

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE SUPREME COURT

Certiorari to Spartanburg County

Roger L. Couch, Circuit Court Judge

RECEIVED

JUL 17 2017

ANTHONY BERNARD CHAPMAN,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001230

PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Is Petitioner entitled to a new PCR evidentiary hearing because the missing portions of his transcript prevent meaningful appellate review in violation of Petitioner's right to due process of law under the federal and state constitutions?

STATEMENT

On January 15, 2010, a Spartanburg County grand jury indicted Petitioner for manufacturing marijuana (2010-GS-42-667), trafficking in cocaine base (2010-GS-42-668), and possession with intent to distribute (PWID) cocaine (2010-GS-42-669). App. 275-276; App. 278-279; App. 281-282. On October 5, 2010, the Honorable J. Derham Cole presided over a hearing regarding Petitioner's motions to suppress. App. 1. Ryan F. McCarty represented the state, and Michael DeMorris Brown represented Petitioner. App. 1. At the conclusion of the hearing, Judge Cole denied Petitioner's motions. App. 83, l. 19 – App. 85, l. 24. Thereafter, Petitioner entered guilty pleas to the charged offenses. App. 86, l. 6 – App. 115, l. 14. Judge Cole sentenced Petitioner to twenty years' imprisonment for trafficking crack cocaine, twenty years' imprisonment for PWID powder cocaine, and five years' imprisonment for manufacturing marijuana. App. 115, ll. 1-14; App. 277; App. 280; App. 283. On October 15, 2010, Petitioner filed a motion for reconsideration. App. 117. Despite multiple requests, Petitioner's motion was not heard. App. 118-122.

On April 25, 2011, Petitioner wrote the Clerk of Court expressing his desire to appeal. App. 123. On September 20, 2011, Petitioner wrote plea counsel requesting he file a motion for a belated appeal. App. 129-131. On October 12, 2011, the Court of Appeals dismissed a notice of appeal in Petitioner's case.¹ App. 132. On October 28, 2011, the Remittitur was sent. App. 134.

On December 8, 2011, Petitioner filed a post-conviction relief (PCR) application. App. 135-141. On June 4, 2012, Petitioner, through counsel, moved for discovery. App. 142-144.

¹ Upon receipt of the order of dismissal, Petitioner wrote to Court Administration to express his confusion regarding the order of dismissal as he did not believe he had filed a notice of appeal. App. 133

The matter proceeded to an evidentiary hearing on January 21, 2014, before the Honorable Roger L. Couch. App. 152. J. Falkner Wilkes represented Petitioner, and Suzanne H. White represented the state. App. 152.

By an order filed on July 18, 2014, Judge Couch held the ruling on the PCR action in abeyance pending resolution of Petitioner's post-sentencing motion. App. 257-259. On October 31, 2014, Judge Cole presided over a hearing concerning the motion. Supp. 1. Wilkes represented Petitioner, and Russell Ghent represented the state. Supp. 1. By an order filed February 12, 2016, Judge Cole denied the motion. App. 260.

Thereafter, on May 20, 2016, Judge Couch denied Petitioner relief from his convictions and sentences. App. 261-274. On June 6, 2016, Petitioner served a notice of appeal. On April 6, 2017, Petitioner, through undersigned counsel, moved this Court for an order to reconstruct the record. On April 11, 2017, the state filed a return opposing the request. On June 16, 2017, this Court denied Petitioner's request for reconstruction. This petition follows.

ARGUMENT

Petitioner is entitled to a new PCR evidentiary hearing because the missing portions of his transcript prevent meaningful appellate review in violation of Petitioner's right to due process of law under the federal and state constitutions.

An individual is entitled to meaningful appellate review of his lower court proceedings. State v. Ladson, 373 S.C. 320, 325-326, 644 S.E.2d 271, 273-274 (Ct. App. 2007); see also Adams v. H.R. Allen, Inc., 397 S.C. 652, 656-657, 726 S.E.2d 9, 12 (Ct. App. 2012)(explaining the record, even the reconstructed record, must permit meaningful appellate review). When meaningful appellate review is not possible due to the incomplete nature of the transcript, the individual is entitled to a new trial. Ladson, 373 S.C. at 325-326, 644 S.E.2d at 273-274. “[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.” Id. at 324, 644 S.E.2d at 273 (internal citations omitted). Noting that “[m]ost jurisdictions require an appellant to demonstrate specific prejudice flowing from an incomplete ... record,” the Court of Appeals stated its belief that this Court “would follow a rule requiring the party challenging a reconstructed record on appeal to demonstrate prejudice flowing from an inadequate record.” Id.

The Court of Appeals' opinion in Ladson, supports Petitioner's argument that the transcript in his case is insufficient to permit meaningful appellate review. Ladson was convicted of first-degree burglary at the conclusion of a three-day trial. Ladson, 373 S.C. at 321, 644 S.E.2d at 271. While Ladson's case was pending appeal, he learned the court reporter could not produce the transcript. Id. Ladson moved for a new trial. Id. The state moved for reconstruction. The Court of Appeals remanded the case for reconstruction. Id.

Ladson's reconstruction hearing occurred more than a year after the trial. Id. The Court of Appeals explained "the passage of time clearly dimmed the recall of the participants." Id. at 325, 644 S.E.2d at 274. Reviewing the transcript of the reconstruction hearing, the Court of Appeals noted "[i]t was clear from the outset of this hearing that reconstructing the record from scratch, after such a substantial delay, would be an uphill struggle." Id. at 321-322, 644 S.E.2d at 271-272. During the hearing, the state summarized the testimony of the majority of the witnesses and provided affidavits from two witnesses. Id. at 322, 644 S.E.2d at 272. The Court of Appeals determined the "information provided by the state was conclusory." Id. Additionally, the Court of Appeals noted that the State "had completely forgotten about one witness, whose identity was determined only by reference to Ladson's trial counsel's notes." Id. The parties even disputed whether Ladson testified in his own defense. Id. Finally, the Court of Appeals noted that the trial court and the state expressed confidence "that Ladson made timely objections at trial and moved for a directed verdict 'based upon the evidence.'" Id. at 323, 644 S.E.2d at 272.

On appeal, the Court of Appeals applauded the diligent effort by all parties to reconstruct the record, but explained "the reconstructed record [was] largely conclusory, with testimony, objections, and the like recalled only in summary fashion." Id. The Court explained, "It is simply unrealistic and unreasonable to think that a trial judge and counsel can – under these circumstances – reconstruct a proper record that will permit meaningful appellate review, especially in light of our issue preservation rules." Id. at 326, 644 S.E.2d at 274. The Court further explained "[t]he continuing dispute as to whether Ladson even testified (much less the content of his purported testimony) is but one example of the trial court and counsel groping in the dark as to what actually happened at trial." Id. After the reconstruction hearing, the Court

was “left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multi-day and fact-intensive trial that resulted in a non-parolable twenty-five year person term.” Id. at 327, 644 S.E.2d at 274. The record before the Court contained only “a few gratuitous references to generic motions and objections” without any information concerning “the context of the motions, the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence.” Id. The Court refused to speculate. Id. In concluding the record was insufficient for meaningful appellate review, the Court of Appeals also noted the record “would effectively foreclose any collateral challenge through post-conviction relief or otherwise.” Id. at 327, 644 S.E.2d at 275. Thus, the Court concluded, Ladson had demonstrated “clear prejudice.” Id.

In Whitehead v. State, 352 S.C. 215, 219, 574 S.E.2d 200, 201 (2002), this Court initially denied Whitehead’s request to reconstruct the record of his first PCR hearing, but later remanded for a reconstruction hearing. Whitehead’s first PCR application was denied after an evidentiary hearing, but his counsel failed to seek appellate review. Id. Thereafter, Whitehead filed a second PCR application alleging he was entitled to a belated appeal of his first PCR application due to PCR counsel’s ineffective assistance. Id. The PCR court agreed and granted Whitehead belated appellate review of the initial order. Id. While preparing for the appeal, Whitehead’s counsel learned that no transcript of the initial PCR hearing was available. Id. Therefore, counsel requested reconstruction of the hearing to permit meaningful appellate review. Id. Nevertheless, this Court denied the request initially, and required the parties to brief whether laches applied. Id. Subsequently, this Court concluded that laches may apply where PCR applicants allege entitlement to a belated PCR appeal, but because the state was required raise the defense and had failed to do so, laches would not bar Whitehead’s claim for relief. Id. at

220, 574 S.E.2d at 202. Next, this Court remanded Whitehead's case to the circuit court to reconstruct the record of his first PCR hearing. *Id.* at 221, 574 S.E.2d at 203.

What is clear from South Carolina jurisprudence is the right to a record that permits meaningful appellate review is not satisfied merely because portions or even a majority of the record is available. *See China v. Parrott*, 251 S.C. 329, 333-334, 162 S.E.2d 276, 278 (1968)(disposing of an appeal from an order settling the case on appeal because "portions of the stenographic notes of the trial proceedings were lost before they were transcribed by the court reporter").

In his PCR application, Petitioner argued he was entitled to relief based upon a violation of the Fourth Amendment concerning probable cause for search and arrest, a violation of his Sixth Amendment right to the effective assistance of counsel due to counsel's failure to investigate and fully inform him of the discovery, that his guilty plea was involuntary, and that counsel failed to file a notice of appeal on his behalf. App. 137. At the start of the PCR hearing, PCR counsel explained two global issues would be pursued. "One is the question whether or not the defendant is entitled to a belated appeal." App. 155, ll. 11-13. The second global issue concerned ineffective assistance of counsel, specifically concerning the "challenge [to] the search warrant and the advice surrounding the search warrant and decision to plead guilty versus continuing on and going to trial." App. 155, ll. 15-18.

The order of dismissal provided a section summarizing the testimony presented during the PCR hearing. App. 263-266. The order also addressed Petitioner's claims that he received ineffective assistance of counsel and entered an involuntary guilty plea. App. 266-274. The order subdivided the ineffective assistance of counsel claims into four groups: (1) failure to inform Petitioner of discovery, (2) failure to investigate, (3) failure to challenge the search

warrant and arrest, and failure to file an appeal. App. 268-270. Based upon the insufficiency of the record, Petitioner may not obtain meaningful appellate review of his claims for relief.

Unknown Witness

Upon first glance, the transcript of the PCR hearing appears complete and in order. However, a closer look reveals significant portions missing. One of the most substantial omissions concerns “Unknown Witness.” The court reporter noted: **“When the matter was resumed a witness was on the stand. The calling and swearing of the witness was not contained on the disc. The following contains what was contained on the disc. I have nothing to identify the witness’ name.”** App. 200, ll. 17-21. The next portion is a very small section of direct examination followed by cross-examination. Based upon a comparison of what is available in the PCR hearing transcript and the PCR order, it appears this is the testimony of the assistant solicitor, Eddie Hunter, Esquire. The index shows **“Unknown Witness”** testified. App. 153.

During the portion of the examination of “Unknown Witness” available, one issue discussed was whether the solicitor’s office had a copy of the chain of custody for the drugs in the case against Petitioner. When the record of the testimony of the Unknown Witness begins, it is with PCR counsel requesting that someone review the solicitor’s file to determine if the chain of custody was in the file. App. 200, ll. 22-25. However, the answer that follows, “yes” presumably from Unknown Witness, is a *non sequitur*. App. 201, l. 1. Unknown Witness goes on to say that at the time of Petitioner’s guilty plea, the chain of custody would have been in “paper form.” App. 201, ll. 2-5. Unknown Witness also indicated that his file contained an email concerning the chain of custody. App. 201, ll. 6-8. However, the remaining portion of this answer was “not audible due to static.” App. 201, ll. 8-9. Only speculation and conjecture,

without the benefit of reconstruction, could fill in the blank regarding what the remaining answer was. The next question asked was whether “that reference,” indicated anything about the solicitor receiving the chain of custody. Unknown Witness responded it did not. App. 201, ll. 10-12. Perhaps, Unknown Witness meant the email when answering the question. However, the missing portion of Unknown Witness’s testimony may have made reference to something else.

During cross-examination, the state’s first question concerned whether Unknown Witness had discussed the search warrant with plea counsel and possible challenges to the warrant. App. 201, ll. 18-23. Such a question, especially first out of the gate, suggests that at least some portion of the direct examination concerned the search warrant used to obtain evidence against Petitioner. Yet, no portion of the direct examination even mentioned the search warrant.

On cross-examination, the state asked if Unknown Witness had a copy of the video “that we have talked about.” App. 202, ll. 6-7. This question makes clear that the video had been discussed with Unknown Witness during direct examination. Yet, no portion of the direct examination even mentioned the video.

During re-direct examination, PCR counsel asked two questions that were transcribed. App. 202, ll. 22-25. Only the answer to one question was transcribed. App. 202, l. 24. The answer to the second question was not transcribed. App. 203, l. 1. It is impossible to know, without reconstruction, how much of the re-direct examination was not transcribed. The court reporter’s note indicated only that a “portion” was not audible due to static on the disc. App. 203, l. 1.

In the PCR court’s order, the testimony of Eddie Hunter, presumably Unknown Witness, is summarized as follows:

Eddie Hunter of the Seventh Circuit Solicitor’s Office testified regarding the chain of custody for the first charge. He testified that he did not have drug

analysis or chain for the June 18, 2009, offense. Hunter testified that he had a note in his file dated November 2, 2009, regarding discovery being turned over. Hunter testified that [Petitioner] was permitted to see the video prior to trial. The video was introduced as Applicant's Exhibit No. 9.

App. 265.

Regarding the paucity of information regarding Unknown Witness in the transcript, the state maintained it was "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." Even accepting this as true, the question remains – why would Eddie Hunter testify at Petitioner's PCR hearing? Despite the state's suggestion that Hunter was the "prosecuting" attorney in the case, according to the guilty plea transcript, the prosecuting attorney was Ryan F. McCarty. App. 1. When the court announced the case, the judge indicated "Mr. McCarty" was present "on behalf of the state." App. 5, ll. 2-4. There was no indication of anyone named Eddie Hunter making an appearance during Petitioner's guilty plea or during the course of the entire pre-trial hearings. The only person who appeared on behalf of the state was Ryan McCarty. The record – including the order of dismissal – is devoid of any basis of knowledge from which Hunter could have testified.

From this quandary, another question emerges - did McCarty testify at the PCR hearing and a summary of his testimony not make it into the order of dismissal? If Mr. McCarty did not testify at the PCR hearing, there must have been some discussion during the PCR hearing – which is missing – regarding why McCarty was not available to testify. Most certainly, there had to be some discussion during the PCR hearing – which is missing – regarding Hunter's role, if any, in the case and what his personal knowledge of the matters to which he was testifying was. See Rule 602, SCRE.

Despite the summary of the testimony included in the order of dismissal and perceived agreement that Unknown Witness listed in the transcript is probably Eddie Hunter, too many questions surround the matter to conclude that Petitioner may obtain meaningful appellate review of his PCR issues due to the missing portions of the transcript specific to Unknown Witness as well as to whether McCarty testified and his testimony may be missing as well.

Portions missing as indicated by “. .”

Throughout the PCR hearing transcript, the court reporter used the two dots (“. .”). These appear at the following locations at a minimum: App. 156, l. 17; App. 158, l. 1; App. 159, l. 7; App. 164, l. 2; App. 166, l. 23; App. 167, l. 12; App. 168, l. 9; App. 169, l. 15; App. 175, l. 23; App. 176, l. 22; App. 178, l. 23; App. 181, l. 10; App. 181, l. 14; App. 181, l. 21; App. 185, l. 7; App. 185, l. 9; App. 187, l. 12; App. 192, l. 5; App. 193, l. 2; App. 193, l. 6; App. 193, l. 18; App. 193, l. 23; App. 194, l. 8; App. 194, l. 10; App. 194, l. 11; App. 195, l. 24; App. 196, l. 7; App. 196, l. 23; App. 213, l. 18; App. 214, l. 20; App. 217, l. 18; App. 218, l. 16; App. 219, l. 17; App. 219, l. 22; App. 219, l. 24; App. 220, l. 2; App. 220, l. 20; App. 221, l. 19; App. 222, l. 23; App. 223, l. 18; App. 224, l. 2; App. 224, l. 17; App. 224, l. 25; App. 225, l. 9; and App. 225, l. 22.

These missing portions appear significant. At times, the “dots” indicated the absence of a question, which was not apparent from the answer, or the absence of an answer to a question. The quantity of the dots is also troubling when trying to determine whether any evidence supported the PCR judge’s decision, which would be a necessary determination if Petitioner could have a meaningful appeal.

The state argued that the dots indicated an answer was not given, not that a portion of testimony was inaudible or missing. In making this argument, the state relied upon an email

from Harriet Bennett, the individual who transcribed the record based on materials from the court reporter, Pamela Faucette. The email is not in the form of an affidavit and is unsigned. The email governs Bennett's "general practice" and is not specific to Petitioner's PCR hearing transcript.²

Regardless, Bennett failed to indicate whether she reviewed the court reporter's digital backup recorder to arrive at her conclusion of "an incomplete answer." There is no indication Bennett was shown the transcript in order to provide a specific reply. Had she been shown the transcript, she may have been able to explain why the dots appear in areas other than where an "answer" might otherwise appear. Despite knowing there were "[l]ots of problems" with this particular court reporter's records, there was no indication from Bennett that she reviewed the digital backup, which court reports are required to maintain pursuant to the Court Reporter's Manual. Additionally, Bennett failed to indicate she reviewed the trial logs, which court reporters are required to keep and maintain in accordance to the Court Reporter's Manual. The trial log would have provided the "names of witnesses," and thus, eliminated the myriad of questions surrounding Unknown Witness. None of this is to impugn the character of Bennett, who worked diligently to prepare a transcript from materials provided by the court reporter. Rather, this discussion merely indicates the unreliability and incomplete nature of the response provided.

² Strikingly, in the Attorney General's email to the transcriber, the Attorney General indicated the information sought from Harriet Bennett was in an effort to respond to Petitioner's motion "as to why a reconstruction hearing is not necessary and that this transcript is sufficient." The Attorney General was not in contact with Bennett in order to investigate the facts and thereafter arrive at a conclusion regarding whether reconstruction was necessary. Rather, the Attorney General had arrived at its conclusion already and was seeking information to shore up its determination.

When discussing the basis of the search warrant, including how the confidential informant (CI) conducted a search of his home, Petitioner's response as to "what happened for this person to come into your house and conduct a search" is shown by dots. App. 169, ll. 12-15. The follow-up question was "How did that happen?" App. 169, l. 16. Thus, it appears that Petitioner responded, but his response was not captured by the court reporter. A similar exchange occurs when discussing how often Petitioner met with plea counsel. App. 175, ll. 22-23.

During a discussion on cross-examination, Petitioner was asked about the testimony of two police officers during the pre-trial hearing. App. 176, ll. 19-21. Although the answer is indicated by dots, the following question asking a more specific question about the testimony of the officers does not support the conclusion that there was no answer to the prior question. Rather, the more specific question supports a conclusion that there was an answer to the prior question. Also during the cross-examination, there is an exchange with multiple instances of the dots – appearing for a question and three answers:

Q. You are telling us - - your testimony . .

A. He never made that clear to them about the false statements, and he never bring up anything about the chain of custody. He never asked the video to be played.

If he had . .

Q. Mr. Chapman, is it your testimony here today that you weren't aware of the fact that you all were attacking the search warrant before you went in there that day?

A. My testimony is that he never went into any details about how my rights were violated. If you're asking . .

Q. Let me ask you again. Did you talk with him about the fact that you wanted to attack the validity of the search warrant on the day you started to trial?

A. I asked him about it, sure, and he said he was going to do that anyway.

App. 181, l. 10 – App. 182, l. 1. Contrary to the assertion that the dots represented areas where there was no response, the dots in the quoted passage appear to indicate a response was given, but could not be heard in order to be transcribed.

At another point during the cross-examination, the dots are used again, but the transcriber wrote a note indicated “counsel and witness speaking at the same time,” proving the dots were used even when words were spoken, but inaudible or undecipherable. App. 185, ll. 7-10.

During the testimony of the detective, Michael Hutchins, the dots appeared quite a few times. When answering a question concerning the chain of custody of the drugs in Petitioner’s case, Hutchins began his answer and started to explain how cases were streamlined, but then the dots appeared. App. 192, l. 19 – App. 193, l. 2. This answer appeared to include more information regarding how information concerning the chain of custody was handled in Petitioner’s case, but the rest of the answer was not transcribed. Regarding this missing chain of custody, PCR counsel sought permission to obtain a copy and the state began explaining how it may have been destroyed, but her explanation ended with dots. App. 193, ll. 10-18. Again, this appears to be a portion in which information regarding a critical issue was provided, but not transcribed.

The dots permeate the argument portion of the PCR hearing. When PCR counsel argued the search warrant was invalid as it was based on a prior illegal search, a portion of the argument ended with dots. App. 217, ll. 17-18. Counsel was making a point regarding when the prior illegal search began, and it appears his argument continued, but was not heard in order to be transcribed. App. 271, ll. 17-18. The dots reappear when PCR counsel was making his “point” about the prior illegal search by the CI. App. 218, l. 16.

Portions where the dots appear are probably not necessary in order for meaningful appellate review as the dots appear in a section concerning the adjudication of Petitioner's post-trial motion. App. 219, l. 17 – App. 221, l. 19; App. 222, l. 20 – App. 225, l. 22. However, those portions support Petitioner's argument that the dots were not used solely for "answers" and were used when the context illustrates that substantive matters were stated, but not transcribed.

Of greatest concern to Petitioner's ability to obtain meaningful appellate review based on the current PCR transcript is where the dots appear concerning issues of the chain of custody and the legality of the search warrant. One of the critical issues in the case concerned plea counsel's advice for Petitioner to enter a guilty plea and his pre-trial motion to suppress the evidence where plea counsel never received a copy of the chain of custody concerning the drugs from the initial buy by the CI and no copy of the chain of custody could be found by the police or the solicitor at the time of the PCR hearing. App. 190, ll. 18-21; App. 201, ll. 2-12; App. 211, ll. 4-22. In resolving this dispute, the PCR judge noted that Hutchins "testified that regarding the chain of custody, the substances all had the solicitor's markings and he could identify them." App. 265. Thus, the order concluded the Hutchins would have been able to identify the drugs if they were introduced at trial based on the "solicitor's markings," rendering a written chain of custody unnecessary. App. 265. However, the portion of the transcript available does not support such a factual finding. Hutchins testified there were chain of custody documents from the solicitor's file for the marijuana and crack cocaine, but no one could establish a chain of custody for the initial marijuana purchase from the CI. App. 195, l. 4 – App. 197, l. 2.

Inaudible portions

Other portions of the available transcript reveal that testimony is missing from other witnesses as well. On page 167, there is a note that the "applicant is reading rapidly from the

search warrant ... a part of which was **inaudible.**” App. 167, ll. 2-4. A similar note appears elsewhere: “Reading rapidly from transcript.” App. 183, ll. 15-16. Static made another portion inaudible and, therefore, prohibited the court reporter from transcribing it: “Portion **not audible** due to static.” App. 201, ll. 8-9. Shortly thereafter, there is a note “Portion **not audible** due to static on disc.” App. 203, l. 1. Portions of plea counsel’s testimony were “**inaudible.**” App. 205, l. 18; App. 208, l. 5; App. 208, l. 24; App. 213, ll. 14.

At least some of these missing portions are significant to the resolution of the case because they relate to answers to questions important to the determination of the allegations raised by Petitioner in his PCR application. However, Petitioner concedes the difficulty of showing how the inaudible portions in and of themselves deny meaningful appellate review. Yet, it cannot be denied the portions concern relevant and important issues for the appeal.

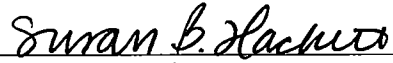
When viewing the combination of the evidence missing from the record, the Unknown Witness, the lack of explanation of why the order of dismissal would list a witness who was seemingly uninvolved in the case as testifying, the sheer number of “dots” in important places, and the inaudible portions of the transcript, it is apparent Petitioner may not receive meaningful appellate review of his PCR application. In disposing of Petitioner’s claim that counsel failed to conduct a proper investigation, the PCR court credited counsel’s testimony regarding reviewing the evidence and discussing potential defenses. App. 269. The court faulted Petitioner for failing “to produce any evidence regarding any additional investigation that counsel could have pursued.” App. 269. Due to the incomplete record, Petitioner is unable to obtain meaningful appellate review on this claim. Throughout the PCR hearing, Petitioner questioned the witnesses regarding the chain of custody as to the drugs allegedly purchased in June of 2009, which began the investigation. This was an avenue that plea counsel should have and could have explored.

However, the minimal record in existence on this aspect prevents meaningful appellate review to enable Petitioner to overcome the PCR court's findings regarding what evidence Petitioner presented to demonstrate plea counsel failed to pursue this level of investigation. The testimony of one of the most critical witnesses on the issue – the prosecuting attorney – is absent. If Hunter were to serve as his surrogate, then a substantial portion of his testimony is missing.

The conclusion that Petitioner is unable to obtain meaningful appellate review based upon the incomplete record is further supported because nothing has been presented, nor alleged, that Petitioner in any way contributed to the loss of the transcript. See State v. Serrette, 375 S.C. 650, 653, 654 S.E.2d 554, 555 (Ct. App. 2007)(holding a defendant whose transcript is not available due to his own actions, including being a fugitive from justice, is not entitled to reconstruction of the record or meaningful appellate review).

CONCLUSION

Petitioner respectfully requests a new PCR evidentiary hearing in order to permit meaningful appellate review.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 17th day of July, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Roger L. Couch, Circuit Court Judge

ANTHONY BERNARD CHAPMAN,

PETITIONER

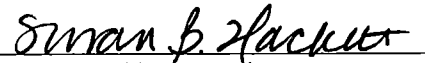
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STATE OF SOUTH CAROLINA,

RESPONDENT

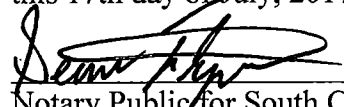
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari, a copy of the Appendix, and a copy of the Supplemental Appendix in the above referenced case has been served upon Valerie Garcia Giovanoli, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition for Writ of Certiorari, a copy of the Appendix, and a copy of the Supplemental Appendix have been served on Anthony B. Chapman, #251075, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 17th day of July, 2017.



Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 17th day of July, 2017.



(L.S)
Notary Public for South Carolina
My Commission Expires: 10/30/2022