

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Williamsburg County
Kristi F. Curtis, Post-Conviction Relief Judge
Appellate Case No. 2019-001088

S.C. SUPREME COURT

JASON SINATRA EDWARDS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

**RETURN TO 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**

Respondent the State of South Carolina, through its undersigned counsel, would respectfully show unto the Court as follows:

I. PROCEDURAL HISTORY

Petitioner Jason Sinatra Edwards, SCDC #313642, is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. During the October 2004 term, the Williamsburg County Grand Jury indicted Petitioner for two counts of murder and possession of a weapon during a violent crime (2004-GS-45-167) that stemmed from the June 19, 2002, killings of Joe Woods and Jimmy Robinson. Steven S. McKenzie, Esquire, represented Petitioner on the charges. Assistant Solicitors Ronnie Sabb and Kimberly Barr of the Third Circuit Solicitor's Office prosecuted the case. Petitioner's brother and co-defendant, Maceo Latonya Edwards, was similarly charged in

the same indictment for both murders and the weapons violation, while the grand jury indicted a third brother and co-defendant, Jonais Edwards, for accessory after the fact of murder. (2004-GS-45-167). On January 30 through February 3, 2006, Petitioner and his brothers proceeded to a joint jury trial before the Honorable Howard P. King, circuit court judge. The jury convicted Petitioner and his brothers as indicted. On February 3, 2006, Judge King sentenced Petitioner to life imprisonment for each count of murder and five years for possession of a weapon during a violent crime. All sentences were to be served concurrently.

Petitioner and his brothers timely served and filed a notice of appeal. Mr. McKenzie represented all three brothers on direct appeal. With counsel's assistance, Petitioner and his brothers filed a Final Brief of Appellants on February 12, 2007. Following oral arguments, the South Carolina Court of Appeals filed a published Opinion on June 21, 2007, affirming the convictions and sentences of Petitioner and his brothers. State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007), rev'd, 384 S.C. 504, 682 S.E.2d 820 (2009). Petitioner filed a Petition for Rehearing on May 18, 2004. On July 3, 2007, the Court of Appeals filed an Order directing Respondent to file a Return addressing their rehearing petition. Respondent submitted a Return to Petition for Rehearing on July 12, 2007, and the Court of Appeals filed an Order denying the petition for rehearing on August 27, 2007.

Petitioner and his brothers filed a Petition for Writ of Certiorari (through counsel) on October 15, 2007. They presented the following issues to this Court:

Did the Court of Appeals commit error when it concluded the trial court did not violate the Constitutionally mandated procedures as set forth in Batson v. Kentucky, 476 U.S. 79, 86 (1986)?

The State filed a Return to Petition for Writ of Certiorari on November 15, 2007.

On July 10, 2008, this Court filed an Order granting certiorari. Petitioner filed a Brief of Petitioner on October 25, 2008. The State filed its Brief of Respondent on January 14, 2009. This Court filed an Opinion reversing the Court of Appeals' decision and granting all three Petitioners a new trial on August 31, 2009, because it found that Petitioners' proffered reasons for striking prospective jurors were sufficiently race-neutral to survive the State's Batson¹ challenge. State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009). The Remittitur was sent to the Williamsburg County Clerk of Court on September 17, 2009.

On January 30, 2012, Petitioner pled guilty to two counts of voluntary manslaughter before the Honorable J. Mark Hayes, II. Michael S. O'Neal, Esquire, and Steven S. McKenzie, Esquire, represented Petitioner at the plea. The same day, Maceo Edwards waived Grand Jury presentment on a charge of accessory after the fact of a felony offense and Judge Hayes accepted his guilty plea to that offense. Finally, Jonais Edwards pled guilty to accessory after the fact on the same day.

On January 31, 2012, Judge Hayes sentenced Petitioner to two concurrent sentences of thirty years' imprisonment. Both of his brothers received time-served sentences and walked out of their pleas free men. Petitioner did not appeal his convictions or sentence.

Petitioner filed a *pro se* post-conviction relief application (2012-CP-45-0369) on July 16, 2012. An evidentiary hearing was held on March 21, 2013, before the Honorable W. Jeffery Young, circuit court judge, at the Sumter County Courthouse. Petitioner was present at the hearing and James D. Dotson, Esquire, represented him. Assistant Attorney General Megan E. Harrigan (now Jameson) represented the State. Petitioner testified on his own behalf at the hearing and he presented testimony from his parents, Johnnie Mae Edwards and Maceo Edwards,

¹ See Batson v. Kentucky, 476 U.S. 79 (1986).

Jr., as well as his co-defendant brothers, Jonias Edwards and Maceo Edwards, III. The State presented testimony from plea counsel, Mr. McKenzie and Mr. O'Neal. Judge Young denied relief and dismissed the application with prejudice in an Order of Dismissal, finding Petitioner failed to establish counsel was ineffective for failing to enforce a plea agreement based on detrimental reliance. This order was filed on April 18, 2013, and Respondent served it on Petitioner's counsel of record on April 23, 2013.

On May 8, 2013, counsel for 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" on Petitioner's behalf; although Petitioner's counsel of record placed a coversheet on top of this motion and served it on Respondent, it is clear this is a *pro se* motion written and signed by Petitioner himself, not his counsel of record.² Although the cover letter from counsel sending the motion to the State is dated May 8, 2013, the attached pleading was dated April 1, 2013, which was before the Order of Dismissal was filed or served. The State filed a Return to this motion on June 21, 2013.

² Current counsel for Petitioner appears to be challenging the accuracy of the State's return to this motion and the order denying said motion, alleging that it was Petitioner himself who served and filed this motion. This is incorrect. A review of the underlying file reveals that Petitioner's counsel, James Dotson, submitted and served Petitioner's *pro se* motion on Respondent by improperly placing his cover letter on the motion that was clearly drafted and signed by Petitioner himself. The return to the motion and order denying the motion correctly indicate that it was counsel who filed and served said motion, and it is current counsel for Petitioner who incorrectly states the motion was filed *pro se*.

Current counsel for Petitioner also repeatedly stresses it is "unclear if Petitioner received" certain copies of motions or orders, seemingly implying the State was somehow improper in its service of documents. However, as Petitioner was represented by counsel, all returns and orders were properly served on counsel of record. See Rule 4.2 of the Rules of Professional Conduct, Rule 407, SCACR, ("In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order"). See also Comment [3] to Rule 4.2 ("The Rule applies even though the represented person initiates or consents to the communication").

On June 23, 2013, Judge Young signed an “Order Denying Petitioner’s *pro se* “Motion To Amend And Make Specific Findings of Facts And Conclusions Of Law Pursuant To Rule 59 And SC Code Of Law § 17-27-80.’ ” Judge Young found the Rule 59(e), SCRPC, motion untimely. The Certificate of Service shows the State served this Order on Petitioner’s attorney, Mr. Dotson, on August 26, 2013. Although page 4 of this Order stated that “if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order” and directed Petitioner to Rules 203, 206, and 243, SCACR, Petitioner did not timely serve a notice of appeal as required by Rule 203(a), SCACR.

Petitioner did not timely serve a notice of appeal. Instead, he sent a “Motion Requesting Status of 59(e)” to the Attorney General’s Office on October 28, 2014. In this pleading, he requested a status report on his *pro se* Rule 59(e), SCRPC, motion. The State forwarded this letter to his attorney, Mr. Dotson on October 30, 2014. On November 10, 2014, Petitioner filed a *pro se* notice of intent to appeal with the Williamsburg County Clerk of Court that he had served on the State on November 6, 2014. However, he did not file this document with the Supreme Court of South Carolina.

Next, Petitioner filed an untimely *pro se* motion pursuant to Rule 60(b)(1), SCRPC, on February 17, 2015. In his Rule 60(b) motion, Petitioner alleged that his PCR counsel, Mr. Dotson, failed to inform him that the Order of Dismissal had been filed on April 18, 2013, and counsel “never informed him of the results of the PCR hearing,” so that he could appeal that Order. See Rule 60(b)(1), SCRPC, motion p. 3. He further asserted the Rule 59(e), SCRPC, motion should not have been untimely because his counsel filed a motion within thirty days of service of the Order of Dismissal on counsel. Contra Rule 59(e), SCRPC. Again, Mr. Dotson

still represented him in connection with the 2012 application, and accordingly, the State sent counsel a copy of that motion.³ The State did not file a response to the *pro se* motion because counsel represented him, *id.*, and no order has been entered on this improper motion.

Petitioner then filed an “Application for Habeas Corpus” filed on August 21, 2015, in the Richland County Court of Common Pleas (2015-CP-40-5138) and a “Motion Requesting Habeas Relief by Judgment of Default and State’s Non Response” filed on August 30, 2016, in the Richland County Court of Common Pleas (2016-CP-40-5283), both of which were summarily dismissed.

On August 14, 2017, while the two current state court habeas petitions were pending in the Richland County Court of Common Pleas, Petitioner subsequently filed a *pro se* Petition for Habeas Corpus under 28 U.S.C. § 2254 (C.A. No. 6:17-cv-01570-DCN-KFM). On November 2, 2017, Respondent filed its Return and Memorandum of Law in Support of Motion for Summary Judgment and Motion for Summary Judgment, seeking summary dismissal of Petitioner’s action, but acknowledging that Petitioner may be entitled to a belated appellate review of his initial post-conviction relief proceeding pursuant to Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). In his response to the motion for summary judgment, Petitioner agreed to a stay of the federal habeas corpus action to allow him pursue an Austin appeal. 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

³ Even though the Rule 60(b), SCRPC, motion was prepared by Petitioner, the State properly served counsel with the motion. See Rule 4.2 of the Rules of Professional Conduct, Rule 407, SCACR, (“In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order”). See also Comment [3] to Rule 4.2 (“The Rule applies even though to represented person initiates or consents to the communication”).

summary judgment be denied and that the case be stayed while the Petitioner pursues his state court remedy.” An order adopting the report and recommendation, denying the motion for summary judgment, and staying the action so Petitioner could exhaust his state remedies was filed May 14, 2018.

On May 4, 2018, Petitioner filed the application for post-conviction relief giving rise to the current appeal. In his application, Petitioner requested leave “to proceed under Austin v. State, 305 S.C. 453 (1991), for the relief afforded him under the Uniform Post Conviction Act, for the State of South Carolina. See §17-27-45(A).” Petitioner alleges:

The cognizable claim involved the failure of PCR counsel Mr. Dotson, to file a requested 59(e), and the subsequent appeal. Involving the State’s breach of plea agreement during Petitioner’s resentencing, which he was statutorily entitled. Under Austin, Petitioner was entitled to appellate review from the circuit court’s PCR ruling. The federal magistrate agreed. And the specificity of the factual background is adequately stated therein (6:17-1570), which warrants relief in this case.

Wherefore based on the forgone, the Petitioner respectfully request the appointment of counsel and the relief required by remanding for further proceedings consistent with the magistrate’s finding in this case. And any further relief deemed just and proper by this honorable court.

On May 9, 2016, Respondent served its return and consented to Petitioner’s request for belated appellate review pursuant to Austin. A hearing into the matter was convened March 28, 2019, at the Sumter County Courthouse before the Honorable Kristi F. Curtis, circuit court judge. Petitioner was present at the hearing and represented by James K. Falk, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General’s Office appeared on behalf of the State. At the start of the hearing, Respondent again consented to Petitioner’s request for an Austin review of his initial post-conviction relief action, noting the record established he had not knowingly and voluntarily waived his right to appellate review

from the denial of his first post-conviction relief action. The court issued an order finding Petitioner was entitled to an Austin review and granting him such belated appellate review.

II. RETURN TO THE CURRENT PETITION BEFORE THIS COURT

In his “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,” Petitioner repeatedly states “reconstruction is not possible” and that the record from the first post-conviction relief proceeding “cannot be adequately reconstructed.” However, it is unclear why Petitioner has adopted this argument.

Respondent has repeatedly advised Petitioner’s counsel that the two necessary witnesses for a reconstruction hearing that currently work at the Attorney General’s Office, prior PCR counsel for the State (Senior Assistant Deputy Attorney General Megan Harrigan Jameson) and the PCR judge (the Honorable W. Jeffrey Young, retired circuit court judge and current Chief Deputy Attorney General)⁴, are both available and willing to testify at a reconstruction hearing. Presumably Petitioner is also available and willing to testify at a reconstruction hearing, as he is housed within the Department of Corrections and can easily be transported for said hearing, and he has provided no evidence or argument to the contrary. Additionally, Petitioner fails to state why prior PCR counsel James Dotson is unavailable to testify at a reconstruction hearing other than stating he is currently suspended from the South Carolina Bar and lives out-of-state. A review of the Attorney Information Search on the South Carolina Judicial website shows that Mr. Dotson resides in Fair Bluff, North Carolina, approximately 70 miles from Williamsburg.

⁴ It is unclear why Petitioner is arguing Judge Young’s current role as Chief Deputy Attorney General makes reconstruction impossible. If Petitioner is contending reconstruction is impossible because Judge Young cannot preside over a reconstruction proceeding, there is no reason why another active circuit court judge cannot preside over a reconstruction proceeding and Judge Young can be called as a witness, as is the common practice when attempting to reconstruct a record when the presiding judge has left the bench.

Petitioner has failed to state why Mr. Dotson is unavailable to appear for a reconstruction hearing or if any good faith effort has been made to contact him regarding his availability to testify at any reconstruction hearing. Simply put, Petitioner has utterly failed to show why reconstruction is not possible or at the very least why reconstruction cannot be attempted.

Here, the proper course of action is to remand back to the circuit court for a reconstruction hearing. The trial court has the authority to set the record for appeal. State v. Ladson, 373 S.C.320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). When a transcript cannot be produced, the proper remedy is to attempt to reconstruct the record. “[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.” Id. (internal citations omitted). “Where a trial transcript has been lost or destroyed, a court may remand to have the record reconstructed.” Koon v. State. 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); see also Whitehead v. State. 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (holding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968) (same); Ladson. 373 S.C. at 325, 644 S.E.2d at 273-274; Dolive v. J.E.E. Developers. Inc.. 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992) (same).

Further, the Court has discretion in remanding the case to the trial court for a reconstruction of the content of the recordings. See State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007) (“The authority of the trial court in South Carolina to reconstruct the record for appellate purposes aligns our state with the majority of jurisdictions that hold ‘the inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.’ ” (quoting Smith v. State, 433 A.2d 1143, 1148 (Md. 1981))); id. at 325, 644 S.E.2d at 273–74 (concluding a reconstructed record on

appeal must allow for “meaningful appellate review,” and a new trial is only appropriate if the appellant establishes “the incomplete nature of the transcript prevents the appellate court from conducting a ‘meaningful appellate review.’ ” (quoting In re D.W., 615 S.E.2d 90, 94 (2005)). Respondent submits an attempt to reconstruct the record of Petitioner’s initial post-conviction relief proceeding is the appropriate course of action, not a de novo PCR hearing as Petitioner asks this Court to grant.

Moreover, Petitioner’s contention he is entitled to a de novo PCR proceeding because the original PCR court denied his motion to amend is also without merit. In support of this contention, Petitioner cites to this Court’s recent decision of Love v. State, 428 S.C. 231, 834 196 (2019), decided more than six years after Petitioner’s original PCR action. Nothing in the Love opinion states that it should be applied retroactively, and, by asking this Court to do so, Petitioner is essentially asking this Court to revisit all PCR applications filed previously where last minute amendments were denied, which could apply to hundreds or thousands of cases. This Court should reject Petitioner’s invitation to apply Love retroactively.

III. PRAYER FOR RELIEF

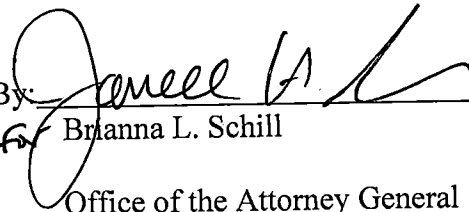
Based on the foregoing, Respondent respectfully asks this Court to deny Petitioner’s “petition for order to remand for a second PCR hearing based on the inability to reconstruct a record of the first PCR hearing that would allow meaningful appellate review.” Rather, Respondent submits the appropriate course of action would be to remand this matter back to the circuit court for all parties to attempt to reconstruct the record of Petitioner’s initial PCR proceeding. Furthermore, Respondent requests this Court to hold the appeal in abeyance until this matter has been ruled upon.

WHEREFORE, Respondent prays this Court will deny to Petitioner's "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," remand the matter to the circuit court to allow the parties to attempt to reconstruct the record of Petitioner's initial PCR proceeding; hold this appeal in abeyance pending a ruling on Petitioner's petition; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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February 3, 2020

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2019-001088

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JASON SINATRA EDWARDS,

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CERTIFICATE OF SERVICE

I, Kaitlyn Slice, certify that I have served the within **Return to Petition for Remand for New PCR Hearing** by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

**Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201**

I further certify that all parties required by Rule to be served have been served. This 3rd day of February, 2020.


KAITLYN S. SLICE
LEGAL ASSISTANT