

The Supreme Court of South Carolina

Sammie Louis Stokes, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-000635

ORDER

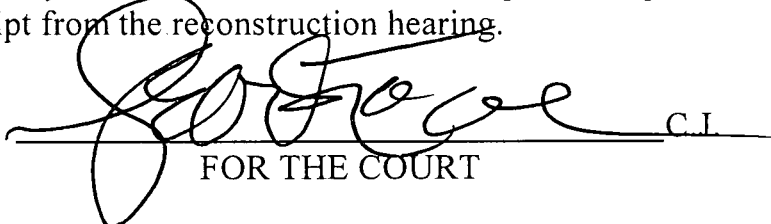
Robert Dudek, counsel for petitioner, states he has been unable to obtain two exhibits and "filed copies" of several documents from petitioner's post-conviction relief (PCR) action. Mr. Dudek moves this Court to issue a transportation order or, in the alternative, remand the case to the circuit court for a hearing to reconstruct the exhibits and documents.

Donald Zelenka has filed a return on behalf of the State in which he indicates he has copies of the documents Mr. Dudek seeks, but does not have copies of any of the exhibits from the PCR hearing. Mr. Zelenka submits that while reconstruction of the documents Mr. Dudek requests is not necessary, it may be necessary to conduct a reconstruction hearing with regard to the exhibits.

By way of reply, Mr. Dudek continues to submit that an order directing the Orangeburg County Clerk of Court to produce all of the missing exhibits and documents for transportation to this Court is the best course of action. He asserts that although Mr. Zelenka may have many of the missing documents, he believes "filed copies" are preferable and that the Clerk of Court's Office should locate them. In the alternative, Mr. Dudek moves the Court to remand the case to the circuit court for a reconstruction hearing.

We find the copies of the documents Mr. Zelenka has in his possession, which he shall provide to Mr. Dudek, although not "filed copies," will suffice for the record in this matter given the fact that "filed copies" are not available. However, we find a remand is necessary solely for the purpose of reconstructing Exhibits 2 and 3

from petitioner's post-conviction relief hearing (Volumes 1 and 2, respectively, of Thomas Sims' pre-trial research documents), as no copies of those exhibits can be located. We remand this matter to the Honorable L. Casey Manning for that purpose. See *Koon v. State*, 358 S.C. 359, 595 S.E.2d 456 (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); *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968); *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007). A hearing should be held within 45 days of the date of this order. If Judge Manning determines reconstruction is not possible, he shall notify this Court and the parties within 15 days of the reconstruction hearing. If the record is reconstructed, the parties shall notify this Court and the matter will proceed upon petitioner's receipt of the transcript from the reconstruction hearing.


C.I.
FOR THE COURT

Columbia, South Carolina

March 19, 2014

cc:

Keir M. Weyble, Esquire

Robert Edward Lominack, Esquire

Robert Michael Dudek, Esquire

Donald J. Zelenka, Esquire

Alan McCrory Wilson, Esquire

The Honorable L. Casey Manning

The Honorable Winnifa Brown-Clark