

STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO YORK COUNTY  
Court of Common Pleas

The Honorable Alison R. Lee, Circuit Court Judge

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Appellate Case No. 2015-001266

David Beatson,.....Petitioner,

v.

State of South Carolina,.....Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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Attorney General

J. RUTLEDGE JOHNSON  
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ATTORNEYS FOR RESPONDENT

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## QUESTION PRESENTED

Is the issue of whether “the PCR court committed reversible error by ruling on the merits of Petitioner’s post-conviction relief application without requiring the State to produce the record of Petitioner’s magistrate court trial, mandated under S.C. Code Ann. § 17-27-70(a), as the absence of a trial record rendered Petitioner’s post-conviction relief application, alleging the ineffective assistance of trial counsel, a nullity” properly preserved for appeal?

## STATEMENT OF THE CASE

David Beatson, (Petitioner), was charged with Assault and Battery, 3rd degree on or around March 8, 2013. On August 6, 2013, the Applicant proceeded to a jury trial in magistrate's court, pursuant to which he was found guilty. The Honorable Johnny Grason sentenced Applicant to a fine of \$400 or jail time. The Applicant appealed this verdict to the Sixteenth Judicial Circuit Court. The Honorable John C. Hayes, III denied this appeal on January 13, 2014.

Petitioner subsequently filed an application for post-conviction relief (PCR) on May 9, 2013. Respondent made its Return on August 13, 2014. On November 19, 2014, an evidentiary hearing was held at the Moss Justice Center in York, South Carolina. Petitioner was present and represented by Leah B. Moody, Esquire. Respondent was represented by J. Rutledge Johnson of the South Carolina Attorney General's Office. On May 8, 2015, the Honorable Alison R. Lee denied and dismissed Petitioner's application with prejudice by written Order. Petitioner subsequently filed a Petition for Writ of Certiorari on November 30, 2015. This Return to the Petition for Writ of Certiorari follows.

## STANDARD OF REVIEW

The proper standard for reviewing a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a PCR proceeding, the Petitioner bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

## ARGUMENT

**The issue of whether “the PCR court committed reversible error by ruling on the merits of Petitioner’s post-conviction relief application without requiring the State to produce the record of Petitioner’s magistrate court trial, mandated under S.C. Code Ann. § 17-27-70(a), as the absence of a trial record rendered Petitioner’s post-conviction relief application, alleging the ineffective assistance of trial counsel, a nullity” is not properly preserved for appeal. Nevertheless, this argument is without merit.**

Petitioner asserts “the PCR court committed reversible error by ruling on the merits of Petitioner’s post-conviction relief application without requiring the State to produce the record of Petitioner’s magistrate court trial, mandated under S.C. Code Ann. § 17-27-70(a), as the absence of a trial record rendered Petitioner’s post-conviction relief application, alleging the ineffective assistance of trial counsel, a nullity.” This issue is not preserved on appeal. Regardless, this argument is without merit.

“To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court. If the issue is raised but not ruled on, it is not preserved for appeal.” State v. Watts, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996). Only a matter that has been ruled on below can be reviewed, otherwise, the appellate court would be exercising original jurisdiction. State v. Gee, 262 S.C. 373, 204 S.E.2d 727 (1974).

This issue was never pled, raised at the evidentiary hearing or raised in a Rule 59(e) SCRCF motion to preserve it for appeal. Therefore, this issue is not properly before this Court.

Even assuming *arguendo* this issue is properly before this Court, Petitioner’s argument fails as Petitioner has failed to show a recording of Petitioner’s trial exists because the magistrate’s court is not a court of record.

“The magistrate's court is not a court of record but the magistrate has the duty of reducing the witnesses' testimony to writing.” Section 22-3-790. State v. Duncan, 269 S.C. 510, 514, 238 S.E.2d 205, 207 (1977). S.C. Code Ann. § 22-3-790 states, “[i]n the trial of any case before a magistrate the testimony of all witnesses must be taken down in writing and signed by the witnesses except when the defendant waives the taking and signing of the testimony. In any case before any magistrate in which a stenographer takes down the testimony or in which the testimony is electronically recorded it need not be read over and signed by the witnesses.”

In the case at bar, there was no duty under the statute for a recording or transcript of the proceedings to exist. Only that the testimony be taken down in writing. Further, Petitioner presented no evidence whatsoever that a stenographer was present and taking down testimony or that a transcript of these proceedings even exists. Therefore, Petitioner cannot prove any wrongdoing by the magistrate judge or by the State for not providing a copy of a non-existent transcript when the State filed its Return to Petitioner post-conviction relief application.

Clear “evidence of probative value” exists to sustain the PCR judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Therefore, Petitioner has failed to meet her burden of proof as to this argument.

**CONCLUSION**

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON  
Attorney General

J. RUTLEDGE JOHNSON  
Assistant Deputy Attorney General  
SC BAR #78871

By:

  
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ATTORNEYS FOR RESPONDENT

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April 8, 2016

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to York County

The Honorable Alison R. Lee, Circuit Court Judge  
\_\_\_\_\_

DAVID BEATSON

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

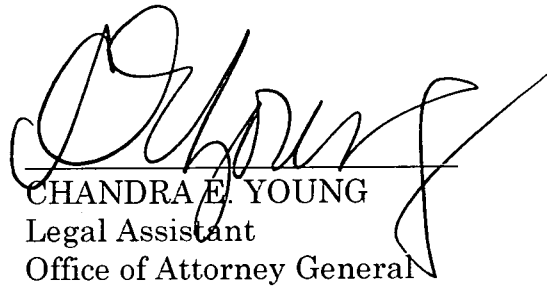
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**PROOF OF SERVICE**  
\_\_\_\_\_

I, CHANDRA E. YOUNG, certify that I have served the Return to Petition for Writ of Certiorari on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

John H. Strom, Esquire  
1330 Lady Street; Suite 401  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 8<sup>th</sup> day of April 2016.

  
\_\_\_\_\_  
CHANDRA E. YOUNG  
Legal Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737



RECEIVED

APR -8 2016

SC SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

April 8, 2016

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

**RE: David Beatson v. State of South Carolina**  
**2015-001266**

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above case.

Sincerely,

  
J. Rutledge Johnson  
Assistant Deputy Attorney General

JRJ:cey  
Enclosures

cc: John H. Strom, Esquire  
Trisha Allen, Victim Services