

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

ORIGINAL

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Certiorari to Williamsburg County

Honorable Kristi F. Curtis, Circuit Court Judge

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JASON SINATRA EDWARDS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2019-001088.

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**PETITION FOR ORDER TO REMAND FOR A SECOND PCR HEARING  
BASED ON THE INABILITY TO RECONSTRUCT A RECORD OF THE FIRST PCR  
HEARING THAT WOULD ALLOW MEANINGFUL APPELLATE REVIEW**

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Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for Petitioner, Jason Sinatra Edwards, requests an order remanding the case for a second PCR hearing. The transcript of the first PCR hearing is not available. (App. p. 83). Under the specific facts of the case, reconstruction is not possible. In support of the remand Petitioner submits the following:

1. On February 3, 2006, a jury found Petitioner guilty of two counts of murder and one count of possession of a weapon during the commission of a violent crime, indictment #2004-GS-45-167. The Honorable Howard P. King sentenced Petitioner to life in prison. The convictions were reversed on appeal and a new trial granted. State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009). On January 30, 2012, Petitioner

appeared before the Honorable J. Mark Hayes, II, and pled guilty to two counts of voluntary manslaughter. (App. pp. 1-55). Steven S. McKenzie and Michael S. O'Neal represented Petitioner at the plea. Judge Hayes sentenced Petitioner to two concurrent thirty (30) year sentences. (App. pp. 60-61). Petitioner did not appeal the convictions or sentences.

2. On July 16, 2012, Petitioner filed an application for post-conviction [PCR] relief. On March 21, 2013, an evidentiary hearing was held before the Honorable W. Jeffrey Young. James D. Dotson<sup>1</sup> represented Petitioner at the PCR hearing. Megan Harrigan Jameson represented the State. In a written order signed April 11, 2013, Judge Young denied relief and dismissed the application. (App. pp. 84-96). PCR counsel did not file a notice of intent to appeal.
3. On May 8, 2013, Petitioner filed a *pro se* motion to amend and to make specific findings of fact and conclusions of law pursuant to Rule 59 and SC Code of Law §17-27-80. (App. pp. 97-98). The motion is dated April 1, 2013. On June 24, 2013, the State filed a return to the *pro se* motion to amend and to make specific findings of fact and conclusions of law pursuant to Rule 59 and SC Code of Law §17-27-80. (App. pp. 99-103). This motion is dated June 21, 2013. The State argued that the motion was not timely filed and wrote, "Applicant's motion is not timely filed and should be summarily dismissed. 'A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.' Rule 59, SCRC. Applicant's counsel of record, James D. Dotson, Esquire, was mailed a copy of this Court's Order of Dismissal on April 23, 2013. Applicant's *pro*

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<sup>1</sup> Information obtained from the South Carolina Bar directory indicates that PCR counsel, James D. Dotson, is under suspension and lives out of state in North Carolina.

*se* motion was filed on May 8, 2013. As this motion was not properly filed by counsel until after the ten day statutory period had expired, this motion should be dismissed as untimely.” (App. p. 101). First, the motion was filed by Petitioner, not by counsel. Second, as to the timeliness of the motion, while the order of dismissal was mailed to counsel on April 23, 2013, there is no reference as to when Petitioner received written notice of entry of the order of dismissal. As to the return, the certificate of service reflects that counsel, James D. Dotson, was served with a copy of the return on June 21, 2013. (App. p. 103). It is unclear if Petitioner received a copy of the return.

4. On June 23, 2013, Judge Young signed an order denying the *pro se* motion to amend and to make specific findings of fact and conclusions of law pursuant to Rule 59 and SC Code of Law §17-27-80. (App. pp. 104-107). Judge Young found that the motion was not timely filed. Judge Young additionally found that the order contained the required findings of fact and conclusions of law. The certificate of service reflects that counsel, James D. Dotson, was served with a copy of the order denying the *pro se* motion to amend and to make specific findings of fact and conclusions of law pursuant to Rule 59 and SC Code of Law §17-27-80 on August 26, 2013. (App. p. 117). It is unclear if Petitioner received a copy of the order.
5. On October 28, 2014, Petitioner sent a motion to the Attorney General’s office requesting the status of the Rule 59(e) motion. (App. pp. 118-121). On November 10, 2014, Petitioner filed a *pro se* notice of intent to appeal. (App. pp. 108-117). In the *pro se* notice of intent to appeal Petitioner states that he did not receive a copy of the order denying the Rule 59(e) motion and did not learn that the motion was denied

until November 4, 2014. (App. p. 109). The *pro se* notice of intent to appeal was filed with the Williamsburg County Clerk of Court but not with the South Carolina Supreme Court.

6. On February 13, 2015, Petitioner filed a *pro se* motion pursuant to Rule 60(b). (App. pp. 122-129). The motion was mailed to counsel, James D. Dotson, on February 12, 2015. On August 21, 2015, Petitioner filed a *pro se* application for habeas corpus relief in Richland County. (App. pp. 132-146). On August 30, 2016, Petitioner filed, in Richland County, a motion requesting habeas relief by judgment of default and State's non-response. (App. pp. 147-151). On May 3, 2018, the State filed a return, motion for merger and motion to dismiss. (App. pp. 152-167). The certificate of service reflects that Petitioner was served with a copy of the return and motions. (App. p. 167). Both actions were dismissed. (App. pp. 168-172).
7. On August 14, 2017, Petitioner filed a petition for habeas corpus in federal court. (App. pp. 173-249). Petitioner alleged that, "Counsel abandoned Petitioner at appeal stages of PCR." (App. p. 186). On November 2, 2017, the State filed a return and memorandum of law in support of summary judgment. (App. pp. 250-289). In the return the State acknowledged that Petitioner had a potential state court remedy available for appellate review of the denial of PCR relief pursuant to Austin<sup>2</sup>. (App. pp. 281-288). On April 16, 2018, the Honorable Kevin F. McDonald, United States Magistrate Judge for the District of South Carolina, issued a Report and Recommendation, recommending "respondent's motion for summary judgment be denied and that the case be stayed while the Applicant pursues his state court

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<sup>2</sup> Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

remedy.” (App. pp. 290-309). On May 14, 2018, the Honorable David C. Norton, United States District Judge, signed an order adopting the report and recommendation of the magistrate judge. (App. pp. 310-311).

8. On May 4, 2018, Petitioner filed a *pro se* application for an Austin appeal. (App. pp. 310-314). On July 9, 2018, the State requested that the court reporter prepare a transcript of the March 21, 2013, PCR hearing. (App. p. 82). On July 17, 2018, South Carolina Court Administration notified the State that the records needed to prepare the transcript were no longer available as the records were more than five years old. (App. p. 83). On October 2, 2018, the State filed a return and consent to belated appellate review pursuant to Austin. (App. pp. 315-324).
9. On March 28, 2019, an evidentiary hearing was held before the Honorable Kristi F. Curtis. (App. pp. 325-336). James K. Falk represented Petitioner. Megan Harrigan Jameson represented the State. In an order signed June 18, 2019, Judge Curtis granted belated appellate review pursuant to Austin.

Meaningful appellate review pursuant to Austin is not possible in this case because the transcript from the first PCR hearing on March 21, 2013, is not available and cannot be adequately reconstructed. When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007). In this case, however, reconstruction is not possible.

As noted in footnote #1, information obtained from the South Carolina Bar directory indicates that PCR counsel, James D. Dotson, is under suspension and lives out of state in North Carolina. The PCR judge, W. Jeffrey Young is now Chief Deputy Attorney General. (App. p. 333, lines 10-14). Under these very specific facts reconstruction is not possible.

In Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983), the defendant's convictions were set aside and a new trial granted where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. In the present case there is no transcript of the PCR hearing from which to base an appeal. Additionally, Petitioner is not asking for a new trial. Petitioner simply seeks a second PCR hearing to ensure meaningful appellate review of his PCR claims.

Citing Deaton, this Court denied a request for reconstruction in State v. Serrette, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) where the reason for the lack of transcript was due to the defendant's absence for a ten-year period, which this Court explained was "not a situation where the court reporter's equipment malfunctioned at trial leading to a loss of the trial transcript." Petitioner in the present case was not absent for a five-year period. Petitioner filed numerous *pro se* documents in an attempt to obtain appellate review. The missing transcript should not be held against Petitioner.

In addition to the fact that the PCR judge is now the Chief Deputy Attorney General and PCR counsel is suspended from practicing law and living out of state, this Court should remand for a new PCR hearing because the PCR judge denied Petitioner's motion to amend his PCR application. The original order of dismissal indicates that Petitioner orally moved to amend his application at the evidentiary hearing. (App. p. 85). The order reads, "At the evidentiary hearing, Applicant moved to orally amend his application to include new allegations;

Respondent objected, citing a lack of notice and prejudice to the State if Applicant was allowed to amend during the hearing. The Court denied Applicant's motion to amend and Applicant proceeded forward on the allegations as specifically pled in his application." (App. p. 85). The order does not include the subject matter of the proposed amendment and does not address what, if any, specific prejudice would result from allowing the amendment.

In Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), a majority of the South Carolina Supreme Court found that the PCR judge erred by not allowing the petitioner to amend his application at the PCR hearing to include an allegation that trial counsel was ineffective for failing to object to comments made by the State in closing argument. The Court wrote:

Many PCR grounds are complex and require extensive preparation on the part of the State and the applicant. The prejudice of allowing an amendment that includes a complex issue very shortly before the commencement of a hearing may be apparent. However, some PCR grounds are not at all complex, and the State's defense to such claims may be straightforward, even if the ground is one advanced by the applicant in an amendment close to the time of the hearing. When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record. The PCR court should consider the relevant circumstances separately as to each proposed amendment, and after doing so, the PCR court can properly rule on the motion to amend.

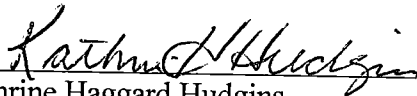
Love v. State, 428 S.C. 231, 241–42, 834 S.E.2d 196, 201 (2019).

While the Love case was decided after Petitioner's PCR hearing, if this Court remands the case for a second PCR hearing the judge would have the benefit of the Love case and would be able to properly analyze the proposed amendment and if any prejudice would result from allowing the amendment.

Counsel respectfully requests an order remanding the case for a second PCR hearing so that a meaningful record can be made on which to base the Austin appeal. **While this petition**

is pending, counsel for Petitioner asks this Court to hold the timelines for filing the Austin appeal in abeyance.

Respectfully submitted,

  
Kathrine Haggard Hudgins  
Appellate Defender  
South Carolina Commission on Indigent Defense  
Appellate Division  
1330 Lady St. P.O. Box 11589  
Columbia, SC 29211  
(803)-734-1343  
[khudgins@sccid.sc.gov](mailto:khudgins@sccid.sc.gov)

January 22, 2020

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Williamsburg County

Honorable Kristi F. Curtis, Circuit Court Judge

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S.C. SUPREME COURT

JASON SINATRA EDWARDS,

PETITIONER

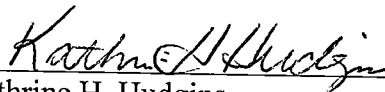
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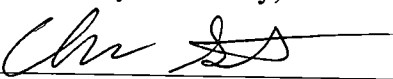
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CERTIFICATE OF SERVICE  
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The undersigned hereby certifies that a true copy of the Petition to remand for a second PCR hearing in the above referenced case has been served upon Janell Gregory, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Petition to remand for a second PCR hearing has been served on Jason Sinatra Edwards, #313642, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 22<sup>nd</sup> day of January, 2020.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 22<sup>nd</sup> day of January, 2020.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: September 30, 2029