

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Dec 12 2022

S.C. SUPREME COURT

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Certiorari to Aiken County

Honorable Robert J. Bonds, Circuit Court Judge
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MARKESE EAST,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000557
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MOTION TO HOLD IN ABEYANCE
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Counsel for Markese East respectfully requests that this case be held in abeyance pending receipt of a May 14, 2019, initial PCR hearing transcript. The petition for writ of certiorari and appendix are due to be filed with this Court on December 14, 2022, having previously been extended by prior orders of this Court. In support of this request, counsel shows:

1. Petitioner was indicted in November 2013 by the Aiken County Grand Jury for one count of murder, one count of armed robbery, and one count of burglary first degree. Petitioner proceeded to trial before the Honorable Doyet A. Early, III, and a jury on January 5-7, 2016. The State was represented by William Weeks and Cassie Hall. Petitioner was represented by Aaron Walsh and

Kevin Beck. Petitioner was found guilty as indicted and sentenced to imprisonment for thirty years, concurrent, on all charges.

2. A notice of intent to appeal was never filed. Petitioner filed an application for post-conviction relief on January 26, 2017, alleging failure of counsel to file an appeal and a general ineffective assistance claim. The State filed a return arguing that Petitioner's general ineffective assistance of counsel claim should be dismissed for failure to file within the statutory one-year filing deadline. The State requested an evidentiary hearing to determine if Petitioner was entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

3. While reviewing the transcripts in this case in preparation for filing the petition for writ of certiorari and the appendix, counsel discovered that there were two distinct PCR hearings held in Petitioner's case. An initial hearing was held on May 14, 2019, before the Honorable J. Cordell Maddox, Jr., to determine if Petitioner was entitled to equitable tolling of the PCR statute and to determine if Petitioner was entitled to review pursuant to White v. State. The court ruled that Petitioner was entitled to tolling of the PCR statute and to belated review pursuant to White v. State, however no written order was filed from this hearing. Additionally, it is unclear who represented Petitioner at this hearing as PCR Counsel Nancy Fennel was not appointed to represent Petitioner until January 2022. **This office had no notice of this hearing.** A second hearing was held on February 2, 2022, before the Honorable Robert J. Bonds, to address Petitioner's remaining PCR allegations. At that hearing, Petitioner was represented by Nancy Fennel, the State was represented by Megan Jameson. In the order of dismissal issued by Judge Bonds, the oral ruling by Judge Maddox granting belated review pursuant to White v. State was referenced and adopted.

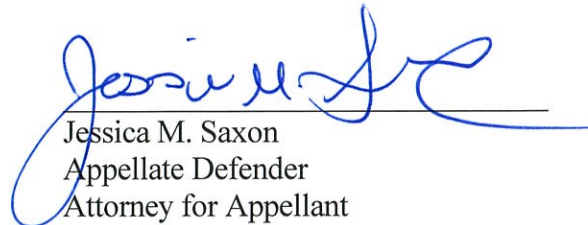
4. Today, on December 12, 2022, our office ordered the transcript of the May 14, 2019, PCR hearing from court reporter Bonnie H. Kelly, as evidenced by Exhibit A which is attached to this motion.

5. Counsel for the State, Megan Jameson, has graciously consented via electronic mail to this request to hold the appeal in abeyance until the transcript from the May 14, 2019, hearing is received.

6. Counsel will notify this Court immediately upon receipt of the missing transcript. Counsel regrets that there were three previous extension requests in this case.

WHEREFORE, undersigned counsel respectfully requests that the time limits for filing the petition for writ of certiorari and appendix be held in abeyance pending receipt of the missing PCR hearing transcript.

Respectfully submitted,



Jessica M. Saxon
Appellate Defender
Attorney for Appellant

December 12, 2022