The Supreme Court of South Carolina

Troy A. Burkhart, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2026-001096

ORDER

This matter is before the Court by way of a notice of appeal from an October 2021 order of the post-conviction relief (PCR) court denying Petitioner's motion for funding for expert and investigative services and a February 2026 order dismissing his application for PCR. Because the record of Petitioner's October 2021 hearing is not available, Petitioner asks this Court to remand the matter to the PCR court to reconstruct the record of the hearing. The State has not filed a return to Petitioner's motion.

We hold this matter in abeyance and remand the matter to the PCR court to reconstruct the record of Petitioner's October 2021 motion hearing. *See Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (holding where a transcript has been lost or destroyed, this Court may remand the matter to have the record reconstructed), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). The PCR court may consider affidavits of PCR counsel, the State's attorney at the hearing, the court reporter, the PCR court judge, and any other person who may assist in determining what transpired at the hearing. *See China v. Parrott*, 251 S.C. 329, 333–34, 162 S.E.2d 276, 278 (1968) (holding the trial court properly considered affidavits of the plaintiff's counsel and the court reporter in determining what transpired at a hearing).

Petitioner's counsel shall contact counsel for the State and the PCR court within ten days of the date of this order to schedule such hearings as the PCR court deems appropriate. Petitioner's counsel shall provide an update to the Clerk of this Court no later than thirty days from the date of this order, and every thirty days

thereafter, with copies of the update provided to counsel for the State. If the PCR court determines reconstruction is not possible, the court shall immediately notify this Court and the parties of that determination. If the record is reconstructed, Petitioner's counsel shall notify this Court, and the matter will proceed on Petitioner's receipt of the transcript from the reconstructed hearing.

C.J.

J.

J.

Verdin, J., not participating

Columbia, South Carolina
November 4, 2026

cc:
E. Charles Grose, Jr.
D. Russell Barlow II