

The South Carolina Court of Appeals

Miguel Alejandro Urena, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-002311

ORDER

Petitioner was tried in his absence and sentenced for trafficking more than twenty-eight grams of heroin in March 2006. Petitioner's sentence remained sealed until he was extradited and appeared before the circuit court in February 2013. Following the denial of Petitioner's application for post-conviction relief, this court granted a belated direct appeal. Petitioner has discovered the transcripts of the trial and sentencing hearing are unavailable, and has filed a motion requesting this court (1) hold this appeal in abeyance, (2) remand for reconstruction of his trial and sentencing hearing, and (3) in the alternative remand for a new trial. The State filed a motion to dismiss the appeal, contending Petitioner's appeal should be dismissed pursuant to the fugitive disentitlement rule.

After careful consideration of the parties' filings, Petitioner's motion to hold the appeal in abeyance and remand for reconstruction or a new trial is denied, and the State's motion to dismiss is granted. *See State v. Serrette*, 375 S.C. 650, 652-53, 654 S.E.2d 554, 555 (Ct. App. 2007) (dismissing a defendant's appeal because the defendant's willful decision to remain a fugitive from justice for nearly eleven years following his conviction presented an obstacle to orderly appellate review in that the decision led to the destruction of trial transcript pursuant to Rule 607(i), and thus, upon defendant's notice of appeal, he was not entitled to remand for reconstruction hearing). Additionally, even if the court remanded the case for reconstruction, the parties would not be able to reconstruct the record in light of the passage of time, the trial judge's retirement, and the South Carolina Appellate Court Rules not requiring the court reporter to maintain the tapes for this period of time. *See State v. Ladson*, 373 S.C. 320, 326, 644 S.E.2d 271, 274 (Ct. App. 2007)

("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."); Rule 607(i), SCACR ("Except as provided below, a court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five (5) years after the date of the proceeding, and the court reporter may reuse or destroy the tapes after the expiration of that period.").



FOR THE COURT

Columbia, South Carolina

cc:

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The Honorable Robert E. Hood

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