CONCLUSION.

WHEREFORE, Troy Burkhart requests an order holding the present appeal in abeyance and remanding this matter to the PCR court for the reconstruction of the missing October 20, 2021 hearing. While this motion is pending, Mr. Burkhart asks this Court to hold in abeyance the timelines for filing his petition for a writ of certiorari and the appendix.

Respectfully submitted,

By s/E. Charles Grose, Jr.

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