

The Supreme Court of South Carolina

Moses Frasier, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-000739

ORDER

This matter is before the Court by way of a notice of appeal from an order of the circuit court finding petitioner is entitled to a belated review of the order issued in petitioner's first post-conviction relief (PCR) action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). However, counsel for petitioner states the record of petitioner's first PCR hearing is not available. Accordingly, counsel for petitioner asks this Court to hold this appeal in abeyance and remand the case to the circuit court for reconstruction of the record of the hearing. The State takes no position on the motion.

We hereby hold this appeal in abeyance and remand the matter to the Honorable R. Markley Dennis to reconstruct the record of the evidentiary hearing of petitioner's first 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 Judge Dennis within ten days of the date of this order to schedule such hearings as Judge Dennis 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 Dennis 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.

Steve Beatty C.J.
John Kettle J.
Kaye L. Glenn J.
John Cannon J.
Joe Jones J.

Columbia, South Carolina

September 21, 2018

cc:

Megan Harrigan Jameson, Esquire

Robert Michael Dudek, Esquire