

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

Certiorari to Lexington County

Honorable Edgar W. Dickson, Circuit Court Judge

RECEIVED

OCT 14 2016

QUINCY MCCANTS,

S.C. SUPREME COURT
PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-002142

**Reply to Respondent's Return to Petitioner's Motion to Remand for Reconstruction of
Post-Conviction Relief Hearing or Granting of a New Trial**

Petitioner submits the following in response to Respondent's Return to Petitioner's Motion to Remand for Reconstruction of Post-Conviction Relief Hearing or Granting of a New Trial which was served on October 10, 2016. Respondent's reliance on Koon v. State¹ is misplaced for an abundance of reasons.

In Koon, the petitioner pled guilty to four counts of burglary in 1986. He did not file a direct appeal. He filed a PCR application in 1987, and that application was denied following a

¹ 358 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).

hearing. The petitioner did not seek certiorari following that denial. Id. at 362, 595 S.E.2d 456, 457.

The petitioner then filed a second PCR application for separate charges in 1997, **over ten years after** his 1986 guilty plea and following the destruction of the court reporter's tapes. He claimed the circuit court lacked subject matter jurisdiction to accept his 1986 guilty plea. A hearing was held on that issue as well as petitioner's Austin v. State² claim. The PCR judge denied relief to the subject matter jurisdiction claim and also found petitioner knowingly and voluntarily waved his right to appellate review following the denial of his first PCR application. The Supreme Court found there was no evidence to support the finding that he waved appellate review. Koon at 362, 595 S.E.2d at 457.

Conversely, Petitioner McCants was convicted after a lengthy trial and never admitted his guilt. He filed a direct appeal, and his conviction was affirmed. State v. McCants, 2009-UP-194 (S.C. Ct. App. filed May 6, 2009). Petitioner McCants filed a PCR application on or about September 19, 2009, **less than five months** after the Court of Appeals affirmed his conviction.

He amended his application once, and an evidentiary hearing was held. Through no fault of his own, the entire transcript from that hearing is unobtainable according to the letter cited in Petitioner McCants' motion. Unlike Koon, there is no question that Petitioner McCants should be afforded appellate review of the denial of his PCR application. Whereas petitioner Koon sat on his rights and waited too long to request a transcript, Petitioner McCants requested a transcript which should otherwise be available. He is seeking certiorari and obviously requires a complete record on which to ensure meaningful appellate review. He filed a Motion to Remand *prior to* any petition for writ of certiorari, unlike in Koon.

² 305 S.C. 453, 409 S.E.2d 395 (1991).

The requirement which Respondent cites in its Return is both inapplicable and illogical for the case at hand: Petitioner McCants is unable to attribute error without a full record. At this stage in his appeal, he should have access to the full transcript in order to prepare a petition for writ of certiorari.

As discussed in Koon, the law surrounding this scenario is straightforward:

Where a transcript has been lost or destroyed, a court may remand to have the record reconstructed. See 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) (**trial judge reconstructed the record where court reporter records were unavailable**).

Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (emphasis added).

Notably, and as an additional means of distinguishing Koon from the case at hand, petitioner Koon failed to include a copy of the 1987 order denying relief in his petition for writ of certiorari and provided no reason why the order could not be included in the appendix. Id. n.7. Petitioner McCants' Order of Dismissal was attached as an exhibit to his motion.

In Koon, the petitioner alleged that his guilty pleas were not knowingly, intelligently, and voluntarily entered. Id. at 367, 595 S.E.2d at 460. Testimony from his guilty plea could be utilized to assess that claim. Unlike petitioner Koon, however, Petitioner McCants did not plead guilty. His original PCR Application included three allegations:

1. Failure to properly prepare for trial and conduct an independent investigation of the case
2. Failure to raise contemporaneous trial objections
3. Failure to properly address the forensic evidence and SLED report regarding that evidence.

In Petitioner McCants' case, the PCR Transcript is necessary in order to conduct meaningful appellate review on a petition for writ of certiorari.

In the same vein, it is disingenuous to suggest that the Order of Dismissal is sufficient to maintain meaningful appellate review of an entire hearing.³ Without witness testimony, Petitioner is confined to the findings of the PCR judge. A transcript is necessary in order to allow Petitioner the opportunity to challenge the factual findings of the PCR judge based on the testimony of multiple witnesses. In fact, there is one instance of a misstatement of fact in the Order of Dismissal based on a reading of the trial transcript alone. At the top of page three, Judge Dickson writes: “The jury returned a guilty verdict. Applicant confessed to committing a strong armed robbery and thanked his attorneys for their hard work.”

Following the publication of the jury’s verdict, the trial transcript contains **no indication that Petitioner McCants confessed**. In addressing the Court, Petitioner McCants offered the following:

Court: Yes, sir, thank you. Anything you would like to say Mr. McCants?

Defendant: Yes, Your Honor. I first want to say that I still thank God for being a healing in my life. You know, I understand the jury found me guilty, which that is their decision, you know. I can’t do nothing about that.

I just want to thank my lawyers for doing their best. They put up a fight. I also want to thank you, Your Honor, for the quality time you put in my case. You know, I just want to thank everybody, you know.

Right now I am just upset and, you know, I understand I am going to be away from my family. I just ask Your Honor to be as merciful as you can so I can get back to my kids and my family, you know.

Tr. 458, l. 25 – Tr. 459, l. 15 (attached).

A clear reading of this colloquy yields no evidence to support the statement that Petitioner confessed. This revelation casts doubt on the accuracy of the remaining assertions in the Order of Dismissal.

³ The undersigned assumes the Attorney General’s office wrote the proposed Order of Dismissal.

In order to allow for meaningful appellate review Petitioner requests the relief listed in his original motion.

A handwritten signature in black ink, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 14th day of October, 2016.

1 with respect to resolving the case. We want to again
2 thank Mr. Bryan and the sheriff's deputies for
3 accommodating us.

4 We were able to meet with Quincy at length,
5 and his family participated in those deliberations. His
6 mother has been to my office on several occasions. You
7 heard from Ms. Brown. They actually came back and
8 looked at the video.

9 Mr. Myers and I met with Quincy's family a
10 couple of weeks ago. I have told Ms. Hall -- and Kim is
11 Mamie Graves' daughter. I know Mamie. Mamie has worked
12 in Richland County in various capacities. It's a good
13 family.

14 Again, their position with Your Honor is to be
15 merciful. They understand the sentence is going to be
16 dispensed. Also, you have Mr. McCants. When Your Honor
17 instructed the jury that evidence comes in many
18 fashions, how someone acts and how someone looks, you
19 see Mr. McCants here today, Your Honor.

20 Hopefully he will be able to address the Court,
21 but he is demonstrably upset, and I think that
22 accelerated during the time his mother was addressing
23 the Court. I ask the Court to note that. Thank you
24 very much, Your Honor.

25 THE COURT: Yes, sir, thank you. Anything you

1 would like to say Mr. McCants?

2 THE DEFENDANT: Yes, Your Honor. I first want
3 to say I still thank God for being a healing in my life.
4 You know, I understand the jury found me guilty, which
5 that is their decision, you know. I can't do nothing
6 about that.

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8 their best. They put up a fight. I also want to thank
9 you, Your Honor, for the quality time you put in my
10 case. You know, I just want to thank everybody, you
11 know.

12 Right now I am just upset and, you know, I
13 understand I am going to be away from my family. I just
14 ask Your Honor to be as merciful as you can so I can get
15 back to my kids and my family, you know.

16 THE COURT: If I do my arithmetic right,
17 Mr. McCants, in 1990 you would have been 17 years old;
18 is that correct?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: You were in Eau Claire High School?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Did you have a drug problem for 16
23 years from the possession of crack cocaine? I'm not
24 asking you about this trial because you may appeal this
25 trial. You have exercised your right. I will protect

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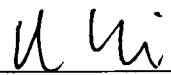
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Reply above referenced case has been served upon Patrick Schmeckpeper, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Reply has been served on Quincy McCants, #318280, at Allendale Correctional Institution, PO Box 1151, Hwy. 47, Fairfax, SC 29827, this 14th day of October, 2016.


Taylor D Gilliam
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 14th day of October, 2016.

 (L.S)
Notary Public for South Carolina
My Commission Expires: