

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

L. Casey Manning, Circuit Court Judge  
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**RECEIVED**

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**S.C. Supreme Court**

SHARON SMITH,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

Appellate Case No. 2012-213022  
\_\_\_\_\_

PETITION TO FILE  
SUPPLEMENTAL APPENDIX  
\_\_\_\_\_

Pursuant to Rule 212, SCACR, undersigned counsel for respondent requests leave in which to file a supplemental appendix in this case. In support of this motion, counsel submits the following facts.

1. Respondent was indicted by the Richland County grand jury for the offense of murder. Her case came on for trial on June 20, 2005 before the Honorable Reginald I. Lloyd, and a jury. Deputy Public Defender April Sampson and Deputy Public Defender Debra Ahrens represented respondent. John Meadors and Todd Wagoner were the Assistant Solicitors. App. 1.

2. On June 23, 2005 the jury found appellant guilty of murder. App. 632, ll. 2-8. Judge Lloyd sentenced respondent to forty-eight years imprisonment. App. 651, ll. 9-10. A notice of

intent to appeal was then filed and served from respondent's murder conviction and sentence. However, Counsel Sampson also subsequently filed a notice of motion and a motion for a new trial in the lower court based on after-discovered evidence of Juror misconduct. Counsel also filed a memorandum in support of defendant's motion for a new trial, and attached an affidavit from Juror Mark Pleasant. App. 716-722.

3. The state filed a memorandum in opposition to defendant's motion for a new trial.

4. A hearing on the motion for a new trial was held on August 15, 2005 before the Honorable Reginald I. Lloyd. App. 655-714. April W. Sampson represented appellant. John P. Meadors and Todd M. Wagoner were again the assistant solicitors. Tr. 1.

5. Towards the conclusion of the new trial hearing, the judge stated his intention to issue a written order. "I will issue a written order on this." App. 708, ll. 24-25. "I understand the defense's continued point on that [limitations on arguing accident to the jury during closing argument where accident was not charged to the jury as a verdict option]. And I'll make sure y'all have a written order so the record is complete on my finding on this issue as well. Thank you, counsel." App. App. 713, l. 23 -714, l. 2.

6. On February 2, 2006 the judge issued a Form 4 order denying the motion for a new trial without explanation on a civil order form. App. 723.

7. On February 7, 2006 a notice of intent to appeal was filed with the Court of Appeals from the *denial of the new trial motion based on after-discovered evidence*. Later counsel filed an amended notice of intent to appeal noting incorrect indictment numbers and a sentencing date. This notice of intent to appeal purportedly covered both the trial and the motion for a new trial proceeding. App. 724. Respondent's appeal from her murder conviction itself proceeded in the interim. A Final Anders Brief of Appellant was filed on July 19, 2006 in that case. This Court

dismissed the appeal and granted counsel's motion to be relieved in State v. Sharon L. Smith, Up.-Op.-No. 2007-UP-2005 (filed May 22, 2007).

8. Undersigned counsel filed his two issue merit initial brief of appellant in the Court of Appeals on November 1, 2007, in the appeal from the motion denying a new trial based on after-discovered evidence. Counsel, based on memory and belief, thinks the state filed a motion to dismiss the appeal on the grounds that the lower court was without jurisdiction to hold the new trial based on after-discovered evidence hearing because respondent's murder conviction was already on appeal. The Court of Appeals dismissed the new trial based on after-discovered evidence appeal on May 5, 2008, ruling the motion for a new trial hearing that proceeded in the lower court while respondent's conviction was on appeal was a nullity. App. 725.

9. Respondent filed a post-conviction relief application on March 6, 2009. A return and motion to dismiss was filed July 2, 2009. The motion to dismiss was denied. An evidentiary hearing was held before the Honorable L. Casey Manning on October 10, 2010. Maura Dawson represented respondent. Brian Patrano was the Assistant Attorney General. App. 740-808. Judge Manning issued an order granting PCR relief on seven different grounds dated September 12, 2012. App. 851-868.

10. The state subsequently filed a petition for writ of certiorari on April 25, 2013. While working on this case to file his return to the state's certiorari petition next week undersigned counsel noted that in granting relief on the ineffective jurisdictional handling of the motion for a new trial based on after discovered evidence hearing, Judge Manning wrote: "Counsel's failure to preserve this issue, and failure to alert appellate counsel, so fundamentally undermined our system of fairness in jury trials that Applicant was deprived the opportunity of a fair trial. This Court is dumbfounded that counsel's motion, for which the trial court believed it

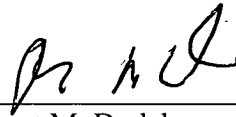
had jurisdiction, was denied. It is impossible to imagine a more unfair deliberation that when a juror voluntarily does his or her own research, presents that research to the remaining jurors, and poisons the jury's mind with information that is both incorrect and prejudicial. Accordingly, Applicant is entitled to a new trial on the grounds that counsel was ineffective in failing to *properly preserve the issue of juror misconduct for review*. As such, Applicant is entitled to a new trial." App. 867-868. (emphasis added).

11. Undersigned counsel notes that the state did not include the initial brief of appellant on direct appeal from the denial of the motion for a new trial based on after-discovered evidence. Counsel has spoken with opposing counsel, David Spencer, and he agrees the initial brief of appellant should be included in a supplemental appendix. Counsel Spencer also desires that the brief of respondent, if one was filed, be included in the record on appeal, and undersigned counsel does not oppose its inclusion if it exists. Finally, undersigned counsel moves to include any written order, beyond the Form Rule 4 order included in the Appendix, which the judge referenced during the new trial hearing. Since respondent must show prejudice pursuant to Strickland v. Washington, 466 U.S. 668 (1984), in support of his argument that the Judge's ruling above should be affirmed on the issue above, undersigned counsel submits a supplemental appendix containing: (1) his initial brief of appellant before the Court of Appeals on the hearing on motion for a new trial based on after-discovered evidence issues; (2) Any state's brief of respondent filed in the Court of Appeals from that appeal; and (3) any written order beyond the Form 4 order denying the motion for a new trial need to be before this Court to ensure an adequate record exists for this Court to review.

12. This motion is in good faith, and not for purposes of delay.

WHEREFORE, counsel requests leave in which to file a supplemental appendix in this case on appeal containing the documents 1-3 listed above. Counsel respectfully requests that this case be held in abeyance pending a ruling on this motion.

Respectfully submitted,



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Robert M. Dudek  
Chief Appellate Defender

Attorney for Petitioner

September 6, 2013

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County

L. Casey Manning, Circuit Court Judge  
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SHARON SMITH,

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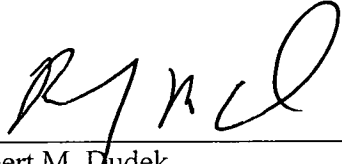
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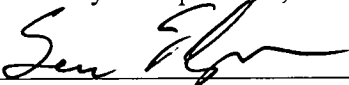
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CERTIFICATE OF SERVICE  
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The undersigned attorney hereby certifies that a true copy of the Petition to File Supplemental Appendix in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of September, 2013.

  
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Robert M. Dudek  
Chief Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me  
this 6th day of September, 2013.

 (L.S.)  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022