



ALAN WILSON
ATTORNEY GENERAL

April 11, 2017

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APR 11 2017

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: Anthony B. Chapman v. State of South Carolina
Appellate Case No.: 2016-001230

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copy of the **Return to Motion to Reconstruct the Record of Petitioner's PCR Evidentiary Hearing** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Valerie Garcia Giovanoli
Assistant Attorney General
SC Bar No. 102524

VGG/ah
Enclosures

cc: Susan B. Hackett, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APR 11 2017

Appeal from Spartanburg County

S.C. SUPREME COURT

The Honorable Roger L. Couch, Circuit Court Judge
2011-CP-42-5457

ANTHONY B. CHAPMAN, #251075,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

APPELLATE CASE NO. 2016-001230

**RETURN TO MOTION TO RECONSTRUCT THE RECORD OF PETITIONER'S PCR
EVIDENTIARY HEARING**

Respondent, by and through undersigned counsel, would respectfully show unto this Court:

1. Petitioner filed his first application for post-conviction relief (PCR) on December 8, 2011 (2011-CP-42-5457). An evidentiary hearing was held on January 21, 2014, at which Petitioner was present and represented by counsel. In a written order dated and filed May 31, 2016, the Honorable Roger L. Couch denied and dismissed the application with prejudice, a copy of which is attached hereto (Attachment A).

2. A timely notice of appeal was filed on Petitioner's behalf.

3. In his motion, Petitioner asks that the matter be remanded for a reconstruction of the January 21, 2014, evidentiary hearing, claiming that significant portions of the transcript are missing. See for example China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968) (where portions of stenographer's notes were missing, no error in considering affidavits in order to settle record for appeal); Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002) (remanding for reconstruction of PCR record); Dolive v. JEE, 308 S.C. 380, 418 S.E.2d 319 (Ct. App. 1992).

4. The standard of review in an appeal from the denial of post-conviction relief is whether probative evidence exists in the record to support the PCR court's finding. Respondent submits that the record, as it exists, contains all of the probative evidence supporting the PCR court's findings.

5. Respondent submits that the matter may be fairly litigated without reconstruction of the record based on the allegations raised and addressed in the Order of Dismissal. In the Order of Dismissal, the following issues were addressed:

a. *Whether Counsel was ineffective in failing to inform Petitioner of discovery.*

The PCR court's ruling on this issue was made based upon the testimony of plea Counsel that he met with Petitioner at least three times and that he reviewed all discovery with Petitioner and Petitioner's admission that he had seen the video of the controlled buy. This testimony is fully available in the PCR hearing transcript, a copy of which is attached hereto (Attachment B). (PCR 52, ll. 15-23; PCR 52, ll. 24 – PCR 54, ll. 20; PCR 14, ll. 22-24).

b. *Whether Counsel was ineffective in failing to investigate.* The PCR hearing testimony cited in the court's order is again contained in the PCR hearing transcript. The PCR court's ruling on this issue was based upon the testimony

that plea Counsel reviewed and discussed all the evidence and potential defenses, including the challenges to the search and statements, with Petitioner. (PCR 52, ll. 24 – 54, ll. 20). The court also noted Petitioner's failure to produce any evidence of additional investigation that Counsel should have pursued.

- c. *Whether Counsel was ineffective in failing to challenge the search warrant and arrest.* The PCR court's ruling on this issue was made based upon the trial record, a copy of which is available, in which plea Counsel made pre-trial motions challenging both the search warrant and the admissibility of Petitioner's statement. The court also relied on the testimony of Counsel that he advised Petitioner he could proceed with trial or plead guilty and that Counsel negotiated a plea to a lesser offense on Petitioner's behalf. (PCR 55, ll. 25 – 56, ll. 14).
- d. *Whether counsel was ineffective in failing to file an Appeal.* Again, the testimony cited in the order was that Counsel made pre-trial motions to suppress, conferred with Petitioner regarding his option to proceed with trial or enter a plea, and negotiated a favorable plea offer. This testimony is fully available in the PCR hearing transcript. (PCR 55, ll. 25 – 56, ll. 14). The court also relied on the trial record, a copy of which is available, in which Petitioner stated he understood he would receive a twenty year sentence and the plea judge admonished Petitioner that he was waiving any challenge to the evidence by pleading guilty. Based on the foregoing, the court found no evidence that a rational defendant would want to appeal or that Petitioner

indicated he wanted an appeal.¹

e. *Whether Petitioner's guilty plea was involuntary.* The court's order relies upon the trial record, a copy of which is available, which supports the knowing and voluntary nature of Petitioner's guilty plea. The trial record shows Counsel challenged the search warrant and statements, that the plea judge admonished Petitioner that by pleading guilty he was waiving any challenges he had to the court's ruling, that Petitioner told the plea judge that he was not threatened, coerced, or forced to plead guilty, and that Petitioner was informed of his Constitutional rights and waived those rights.

6. With regard to the missing witness name, it is clear from the thorough summary of testimony included in the Order of Dismissal, as well as the type of questions asked and answers given, that the testimony was, in fact, from the prosecuting Assistant Solicitor, Eddie Hunter, Esquire.

7. With regard to 45 "ellipses," as Petitioner refers to the two periods with a space between them (" . ."), Respondent contacted the transcriber, Mrs. Harriet Bennett, of the transcript and received a response explaining her use of the two periods. In her response, attached hereto (Attachment C), Mrs. Bennett explains that the two periods indicate an answer not given, *not* that a portion of testimony is inaudible or missing.

8. With regard to the seven notes of inaudible portions, Respondent submits the effect is minimal and does not affect this Court's ability to give meaningful review.

a. On page 16, there is a note that "Applicant is reading rapidly from the search warrant ... a part of which was inaudible." Petitioner was reading from the

¹ Though not referenced specifically in the Order of Dismissal, more testimony supporting the court's finding is available in the PCR hearing transcript, despite the inaudible portion. (PCR 56, ll. 19 – 57, ll. 11).

search warrant that his plea counsel had challenged in his pre-trial suppression motion, a copy of which is available.

- b. On page 27, Petitioner's answer was inaudible, but further questioning clarified the ultimate issue, rendering this missing portion negligible.
- c. On page 43, witness Sergeant Hutchins reads from his investigative report and the inaudible portion, "Carl (inaudible) Chapman," appears to be the middle name of another suspect. He reads from his report again a few lines down and states Carl Chapman's name completely with no middle name.
- d. On page 52, there is an inaudible note when Counsel is giving the dates of his meetings with Petitioner and the third date is inaudible. Those three dates are included in the summary of testimony in the Order of Dismissal. Regardless of the dates, the Court found that Counsel adequately conferred with Petitioner based on Counsel's testimony that they met "at least three times" (Order, p. 8), which can be gleaned from the next question and answer in the transcript. (PCR 52, ll. 21-23).
- e. On page 53, the inaudible portion appears to be minimal within the context. The answer is complete and fully addresses the question asked.
- f. On page 56, the inaudible portion appears to be minimal within the context. The answer is complete and fully addresses the question asked.
- g. On page 56, the second inaudible portion appears to be minimal within the context. The question asked requires a yes or no answer and the negative answer given is complete and fully addresses the question asked.

7. Furthermore, Respondent would submit that a reconstruction from a hearing that

occurred *more than 3 years ago* would yield less detail and specificity than the combination of the current transcript and thorough summary of testimony contained in the Order of Dismissal.

Should the matter be remanded for reconstruction, counsel should be appointed and the matter scheduled for hearing at a term of PCR court in the Seventh Circuit.

WHEREFORE, having made Return, Respondent requests that this Court deny Petitioner's Motion for Reconstruct the Record of Petitioner's PCR Evidentiary Hearing. In the alternative, Respondent submits that this Court should remand the matter, if at all, given the issues to be submitted, for reconstruction only at a term of PCR court in the Seventh Circuit and for such other relief as the Court deems just and proper.


Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General
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ATTORNEYS FOR RESPONDENT

April 11th, 2017.

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Spartanburg
The Honorable Roger L. Couch, Circuit Court Judge

Appellate Case No. 2016-001230

ANTHONY B. CHAMAN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

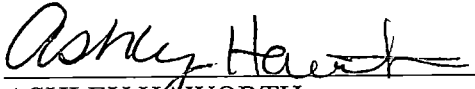
RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of **Return to Motion to Reconstruct the Record of Petitioner's PCR Evidentiary Hearing** has been served upon opposing counsel by mailing two (2) copies of the Return in the United States mail, postage prepaid:

Susan B. Hackett, Esquire
SC Commission of Indigent Defense
Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 11th day of April, 2017


ASHLEY HAWORTH
PARALEGAL