

ADNAN SYED,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

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IN THE

COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2519, September Term, 2013

(CC# 199103042)

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ORDER

Following a jury trial which concluded on February 25, 2000, Adnan Syed, Appellant, was convicted in the Circuit Court for Baltimore City of first-degree murder, robbery, kidnapping, and false imprisonment. On June 6, 2000, the circuit court denied his motion for a new trial and sentenced Syed to imprisonment for life for murder, to thirty years' imprisonment for kidnapping, to run consecutive to the life sentence, and to ten years' imprisonment for robbery, to run concurrently with the sentence for kidnapping. Syed appealed and in an unreported opinion this Court affirmed. *Adnan Syed v. State of Maryland*, No. 923, September Term, 2000 (filed March 19, 2003). The Court of Appeals denied Syed's subsequently filed petition for writ of certiorari. *Adnan Syed v. State of Maryland*, 376 Md. 52 (2003).

On May 28, 2010, Syed filed a petition for post-conviction relief in the Circuit Court for Baltimore City. On June 27, 2011, he filed a supplement to that petition. On October 11 and October 25, 2012, the circuit court held hearings on the petition. On

January 6, 2014, the circuit court filed a memorandum opinion denying Syed's request for post-conviction relief.

On January 27, 2014, Syed filed a timely application for leave to appeal seeking appellate review of the circuit court's decision denying his petition for post-conviction relief. Syed requested appellate review of two issues he contends were wrongly decided by the circuit court: (1) whether his trial counsel rendered ineffective assistance by failing to interview or even contact Asia McClain, a potential alibi witness; and (2) whether trial counsel was ineffective for failing to pursue a plea offer and purportedly misrepresenting to Syed that she had. By order dated September 10, 2014, this Court directed the State to file a response to Syed's application for leave to appeal, which the State did on January 15, 2015.

On January 20, 2015, Syed filed with this Court a "supplement" to his application for leave to appeal in which, among other things, he requested that this Court remand the case to the Circuit Court for Baltimore City for additional fact-finding on the alibi witness issue regarding Asia McClain. He set forth reasons why Ms. McClain had not testified at the post-conviction hearings held in October 2012. He attached to the supplement an affidavit by Ms. McClain, dated January 13, 2015, reaffirming her recollection of seeing Syed at or around the time the State had alleged that Syed had committed the murder. In her affidavit, Ms. McClain also stated, in essence, that, in a telephone conversation with an Assistant State's Attorney involved in the case, she was discouraged from attending the post-conviction hearings. In light of this "new evidence," Syed asserts that a remand to the circuit court would be "in the interest of justice", that it

would promote “judicial economy” and that Ms. McClain’s testimony “is reasonably likely to change the outcome of the post-conviction proceeding.” On January 27, 2015, the State filed a motion to strike Syed’s supplement to the application for leave to appeal and urged this Court to deny his request for a remand.

On February 6, 2015, this Court granted Syed’s application for leave to appeal and directed the parties to file briefs. The order granting the application for leave to appeal also stated that “a decision” on Syed’s request for a remand to the circuit court for additional fact-finding on the alibi witness issue would be “referred to the panel of judges to be assigned” to hear the appeal.

Syed filed his brief with this Court on March 23, 2015, and the State filed its brief on May 6, 2015.

Having now reviewed the briefs filed in this appeal, and having considered Syed’s supplement to his application for leave to appeal and his request for a remand, as well as other pleadings filed in this Court, we believe that a stay of this appeal and a limited remand to the circuit court is in the interest of justice. *See* Md. Rule 8-604(a)(5) & (d) (authorizing the Court to remand a case on appeal to the lower court when “justice will be served by permitting further proceedings”); Md. Rule 8-204(f)(4) (authorizing the Court to grant an application for leave to appeal and remand to the lower court); Section 7-109(b)(3)(ii)(2) of Criminal Procedure Article of the Md. Code (authorizing the Court to grant an application for leave to appeal in a post-conviction matter and remand the case for further proceedings).

The purpose of the stay and the remand is to provide Syed with the opportunity to file with the circuit court a request, pursuant to § 7-104 of the Criminal Procedure Article of the Md. Code, to re-open the previously concluded post-conviction proceeding in light of Ms. McClain's January 13, 2015, affidavit, which has not heretofore been reviewed or considered by the circuit court. Moreover, because the affidavit was not presented to the circuit court during Syed's post-conviction proceedings, as it did not then exist, it is not a part of the record and, therefore, this Court may not properly consider it in addressing the merits of this appeal. This remand, among other things, will afford the parties the opportunity to supplement the record with relevant documents and even testimony pertinent to the issues raised by this appeal.

We shall, therefore, remand the case to the circuit court, without affirmance or reversal, to afford Syed the opportunity to file such a request to re-open the post-conviction proceedings. In the event that the circuit court grants a request to re-open the post-conviction proceedings, the circuit court may, in its discretion, conduct any further proceedings it deems appropriate. If that occurs, the parties will be given, if and when this matter returns to this Court, an opportunity to supplement their briefs and the record.

Accordingly, it is this 18th day of May 2015, by the Court of Special Appeals,

ORDERED that the above-captioned appeal be and hereby is STAYED; and it is further

ORDERED that the Appellant's request for a remand to the circuit court is GRANTED and the case be and hereby is REMANDED to the Circuit Court for

Baltimore City, without affirmance or reversal, for the purpose set forth in this Order; and it is further

ORDERED that Appellant shall file his motion to re-open the closed post-conviction proceeding within 45 days of the date of this Order and, if he fails to do so, the stay shall be lifted and this Court will proceed with the appeal without any reference to or consideration of the Appellant's Supplement to Application for Leave to Appeal or any documents not presently a part of the circuit court's record; and it is further

ORDERED that, after taking any action it deems appropriate, the circuit court shall forthwith re-transmit the record to this Court for further proceedings.

FOR A PANEL OF THIS COURT
CONSISTING OF KRAUSER, C.J.,
WOODWARD, AND WRIGHT, JJ.



/S/

PETER B. KRAUSER, CHIEF JUDGE