

STATE OF SOUTH CAROLINA

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IN THE COURT OF APPEALS

SEP 04 2020

SC Court of Appeals

CERTIORARI TO LEXINGTON COUNTY

HONORABLE J. CORDELL MADDOX, CIRCUIT COURT JUDGE

DAVID LORANCE ADAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000781

PETITION FOR REHEARING

DAVID LORANCE ADAMS #271989

PETITIONER, PRO-SE

LEE C.I. [F4B-2216]

990 WISACKY HWY

BISHOPVILLE, S.C. 29010

TABLE OF AUTHORITIES

| CASES | PAGE |
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| State v. Ladson, 373 S.C. 320, 644 S.E.2d 271 (2007) | 5, 6, 8 |
| China v. Parrott, 251 S.C. 329, 162 S.E.2d 276, 278 (1968) | 5, 6 |
| Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200, 203 (2002) | 6, 7, 8 |
| Koon v. State, 358 S.C. 359, 595 S.E.2d 456, 460 (2004) | 6 |
| Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 418 S.E.2d 319, 321 (Ct. App. 1992) | 6 |

ISSUE PRESENTED

Was the reconstructed record of Petitioner's trial sufficient to allow for meaningful Post-Conviction Relief review?

STATEMENT

On January 5, 2014, Petitioner was arrested and charged with CSC with a minor second degree. The Lexington County Grand Jury indicted Petitioner on the charge of CSC with a minor second degree in June 2014. Petitioner was scheduled for trial on May 4, 2015 but decided to plead guilty while getting dressed just prior to jury selection and was sentenced to eighteen (18) years incarceration.

Petitioner filed a notice of appeal and wrote the court reporter requesting plea transcripts to perfect the appeal. The court reporter wrote back stating that her car was broken into on

June 3, 2015 and her equipment and tapes were stolen.

Petitioner's plea was one of the stolen tapes. Upon receiving this information when requested, Petitioner failed to provide a sufficient reason of explanation as required by the Appellate Court Rules believing that Petitioner needed the plea transcripts for proving and providing a sufficient reason of explanation, thus rendering the Court of Appeals to dismiss Petitioner's appeal.

On September 15, 2015, Petitioner filed an application for Post-Conviction Relief. The State filed a return on December 22, 2016. An evidentiary hearing was held on December 11, 2017 before the Honorable J. Cordell Maddox.

At the beginning of the PCR hearing, the State

informed the judge that the court needed to do a plea reconstruction hearing as there was no transcript from Petitioner's plea. The State told the judge that the solicitor and trial counsel were going to testify as to their recollections. The judge agreed. Trial counsel and solicitor both stated that they did not have any plea paperwork.

At the close of the reconstruction hearing, PCR counsel opposed the reconstruction hearing. The judge made a finding that the plea hearing had been reconstructed sufficiently enough for him as the PCR judge to determine whether or not any of the allegations of the PCR are correct.

ARGUMENT

The reconstructed record of Petitioner's trial was insufficient to allow for meaningful Post-Conviction Relief review.

The Supreme Court of South Carolina would require a reconstructed record on appeal to allow for "meaningful appellate review." See State v. Ladson, 373 S.C. 320.

A new trial is therefore appropriate if the appellate establishes that "the incomplete nature of the transcript prevents the appellate court from conducting a 'meaningful appellate review.'"

State v. Ladson, supra, (quoting) China v. Parrott,

251 S.C. 329. South Carolina jurisprudence recognizes the trial court's authority to set the record for appeal. State v. Ladson, supra.

The precedent extant in South Carolina, consisting of: China v. Parrott, 251 S.C. 329; Whitehead v. State, 352 S.C. 215; Koon v. State, 358 S.C. 359; and Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, establishes the rule and procedure in regard to reconstruction of the record of the trial court proceedings.

Seeking a direct appeal and post-conviction relief from his conviction and sentence, Petitioner requested a copy of the transcript of his trial

from the court reporter. However, the court reporter informed Petitioner that the trial transcript was stolen from her car. Notwithstanding, the loss of the trial transcript, Petitioner filed an original application for Post-Conviction Relief.

When a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed. Whitehead v. State, 352 S.C. 215.

However, the PCR court hearing Petitioner's PCR application, in light of knowing that the transcript of Petitioner's trial had been lost by the court reporter, failed to remand to the trial court to have the trial record reconstructed and instead

reconstructed the record of Petitioner's trial itself. See State v. Ladson, supra; Whitehead v. State, supra.

Petitioner was prejudiced by the reconstructed record of Petitioner's trial because the reconstructed record was void, as the PCR court lacked subject-matter jurisdiction to reconstruct the record of Petitioner's trial. See State v. Ladson, supra; Whitehead v. State, supra.

Consequently, the reconstructed record of Petitioner's trial was insufficient to allow for meaningful Post-Conviction Relief review. See State v. Ladson, supra.

Moreover, Petitioner is actually innocent and therefore to deny his petition for a writ of

Certiorari would result in a gross miscarriage of justice.

Accordingly, this Court should reverse the judgment of its order denying the petition for a Writ of Certiorari brought by Petitioner.

CONCLUSION

For the foregoing reasons stated, Petitioner prays
this court to reverse the judgment of it's order denying
the petition for a Writ of Certiorari brought by Petitioner.

August 31, 2020

Respectfully Submitted,

/s/ David Lorraine Adams

David Lorraine Adams #271989

Lee Correctional Institution

990 Wisacky Hwy.

Bishopville, S.C. 29010

THE STATE OF SOUTH CAROLINA

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I certify that I have served the Petition for Rehearing on Sherrie Butterbaugh, Assistant Attorney General, 1000 Assembly Street, Columbia, S.C., 29201, by depositing a copy of it in the United States Mail, postage paid on August 31, 2020.

/s/ David L. Adams

DAVID L. ADAMS #271989

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Bishopville, S.C. 29010

August 31, 2020

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Bx 11629
Columbia, S.C. 29211

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SC Court of Appeals

RE: DAVID LORANCE ADAMS, APPELLATE
Appellate Case No. 2018-000781,
V. STATE OF SOUTH CAROLINA, Respondent

Dear Mrs. Kitchings/Mrs. Allen:

Enclosed for filing is a Petition for Rehearing in the above case. Also, I would like to have a court/clock stamped copy of this petition and letter showing that it has been filed please.

Sincerely,

/s/ David L. Adams

DAVID L. ADAMS #271989
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Jenny Abbott Kitchings, Clerk

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