



**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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**ORIGINAL**

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

December 16, 2016

**RECEIVED**

DEC 16 2016

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

S.C. SUPREME COURT

Re: Quincy McCants v. State of South Carolina, Appellate Case No. 2015-002142

Dear Mr. Shearouse:

Please allow the following to serve as an update in accordance with this Court's order dated December 1, 2016.

By way of the enclosed letter, I contacted the Honorable Edgar W. Dickson in order to explain the procedural history of this matter and seek his advice on how to proceed.

I have spoken with one of Mr. McCants' trial attorneys as well as his PCR attorney. I am in the process of obtaining files and notes associated with this matter. I have spoken with Counsel for Respondent and will provide him with a copy of these documents.

If you have any questions or concerns, please do not hesitate to contact me. Pursuant to this Court's order dated December 1, 2016, I will provide another update on December 30, 2016.

Sincerely,

Taylor D Gilliam  
Appellate Defender

TDG/tg

Enclosure

Cc: Patrick Schmeckpeper  
Mr. Quincy McCants



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

RECEIVED

December 12, 2016

DEC 16 2016

The Honorable Edgar W. Dickson  
P.O. Box 1949  
Orangeburg, SC 29116-1949

S.C. SUPREME COURT

Re: Quincy McCants, Petitioner v. State of South Carolina, Respondent  
Appellate Case No. 2015-002142  
2009-CP-32-04236

Dear Judge Dickson:

Please find enclosed a copy of the Order from the South Carolina Supreme Court remanding this matter for a reconstruction of the record. This case arises out of an alleged gas station robbery in Lexington County.

*Background*

Petitioner's trial took place in October 2006. Jonathan Harvey and Stanley Myers represented him. He was found guilty after a two-day trial and filed a timely notice of appeal; his conviction and sentence were affirmed in an unpublished opinion.

Petitioner then filed an application for post-conviction relief in August 2009. An evidentiary hearing was held in front of Your Honor on August 13, 2013. Petitioner was represented by Tricia Blanchette. Respondent was represented by Walt Whitmire of the Office of the Attorney General. Upon information and belief, Karen Ratigan was also present. By all accounts, four witnesses testified at the hearing: Petitioner, Jonathan Harvey, Stanley Myers, and Agent Abilen from SLED.

Following the evidentiary hearing, an Order of Dismissal was issued on November 24, 2014 and filed on or about February 5, 2015. Petitioner filed a Motion for Rehearing or to Alter/Amend the Order of Dismissal, and that motion was denied in September 2015. A notice of appeal was filed the following month, on October 16, 2015.

The undersigned's office first requested the transcript from the August 13, 2013 evidentiary hearing on December 3, 2015. After repeated follow-up attempts, it was determined that the court reporter present at the hearing had retired. The transcript could not be produced.

Petitioner filed a motion to remand for reconstruction of the evidentiary hearing on or about September 21, 2016. The State offered a Return on October 3, 2016. Petitioner filed a Reply on October 14, 2016.

The attached order was issued on December 1, 2016. For the reasons below, I am respectfully requesting guidance on how you wish to proceed.

*Discussion*

The PCR transcript is necessary in order to conduct meaningful appellate review on a petition for writ of certiorari. Currently, both Petitioner and Respondent are in possession of the Order of Dismissal as well as exhibits (of which there were approximately sixteen) from the hearing. I am in the process of obtaining notes from trial counsel, PCR counsel, and the Attorney General's office.

If Your Honor determines that reconstruction is possible, I believe it will be necessary to examine, under oath, the Petitioner, the two trial attorneys, the two Attorney's General, PCR Counsel, and the SLED witness who testified at the PCR hearing. To that end, I have reached out to all involved parties in order to accomplish this task.

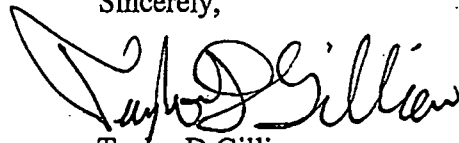
I believe that Your Honor is aware of the health problems Tricia Blanchette is currently facing. Having spoken with her, it is believed that she is unavailable until February for a reconstruction attempt.

I would respectfully ask Your Honor to contact me at his earliest convenience for the purposes of scheduling a hearing. In the alternative, it may be useful to have a telephone conference or brief meeting in order to discuss this effort. I have copied opposing counsel on this letter.

In the event that Your Honor would prefer a formal motion for a hearing, I would ask permission to submit such a reply upon request. If your Honor has any questions or concerns regarding this case, please do not hesitate to contact me.

*(signature page to follow)*

Sincerely,

A handwritten signature in black ink, appearing to read "Taylor D. Gilliam". The signature is fluid and cursive, with a large initial "T" and "G".

Taylor D Gilliam  
Appellate Defender

TDG/tg

Enclosure

Cc: Patrick Schmeckpeper  
Mr. Quincy McCants

# The Supreme Court of South Carolina

Quincy McCants, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-002142

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## ORDER

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This matter is before the Court by way of a notice of appeal from an order of the circuit court denying petitioner's application for post-conviction relief (PCR). However, counsel for petitioner has been informed the tapes of the evidentiary hearing in the matter are not available for transcription. Accordingly, petitioner asks this Court to remand the matter to the circuit court for reconstruction of the record of those proceedings, or in the alternative, for a new trial. The State opposes the motion.

We hereby hold this appeal in abeyance and remand the matter to the Lexington County Court of Common Pleas to reconstruct the record of the evidentiary hearing on petitioner's PCR application. *See Koon v. State*, 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); *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968); *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007). Counsel for petitioner is ordered to contact counsel for respondent and the circuit court judge, the Honorable Edgar W. Dickson, within ten days of the date of this order to schedule such hearings as Judge Dickson deems appropriate. Counsel for petitioner shall provide an update to the Clerk of this Court no later than fifteen days from the date of this order, and every fifteen days thereafter, with copies of the updates provided to counsel for respondent. If Judge Dickson determines reconstruction is not possible, he shall immediately notify this Court and the parties of that determination. If the record is reconstructed, counsel for petitioner shall notify this Court and the matter will proceed upon petitioner's receipt of the transcript from the reconstruction hearing.

*[Handwritten signature]* C.J.  
*[Handwritten signature]* J.  
*[Handwritten signature]* J.  
*[Handwritten signature]* J.  
*[Handwritten signature]* J.

Columbia, South Carolina

December 1, 2016

cc:  
Patrick Lowell Schmeckpeper, Esquire  
Taylor Davis Gilliam, Esquire  
The Honorable Beth Carrigg  
The Honorable Edgar W. Dickson

RECEIVED  
DEC 1 2016