

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Charleston County

R. Markley Dennis, Jr., Circuit Court Judge  
\_\_\_\_\_

RECEIVED

JAN - 5 2015

S.C. Supreme Court

KANDY GILLIARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2014-001425  
\_\_\_\_\_

PETITION FOR ORDER  
TO RECONSTRUCT THE RECORD OF  
PETITIONER'S FIRST PCR HEARING  
\_\_\_\_\_

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned counsel requests an order requiring the parties to reconstruct the record of petitioner's first PCR hearing held on March 14, 2007, at the Charleston County Courthouse before Judge Roger M. Young. In support of this petition, counsel would submit the following information.

1.) Petitioner was convicted of murder and armed robbery during the June 2001 term of the Charleston County General Sessions Court before Judge James E. Lockemy and sentenced to imprisonment for a period of life on the murder conviction and ten years on

the armed robbery conviction. Petitioner appealed, but her convictions and sentences were affirmed by the Court of Appeals on May 5, 2004. See State v. Gilliard, Op No. 2004-UP-296 (2004).

2.) On February 15, 2005, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court alleging ineffective assistance of trial counsel in her case. On March 14, 2007, a PCR hearing was held at the Greenville County Courthouse before Judge Roger M. Young, which action was ultimately denied and dismissed by Judge Young per Order dated July 23, 2007. Petitioner did not enjoy the benefit of an appeal of this first PCR action.

3.) On January 17, 2012, petitioner filed a second application for post-conviction relief alleging chiefly that she was denied an appeal of her first PCR action along with additional allegations of ineffective assistance of counsel from her case. Two PCR hearings were held thereafter. On November 21, 2013, a PCR hearing was held at the Charleston County Courthouse before Judge Stephanie P. McDonald; and on April 15, 2014, another PCR hearing was held at the Charleston County Courthouse before Judge R. Markley Dennis. On January 15, 2014, Judge McDonald issued an Order granting petitioner's requested belated PCR appeal via Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). On June 19, 2014, Judge Dennis issued an Order denying relief to petitioner on the additional allegations raised in her second PCR action. Petitioner appealed.

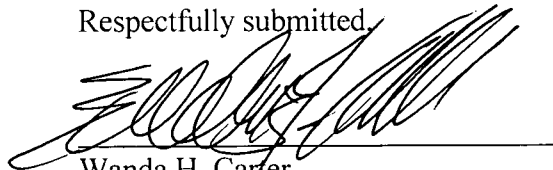
4.) On December 8, 2014, before any extensions had been requested in the PCR appeal, PCR appellate counsel asked that the appeal be held in abeyance pending receipt of the transcript of petitioner's first PCR hearing (which had not been transcribed) in order to perfect the Austin portion of the PCR appeal in the case. Also, a request for said

transcript from the court reporter was also submitted on that date. On today's date, correspondence was received indicating that the tapes of petitioner's first PCR hearing are not available to be transcribed. Since a transcript of petitioner's first PCR hearing is necessary to perfect the Austin portion of petitioner's appeal, PCR appellate counsel requests an order for a reconstruction hearing to be held in the case

6.) When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002), and China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968). See also Deaton v. Leath, 279 S.C. 82, 302 S.E.2d 335 (1983), where the Court granted the appellant's motion to set aside their convictions and remand for a new trial where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal.

WHEREFORE, the undersigned counsel requests an order for the reconstruction of the record of petitioner's first PCR hearing to be held in order to perfect the Austin portion of petitioner's PCR appeal in the case.

Respectfully submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

January 5, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

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KANDY GILLIARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

\_\_\_\_\_

CERTIFICATE OF SERVICE

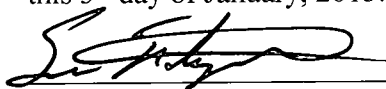
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The undersigned attorney hereby certifies the petition for order to reconstruct the record of petitioner's first PCR hearing in the above referenced case has been served upon Ashleigh R. Wilson, Esquire, Assistant General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, and Ms. Kandy Gilliard, #275605, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 5<sup>th</sup> day of January, 2015.

  
\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 5<sup>th</sup> day of January, 2015.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022.



ORIGINAL

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Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

RECEIVED

January 5, 2015

JAN - 5 2015

S. C. Supreme Court

Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Re: Kandy Gilliard v. State of South Carolina

Dear Mr. Shearouse,

Enclosed please find the original and six copies of the petition for order to reconstruct the record of petitioner's first PCR hearing in the above case.

If you have any questions concerning this matter, please contact me.

Sincerely,

Wanda H. Carter  
Deputy Chief Appellate Defender

WHC/smf

Enclosures