

Respondent filed a motion notifying the Court that Stewart inadvertently omitted filings and exhibits from the Appendix. Respondent requested that the Court compel Stewart to file a Supplemental Appendix containing these documents. Stewart did not oppose the motion, and the Court granted the same.

While complying with the Court's order, Stewart thoroughly reviewed the lower court record and Appendix searching for any further omissions. He discovered a major discrepancy in the 2018 PCR record.¹ The respondent in this action failed to file a document it claimed supported its request for summary dismissal. The PCR court summarily dismissed Stewart's claim based on this purported document, which was not in the record before the court.

As the PCR court erred in summarily dismissing Stewart's claim based on evidence that was not in the record, and is of questionable existence, Stewart moves this Court to issue an order that the erroneous PCR court ruling is void, and to grant him leave to raise this improperly dismissed claim before the Court in its original jurisdiction, based on the following:

BACKGROUND

In the 2018 PCR action, Stewart raised a claim of newly discovered evidence on the basis that the State failed to disclose evidence that was favorable to him. *M.App. 11*. Specifically, Stewart claimed the State withheld crime scene notes taken by SLED forensic crime scene investigator, Al Stuckey. *Id.* He claimed this evidence was favorable to him because Agent Stuckey noted forensic observations the investigator made on the scene of C.A.'s death which directly contradicted the State's circumstantial case against Stewart. *M.App. 25-26*

² Stewart provided the previously undisclosed evidence—the crime scene notes from Agent

¹ Stewart submitted the entire 2018 PCR record in a Motion Appendix, hereinafter referred to as "M.App.". The Motion Appendix includes every document that was filed in this action, including the documents that are not in the public online record.

² The State's trial theory was that C.A. suffered a violent death at the hands of Stewart. Agent Stuckey specifically

Stuckey. *M.App. 102-106*. He also provided correspondence from the case prosecutor listing all the evidence that had been disclosed to Stewart. *M.App. 98-99*. The crime scene notes from Agent Stuckey were not included in the list of disclosed evidence. *Id.*

In response, the respondent contended the crime scene notes were not newly discovered because correspondence from the case prosecutor to Stewart allegedly revealed this evidence had been disclosed to Stewart in 2003. *M.App. 138*. The respondent referred to this correspondence as "Exhibit A". *Id.* However, the respondent never filed the purported exhibit, and the 2018 PCR record contains no correspondence from the trial prosecutor other than that filed by Stewart. *See Motion Appendix*. The PCR court summarily dismissed Stewart's newly discovered evidence claim pertaining to the scene notes, based on this alleged correspondence that was not in the record before the court. *M.App. 184*.

In the current action before this Court, Respondent filed a motion for the Court to compel Stewart to file a Supplemental Appendix which includes the "entire lower court record".

Respondent Motion p. 1. Respondent emphasized:

Rule 243(f)(1), SCACR, provides that the **entire** lower court record **shall** be included in the Appendix. The term "shall" is employed to signify a mandatory requirement, indicating that there exists no opportunity for discretion or deviation from the stipulated directive.

Respondent Reply p. 3.

Stewart did not oppose the motion and the Court granted the same. While preparing the Supplemental Appendix, Stewart discovered the aforementioned omission from the 2018 lower court record. This motion follows.³

noted that no evidence of violence was found on the scene of C.A.'s death. *M.App. 25*. *See M. App. 105* (Agent Stuckey's notes).

³ Stewart filed the Supplemental Appendix in a timely manner so this motion would not be construed as an attempt to delay complying with the order of the Court.

ARGUMENT

Rule 243(f)(1) mandates that the entire lower court record shall be included in the Appendix. At the PCR level, the respondent is responsible for filing the record. *See S.C. Code Ann. § 17-27-70(a)*. The respondent in the 2018 PCR proceeding failed to include evidence in the record it claimed was material to conclusively refuting Stewart's crime scene notes newly discovered evidence claim. The fact the respondent failed to produce a document that was essential to its claim tends to imply that the document does not exist, and that the respondent committed fraud upon the court by claiming the document did exist. Regardless, the respondent's failure to establish the complete 2018 PCR record precludes Stewart from including the entire record in the Appendix for the current proceeding before this Court. Moreover, the 2018 PCR court's ruling summarily dismissing Stewart's claim was based on the respondent's fraud.

Stewart therefore moves the Court to issue an order that the 2018 PCR order is void, pursuant to Rule 60(b), SCRPC. He further moves the Court to grant him leave to raise the scene notes newly discovered evidence claim before the Court in its original jurisdiction. In the alternative, he moves the Court to remand his case to the lower court with instructions for the court to grant discovery and an evidence hearing for this claim, in an expedited manner. Additionally, Stewart moves the Court to hold the filing deadline for Respondent's response in abeyance pending the resolution of this matter, as Respondent has previously indicated it cannot prepare its response without the entire record being included in the Appendix.

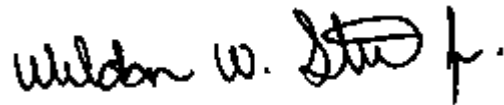
CONCLUSION

Based on the foregoing, Stewart moves the Court to issue an order that the 2018 PCR order, summarily dismissing the scene notes newly discovered evidence claim, is void. He further moves the Court to grant him leave to raise this claim before the Court in its original

jurisdiction. In the alternative, he moves the Court to remand his case to the lower court with instructions for the court to grant discovery and an evidence hearing for this claim in an expedited manner.

Finally, Stewart moves the Court to hold the filing deadline for Respondent's response in abeyance pending the resolution of this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Weldon W. Stewart, Jr." with a stylized flourish at the end.

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