

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Appeal from Oconee County

RECEIVED

J. Cordell Maddox, Jr., Circuit Court Judge

JUL 12 2012

JAMES RANDOLPH FRADY,

S.C. Supreme Court

PETITIONER,

V.

THE STATE,

RESPONDENT.

MOTION TO REMAND
FOR RECORD RECONSTRUCTION

Petitioner James R. Frady respectfully moves this Court for an Order remanding this case to the Oconee County Court of Common Pleas for a reconstruction hearing of the October 3, 2011, post-conviction relief hearing in this matter, and for appointment of counsel to represent Petitioner for the reconstruction hearing. In support of this motion, Petitioner alleges the following:

- (1) That on August 31, 2006, Petitioner was convicted of possession of a weapon during the commission of a violent crime, grand larceny, second-degree arson, first-degree burglary, and two counts of murder. The trial court imposed concurrent sentences of life imprisonment without possibility of parole for each count of murder, thirty years for first-degree

burglary, twenty-five years for second-degree arson, five years for grand larceny, and five years for possession of a weapon during the commission of a violent crime. See Exhibit A (Indictments and Sentence Sheets).

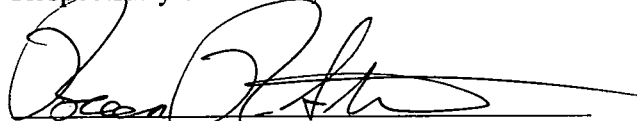
- (2) That Petitioner appealed his convictions, which were subsequently dismissed by the South Carolina Court of Appeals on November 12, 2008, in State v. Frady, Op. No. 2008-UP-634 (SC Ct. App. filed Nov. 12, 2008) pursuant to Anders v. California, 386 U.S. 738 (1967). He was represented on direct appeal by Joseph L. Savitz, III. The case was remitted on December 3, 2008. See Exhibit B (Opinion and Remittitur).
- (3) That Petitioner filed his application for post-conviction relief (PCR) (case number 2009-CP-37-0451) on April 13, 2009, asserting multiple grounds of ineffective assistance of counsel, as well as prosecutorial misconduct. See Exhibit C (PCR Application). An evidentiary hearing was held before the Honorable J. Cordell Maddox, Jr., on October 3, 2011. Petitioner was represented by Rodney W. Richey, while the State was represented by Kaelon E. May. The PCR court filed the Order of Dismissal on January 19, 2012. See Exhibit D (Order of Dismissal).
- (4) That the certified court reporter, Ms. Renee H. Tollison, experienced malfunctions in her primary recording system such that it was inaudible, and her backup software only began to function in the middle of the hearing. See Exhibit E (Letter from Renee H. Tollison, 03/13/2012). The index of the partial transcript produced Ms. Tollison indicates testimony from three of six witnesses is completely missing, as well as the direct

testimony of a fourth witness. See Exhibit F (Partial Transcript of October 3, 2011 Hearing).

- (5) That this Court has the authority to remand a case for a reconstruction hearing where a transcript has been lost or destroyed. Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968). Remand for record reconstruction is appropriate in instances where “a reconstructed record on appeal would allow for meaningful appellate review.” State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 274 (Ct. App. 2007) (internal quotations omitted).
- (6) That a full and complete transcript of the October 3, 2011 PCR hearing is necessary in Petitioner’s case to allow for meaningful appellate review.

Accordingly, in order to allow meaningful appellate review, Petitioner respectfully requests that this Court remand his case to the Oconee County Court of Common Pleas for reconstruction of the October 3, 2011, post-conviction relief evidentiary hearing, and that counsel be appointed to represent Petitioner for the reconstruction hearing.

Respectfully submitted,



Breen R. Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

July 12, 2012

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Oconee County

J. Cordell Maddox, Jr., Circuit Court Judge

JAMES RANDOLPH FRADY,

PETITIONER,

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THE STATE,

RESPONDENT.

CERTIFICATE OF SERVICE

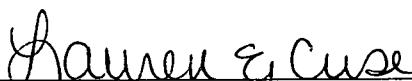
I hereby certify that a true copy of the Motion to Remand for Record Reconstruction in the above case has been served upon Kaelon E. May, Esquire, this 12th day of July, 2012.



Breen R. Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day
of July, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014