

Court of Appeals of the State of Georgia

ATLANTA, May 08, 2025

The Court of Appeals hereby passes the following order:

A25A1442. SPELL v. THE STATE.

This is an appeal pursuant to a habeas court's grant of Spell's motion for an out-of-time appeal. See *Siders v. State*, 320 Ga. 367, 367 n. 1 (907 SE2d 645) (2024) (a habeas petitioner could pursue an out-of-time appeal in a matter previously dismissed as an unauthorized out-of-time direct appeal under *Cook v. State*, 313 Ga. 471 (870 SE2d 758) (2022)).

Spell has moved this Court to remand the case to the trial court for completion of the record. The State joins in the motion, asserting that the post-conviction history of the case, dating from March 2017, is "convoluted and must be corrected." Specifically, the parties agree that the trial court did not have jurisdiction to reach the merits of Spell's original motion for new trial and now ask that the trial court decide that motion in the first instance now that it has jurisdiction pursuant to the habeas court's order. See *Pounds v. State*, 309 Ga. 376, 380 (846 SE2d 48) (2020) (a trial court's grant of an out-of-time appeal can revive an untimely motion for new trial). The parties specifically ask for an evidentiary hearing as to whether Spell was denied effective assistance of counsel.

The consent motion to remand is GRANTED. This appeal is REMANDED to the trial court for the completion of the record and further proceedings, including an evidentiary hearing on Spell's motion for new trial. At this hearing, the parties may address the issue of whether Spell received ineffective assistance of counsel and any other issue bearing on Spell's request for a new trial. Spell may file a notice of appeal within 30 days of a final order entered by the trial court.



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Clerk's Office, Atlanta, 05/08/2025

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Christina Bailey Smith

, Clerk.