

STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas

JAN 19 2017

S.C. SUPREME COURT

The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2016-000823

James Livingston,Petitioner,

v.

State of South Carolina,Respondent.

**Return to Petitioner's Motion to Hold in Abeyance
and Motion to Remand for Reconstruction of Post-
Conviction Relief Hearing**

In response to Petitioner's Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of Post-Conviction Relief Hearing, Respondent submits the following:

1. Respondent does not oppose holding the deadlines in abeyance pending resolution of this motion.
2. Respondent does, however, oppose Petitioner's motion to remand for reconstruction.
3. As noted by Petitioner, there is an existing copy of the post-conviction relief transcript (ATTACHMENT A) that is signed by the court reporter and has no indications of tampering or missing information.
4. Petitioner has failed to identify any specific issues that cannot be reviewed absent a full reconstruction of the evidentiary hearing. *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) (denying request to remand for reconstruction of a post-conviction relief hearing after appellant failed to allege specifics regarding his assignments of error).
5. Petitioner's contention that the exhibits are unable to be obtained is also incorrect. The exhibits introduced during the evidentiary hearing are available and on file at the Lexington County Clerk's office.

6. Given Petitioner's failure to identify *any* specific issues that cannot be adequately reviewed, the existing PCR transcript, and the availability of the exhibits presented during the evidentiary hearing, reconstruction of the record is unwarranted.
7. Alternatively, Respondent requests that Petitioner identify specific issues that cannot be adequately reviewed so that this Court can determine whether and to what extent reconstruction is actually necessary.

Respondent therefore requests that Petitioner's motion be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

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ATTORNEYS FOR RESPONDENT

19 Jan., 2017

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STATE OF SOUTH CAROLINA
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JAMES LIVINGSTON,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petitioner's Motion to Hold in Abeyance and Motion to Remand for Reconstruction of Post-Conviction Relief Hearing, has been served upon opposing counsel by mailing a copy in the United States mail, postage prepaid:

Robert W. Mills, Esquire
1728 Main St., Ste. 213
Columbia, SC 29201

This 19th day of January, 2017.


BRIANNA ARNONE
LEGAL ASSISTANT