

 ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Oconee County

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

JUL 20 2012

S.C. Supreme Court

JAMES RANDOLPH FRADY,

PETITIONER,

v.

THE STATE,

RESPONDENT.

REPLY TO RETURN
TO MOTION FOR REMAND
FOR RECORD RECONSTRUCTION

Petitioner James R. Frady respectfully submits that, contrary to the argument advanced by the State, 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 evidentiary (PCR) hearing in this matter is necessary. In support of this motion, Petitioner alleges the following:

- (1) The State's assertion that a reconstruction hearing is unnecessary because "the findings of fact in the Order of Dismissal are specific and complete on every issue" is misplaced (Respondent's Return to Motion to Remand for Record Reconstruction, paragraph 5), as it overlooks the standard of review Petitioner will have to meet when challenging the PCR court's

Order of Dismissal: when challenging the findings of the PCR court, Petitioner will have to show that no “evidence of probative value in the record exists to support the findings of the PCR court.” See, e.g., Narciso v. State, 397 S.C. 24, 29, 723 S.E.2d 369, 371 (2012).

- (2) That Petitioner can only show the PCR court’s factual findings are without evidentiary support in the record on a given issue if the actual record exists for review.
- (3) 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. 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. Notably, the missing testimony is from witnesses produced by Petitioner in support of his numerous claims.
- (4) That in the interests of fundamental fairness, remand for record reconstruction of the October 3, 2011 PCR evidentiary hearing is necessary in this instance because “the incomplete nature of this transcript prevents the appellate court from conducting a meaningful appellate review.” State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 274 (Ct. App. 2007) (internal quotations omitted); see also Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002).

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.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen R. Stevens", written over a horizontal line.

Breen R. Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

July 20, 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,

V.

THE STATE,

RESPONDENT.

CERTIFICATE OF SERVICE

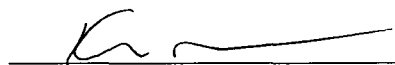
I hereby certify that a true copy of the Motion to Remand for Record Reconstruction in the above case has been served upon Kaelon E. May, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of July, 2012.



Breen R. Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 20th day
of July, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.