

RECEIVED

Jul 22 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2023-001329

Tyrone M. Benn Petitioner,

v.

State of South Carolina, Respondent.

MOTION TO SUPPLEMENT APPENDIX

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for Respondent moves to supplement the Appendix in this case. In support of this motion, Respondent would present the following facts:

1. Petitioner Tyrone Benn was convicted of murder and possession of a weapon during the commission of a violent crime in the Charleston County Court of General Sessions in 2016 and sentenced to life without the possibility of parole. Petitioner filed a timely notice of appeal. The South Carolina Court of Appeals granted counsel’s motion to be relieved pursuant to Anders v. California, 386 U.S. 738 (1967), and dismissed the appeal on November 22, 2017. The remittitur was returned to the circuit court on December 9, 2017.

2. Petitioner filed an application for post-conviction relief (PCR) February 15, 2018 (2018-CP-10-00813). Petitioner filed a *pro se* Motion to Amend his application on or about July 9, 2019. A hearing was held on the merits and Petitioner was represented by counsel. On July 27, 2023, the Honorable Bentley Price denied and dismissed with prejudice the application by written order.

3. The Petition for Writ of Certiorari and Appendix in this case were filed on February 20, 2024. The Appendix, however, does not reference State's Exhibit 24 and 40, which were part of the trial record before the circuit court. The circuit court noted in its order that it had conducted a "thorough review of the record in its entirety, including the testimony and evidence presented at the trial" (App.475). State's Exhibit #24 is a booking photo of Tyrone Benn from the day of his arrest on these charges, and is highly relevant to Benn's PCR claims, which are premised on a theory of police misidentification. State's Exhibit #40 is an audio recording of a phone call Benn made from jail, and was a crucial piece of evidence at trial. While Benn designated a transcription of the call, the State believes the audio recording is more probative. Without these exhibits, the appellate record is incomplete and, as such, they should be included in the Appendix. Further, Respondent cannot fully address the merits of Petitioner's allegations without being able to reference these exhibits.

4. Inasmuch as these exhibits are relevant and pertinent material under Rule 243(f), SCACR, counsel respectfully requests these exhibits be transported to be included as part of the Appendix.

WHEREFORE, as the Appendix is incomplete, counsel for Respondent requests this Court grant the motion to supplement the Appendix.

Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General
S.C. Bar # 101188

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3727

By:  _____

ATTORNEYS FOR RESPONDENT

July 22, 2024