

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to Spartanburg County
The Honorable Grace Gilchrist Knie, Post-Conviction Relief Judge
Appellate Case No: 2018-001839

Calvin Terrell Williams,

Petitioner,

v.

State of South Carolina,

Respondent.

**REPLY TO RETURN TO PETITION TO FILE A
SECOND SUPPLEMENTAL APPENDIX**

On March 7, 2023, Respondent the State of South Carolina filed a petition seeking to file a second supplemental appendix containing the complete general sessions records from Petitioner Calvin Williams’s conviction that were filed in the lower court¹ and, therefore, had to be included in order for it to be in compliance with the unambiguous requirements of Rule 243, SCACR. See Rule 243(f), SCACR (requiring petitioner to file an appendix with the *entire lower court record*).

¹ As set forth in its petition, the records Respondent seeks to include in the appendix are the entire set of clerk’s records from Petitioner’s underlying general sessions conviction that he challenges in this post-conviction relief action. These records were filed with the application and provided to Respondent with the application, and also provided to the post-conviction relief court. See Spartanburg County Public Index for the underlying post-conviction relief action, Calvin Terrell Williams v. State, 2018-CP-42-00057: <https://publicindex.sccourts.org/Spartanburg/PublicIndex/CaseDetails.aspx?County=42&CourtAgency=42002&Casenum=2018CP4200057&CaseType=V&HKey=8483809068110112555586726688971051111164866746977889810411884988554701027611611089778350531078852> (last accessed Mar. 24, 2023).

In response, Petitioner filed a return opposing Respondent's petition for the following reasons: (1) the motion was purportedly untimely, and, because it was made after oral argument, deprives him of an opportunity to respond; (2) Respondent was supposedly responsible for the records not originally being included; and (3) Respondent allegedly failed to provide extraneous proof that the records were presented to and relied upon by the post-conviction relief court in rendering its decision. Respondent makes the following reply to address those arguments, which should be rejected as meritless.

Addressing the first claim, Respondent notes Petitioner's claim that this request is untimely and that he was not advised of these missing documents until following oral argument is incorrect. As set forth in Respondent's petition to supplement the appendix, Petitioner was previously advised by undersigned counsel that the appendix as filed omitted documents, including the very indictment for the conviction he is challenging. In response, Petitioner filed a supplemental appendix to add the missing indictment but did not include the full set of clerk's records of the underlying conviction. A review of the public index of the underlying action—which was and is available to Petitioner along with the public at large—clearly and unequivocally establishes that the full clerk's records were filed in this action alongside the application and were part of the lower court record. Despite this, Petitioner asserts that Respondent (who is not responsible for compiling and filing an appendix in compliance with Rule 243, SCACR) is somehow responsible for Petitioner failing to discover and include these records in a timely fashion.

Petitioner also inaccurately argues that Respondent delayed the filing of this motion until after oral argument to somehow prejudice him and deny him the opportunity to respond. This argument lacks merit and is disingenuous. As evidenced from the attached email chain between

undersigned counsel and counsel for Petitioner (see attachment A), undersigned counsel alerted counsel for Petitioner that these documents were improperly omitted from the appendix shortly after she assumed representation of the case for oral argument. Undersigned counsel did so to both alert Petitioner that these documents were improperly omitted as they were part of the lower court record and to obtain his consent to file its own supplemental record for the sake of most expeditiously remedying the incompleteness of the appendix. While undersigned counsel did handle the hearing below, she had not handled the appeal at the return to certiorari or briefing stage as she went out on emergency medical leave within days of the filing of the supplemental appendix and remained out of the office on medical leave through the remainder of the year (something undersigned counsel shared with counsel for Petitioner both on the phone and in this email exchange). Accordingly, undersigned counsel alerted Petitioner of the omission of these documents as soon as she resumed representation for Respondent and noticed the omission and attempted to correct Petitioner's erroneous omission as discovered *before* the oral argument. When Petitioner made it clear that he would not only not consent to the documents' inclusion but actively oppose it through the filing of a return in opposition, undersigned counsel elected not to do so because the records are already part of the official court file, and, therefore, this Court could take judicial notice of these documents. However, as again evidenced in this email chain, undersigned counsel ultimately decided to move to supplement the record based on the questioning from the panel at the argument that made it clear these records (and particularly, the State's life without parole notice and its attachments as well as the Rule 404(b), SCRE, motion) were pertinent to the Court's consideration of the issues at hand. Petitioner's assertions that Respondent's motion is untimely and causes him prejudice is without merit.

Second, Petitioner argues Respondent is the cause of the omission, arguing that Respondent failed to timely notify Petitioner of these missing documents and asserting that Respondent is somehow responsible because it only provided the indictments and sentencing sheets. In support of this responsibility-shifting argument, Petitioner attached an exhibit showing an email exchange between a legal assistant for Petitioner and a legal assistant for Respondent with a description of attached files including “WILLIAMS Calvin Terrell – Clerk’s Records REDACTED.” However, it is crucial to note that Petitioner, though his legal assistant, only requested a very limited number of documents, including “indictment(s)” and “Sentence Sheet(s).” (See Attachment B). Petitioner failed to include this document as an exhibit in his return in opposition, which directly contradicts his argument that Respondent was somehow concealing documents or failing to properly provide documents as requested. It is worth noting that this document request appears to be exactly the same as the same standard request that this particular legal assistant routinely sends to the Office of the Attorney General’s legal assistants (without copy to any attorney, including the attorney who handled the matter below, as undersigned counsel did in this very case) based on undersigned counsel’s review of dozens of such documents requests in preparation for the filing of this reply. Simply put, Petitioner received exactly the documents he requested (the indictments and sentencing sheets) but somehow argues Respondent improperly responded to his request and is responsible for the necessary documents not being included in the appendix, despite the burden clearly falling on a petitioner to compile an appendix in compliance with Rule 243, SCACR.

Third, Petitioner argues that Respondent failed to provide contemporaneous proof that these records were before the lower court and relied upon in rendering its decision despite the fact that these records were filed in the lower court clerk’s file. Documents that are filed in the lower

court proceeding, such is the case here, are obviously and necessarily part of the “entire record” and, thus, fall within the requirements of Rule 243, SCACR. Cf. South Carolina Dep’t of Soc. Servs. v. Janice C., 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct. App. 2009) (“These documents were filed with the family court; therefore, they were part of the record.”). Petitioner has failed to cite to any rule, statute, or authority to support his position that filed documents are not part of the record for an appeal of a post-conviction relief action pursuant to Rule 243, SCACR, likely because no such authority exists.² These filed documents are part of the lower court record, and because Rule 243(f), requires Petitioner to file an appendix with the “entire lower court record”, these records shall be included in the appendix. Petitioner’s challenge to their inclusion lacks merit and, without them, the appendix as presently filed is not in compliance with the nondiscretionary requirements of Rule 243, SCACR.

Despite the clear nature of Rule 243, SCACR, Petitioner attempts to create ambiguity by adding in requirements for contemporaneous proof that documents were “before the Court” and actually considered by the Court in rendering its decision. None of these things are requirements of Rule 243, SCACR. Petitioner also argues that perhaps clarity is needed as to the requirements of Rule 243, SCACR. Again, Rule 243, SCACR, is unambiguous—the entire lower court record must be included.

² Instead, Petitioner cites to numerous cases discussing Rule 210, SCACR, which governs Records on Appeal and includes a process by which an appellant and respondent *designate* matters for inclusion in the appellate records. The appendix in post-conviction relief appeals is governed by Rule 243, SCACR, does not include designations, and *requires* the entire lower court record to be included without any discretion. Petitioner’s attempts to draw parallels between Rule 210, SCACR, and Rule 243, SCACR, and add the requirements of Rule 210, SCACR, to appendices filed pursuant to Rule 243, SCACR, ring hollow and patently lack merit. The same is true for the out-of-state authority Petitioner cites that involves different scenarios than what is currently before this Court.

Petitioner also seems to be making an argument that the appendix should not be supplemented to include these records based on a lack of relevance. Importantly though, since Rule 243, SCACR, is nondiscretionary and unambiguous concerning what must be included in the appendix, Petitioner's partisan view on the relevance of the documents is itself irrelevant to the matter of whether the missing documents should have been included in this appendix. While Rule 243(f), SCACR, is not discretionary and these records should have been included pursuant to the appellate court rules, undersigned counsel also notes that during the oral argument before this Court, these general sessions records were repeatedly referenced and are directly relevant to the issues at hand in this appeal. As these records were before the lower court, the appendix must include these records pursuant to Rule 243(f), SCACR, in order to be complete.

WHEREFORE, Respondent prays that this Court will allow Respondent to file a Second Supplemental Appendix containing the complete set of general sessions records from the underlying conviction being challenged in this post-conviction relief appeal; accept the filing of Respondent's Second Supplemental Appendix; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108

By: *s/Megan Harrigan Jameson*

ATTORNEYS FOR RESPONDENT
Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

March 24, 2023

ATTACHMENT A

From: [Megan Jameson](#)
To: [Gilliam, Taylor](#)
Subject: RE: [External] Calvin Williams Clerk's
Date: Tuesday, March 7, 2023 8:55:00 AM
Attachments: [image001.png](#)
[WILLIAMS Calvin - Second Supplemental Appendix - 2018-001839 \(03232083xD2C78\).PDF](#)

Taylor,

In light of the presentations at yesterday's oral argument, it is clear the Court needs to view the life without parole notice with the accompanying attachments, as well as the Rule 404(b) motion and memorandum. Again, these were before the Court as attachments to the PCR application provided by the Spartanburg County Clerk of Court (<https://publicindex.sccourts.org/Spartanburg/PublicIndex/CaseDetails.aspx?County=42&CourtAgency=42002&Casenum=2018CP4200057&CaseType=V&HKey=8483809068110112555586726688971051111164866746977889810411884988554701027611611089778350531078852>)

Pursuant to Rule 243, SCACR, I will be filing a motion to supplement the appendix and this second supplemental appendix later today.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
Post-Conviction Relief Section
South Carolina Attorney General's Office

From: Megan Jameson
Sent: Thursday, March 2, 2023 9:18 PM
To: Gilliam, Taylor <tgilliam@sccid.sc.gov>
Subject: RE: [External] Calvin Williams Clerk's

Taylor,

Thank you for taking a look at these records. The entirety of these documents are the records from the Spartanburg County Clerk of Court filed in Petitioner's general sessions file and were provided with his application for post-conviction by the clerk of court. As a matter of course, Spartanburg County provides the entire GS file, not just indictments, sentencing sheets, and arrest warrants as many counties only provide. I can assure you as an officer of the court that these were indeed before the PCR court and I firmly believe these should have been included in the Appendix when originally filed pursuant to Rule 243, SCACR, which is not discretionary and requires the inclusion of the entire lower court record. Had I not been out on emergency medical leave the certiorari stage and handled the case from the earlier stages of the appeal, I would have filed such a motion to supplement when the appendix was filed without them. However, while I believe these are firmly within the purview of Rule 243, SCACR, I believe our courts can take judicial notice of its own records if needed. I will likely not file a motion to supplement because I do not think this issue needs to turn into a distracting, protracted issue on the eve of an oral argument before the Court.

Have a good evening,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
Post-Conviction Relief Section
South Carolina Attorney General's Office

From: Gilliam, Taylor <tgilliam@sccid.sc.gov>
Sent: Thursday, March 2, 2023 3:30 PM
To: Megan Jameson <MJameson@scag.gov>
Subject: RE: [External] Calvin Williams Clerk's

Good afternoon,

I will consent to the inclusion of pages 111-112 of the PDF you e-mailed. Those pages contain the two-count indictments from the District Court.

I oppose the inclusion of the remaining pages in a supplemental appendix. I cannot verify that the PDF which you e-mailed was ever provided to the PCR court; the packet was not made a Court's Exhibit and there is no cover letter containing a list of items given to the PCR judge. As such, the contemporaneous records fail to affirmatively establish that these documents were before the Court under Rule 243.

I also disagree with contention that these documents are directly relevant to the issue before the Court, particularly the exhibit receipt, a voir dire request, the state's exhibit and witness lists, the strike sheet, the checklist for magistrate's judges, a continuance request, discovery affidavits, and witness subpoenas; those records are irrelevant to the issue presented in the briefs. I agree with you that relevance is not the litmus test, but I believe we can be considerate of the Court's time and taxpayer money by using common sense.

If you intend to just file a two-page Second Supplemental Appendix with the above-referenced federal court indictments, I consent. If you plan on filing any additional documents, I oppose the motion and will file a return.

-Taylor

From: Megan Jameson <MJameson@scag.gov>
Sent: Thursday, March 2, 2023 11:22 AM
To: Gilliam, Taylor <tgilliam@sccid.sc.gov>
Subject: RE: [External] Calvin Williams Clerk's

Taylor,

I apologize, I did not attach the correct document I was referencing on the phone, which is the 244 pages of clerk's records we received from the Spartanburg County Clerk of Court with the filed PCR application; I accidentally included the portion of the clerk's records with the

indictment. I have attached them now in my proposed Supplemental Appendix. This is what was provided with the PCR application and provided to the PCR court in the Court packet, as well as what was before the PCR court at the hearing. My position is that Rule 243, SCACR, requires everything before the Court and is not discretionary, so these should be included, but moreover, are directly relevant to the issue before the Court (even though that is not the standard under Rule 243, SCACR). Please let me know your position on a motion to supplement the appendix when you have a chance to review.

Thank you,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
Post-Conviction Relief Section
South Carolina Attorney General's Office

From: Gilliam, Taylor <tgilliam@sccid.sc.gov>
Sent: Thursday, March 2, 2023 11:11 AM
To: Megan Jameson <MJameson@scag.gov>
Subject: RE: [External] Calvin Williams Clerk's

I have no objection to these 6 pages being submitted to the Court. I believe two of them are already in the original Appendix, and two are in the Supplemental Appendix.

As we discussed this morning, although the Order of Dismissal contains no indication of what was provided to the PCR court, these documents were certainly part of the lower court record. Additionally, they appear to have been provided by your office to ours via e-mail on October 31, 2018. I apologize for not including those two pages. Based on my review of what you sent, we will be adding pages 5/6 and 6/6 of the PDF- an affidavit of John Gallman and the Sentence Sheet from June 2016.

Do you want me to prepare a Second Supplemental Appendix with these two pages that are not yet part of the Court of Appeals record?

-Taylor

From: Megan Jameson <MJameson@scag.gov>
Sent: Thursday, March 2, 2023 9:05 AM
To: Gilliam, Taylor <tgilliam@sccid.sc.gov>
Subject: [External] Calvin Williams Clerk's

Hi Taylor,

I've attached the clerk's records Calvin Williams. Take a look and please let me know as soon as possible your position.

Thank you,

MEGAN HARRIGAN JAMESON, Senior Assistant Deputy Attorney General
South Carolina Attorney General's Office
Post-Conviction Relief | Office 803-734-3319 Cell 803-977-1644
P.O. Box 11549 | Columbia, SC 29211
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ATTACHMENT B



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 31, 2018

Carson Kirk
Attorney General's Office

Re: Calvin Terrell Williams v. The State
2018-CP-42-0057

Dear Carson:

Our office is representing the above individual in their appeal to the Supreme Court. In order to properly prepare the appeal, we are asking you for copies of the following documents:

- (1) the original trial or guilty plea transcript;
- (2) the PCR application
- (3) the State's Return
- (4) the Order of Dismissal
- (5) Indictment(s)
- (6) Sentence Sheet(s)

If you have any questions, please do not hesitate to contact me. Thank you in advance for your kind assistance in this matter.

Sincerely,

Sean Flynn
Administrative Coordinator

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to Spartanburg County
The Honorable Grace Gilchrist Knie, Post-Conviction Relief Judge
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Calvin Terrell Williams,

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(b)(3), SCACR, the undersigned hereby certifies a true copy of Respondent’s Reply to the Return to the Petition to Supplement the Appendix and proposed Second Supplemental Appendix has been served upon the Petitioner by sending a copy via mail, addressed to:

**Taylor Davis Gilliam, Esquire
S.C. Commission on Indigent Defense
P.O Box 11589
Columbia, SC 29201**

This 24th day of March, 2023.

s/ Megan Harrigan Jameson

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
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