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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL TO SPARTANBURG COUNTY
The Honorable Brian M. Gibbons, Circuit Court Judge

Appellate Case No: 2023-000384

DERRICK BURNSIDE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

MOTION TO FILE SUPPLEMENTAL APPENDIX

Pursuant to Rules 212(b) and 243(f), SCACR, Respondent moves to supplement the Appendix previously filed in the above captioned post-conviction relief (PCR) appeal, which is based on the following:

1. On October 30, 2023, Petitioner Derrick Burnside filed and served a Petition for Writ of Certiorari and accompanying Appendix in this post-conviction relief appeal. When reviewing the record to prepare the State's return to the Petition, counsel discovered the record did not include two mental health reports that were before the circuit court. These reports were provided to the plea judge for his review prior to the plea hearing, and both the State and defense counsel referenced them during that hearing. Petitioner's PCR counsel had the reports during the PCR

hearing and Petitioner's trial counsel referenced them during his testimony. In addition, the Seventh Circuit Solicitor testified at the PCR hearing about the reports and decisions he made about the case based on the reports' contents.

2. On March 2, 2024, the State moved to hold this matter in abeyance while counsel sought copies of the reports and was able to review their contents. By Order filed March 4, 2024, the Court granted the motion and extended the time for filing the Respondent's Return until April 3, 2024.

3. Counsel was unexpectedly out of the office due to illness from March 7 to March 18th. Upon her return, counsel was able to review the two mental health reports, and determined they are directly relevant to Issue 2 in the Petition for Writ of Certiorari. In addition, Counsel has unexpectedly been out of the office this week due to family illness.

4. Counsel then contacted Petitioner's counsel to advise him the State was going to move to file a supplemental appendix to include the two reports in the record. Petitioner's counsel authorized the undersigned to advise the Court he does not oppose supplementing the Appendix with the two reports.


WHEREFORE, based on the foregoing, Respondent moves to file the Supplemental Appendix containing the two mental health reports as submitted with this Motion, and asks that the deadlines in this matter be held in abeyance pending resolution of the Motion.

Respectfully submitted,

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April 3, 2024