

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
Certiorari to Orangeburg County  
L. Casey Manning, Circuit Court Judge

**RECEIVED**

DEC - 5 2013

**S.C. Supreme Court**

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SAMMIE LOUIS STOKES,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

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APPELLATE CASE NO. 2013-000635

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**RETURN TO "MOTION FOR A TRANSPORTATION ORDER FOR  
MISSING DOCUMENTS OR, IN THE ALTERNATIVE, TO REMAND  
FOR A RECONSTRUCTION HEARING"**

The Respondent above-named hereby makes a Return to the motion for this Court to issue a transportation order, or, in the alternative, to remand this case to the Orangeburg County Court of Common Pleas for a reconstruction hearing. The Petitioner, through his appellate counsel, Robert Dudek, claims that several exhibits and documents that have not been located by the Orangeburg Clerk of Court from the state PCR hearings in the above-entitled action.

As set forth within. Respondent has made available to Petitioner the requested pleadings and proposed orders that he specifically claims are unavailable within his files; among others not requested. However, Respondent does not have copies of any of the exhibits from the PCR hearing, including the requested Plaintiff Exhibits 2 and 3.

I.

In his motion, dated November 19, 2013, appellate counsel Dudek asserted that that the following documents were missing from the Clerk's Office and/or unavailable from the Office of the Attorney General and were needed for the Appendix (Motion, p. 3, 4.).

PCR HEARING EXHIBITS

- A. Exhibits from PCR hearing: Plaintiffs #2 and #3 (Volumes 1 and 2, respectively, of Thomas Sims' pre-trial research documents).

PCR MEMORANDUMS, PLEADINGS AND PROPOSED ORDERS

- A. Applicant's Memorandum Clarifying Ground 9(d) and Motion to Supplement the Record with Affidavit of Sammie Stokes (filed in August, 2009)
- B. Post Hearing Memorandum (filed in March, 2010)
- C. Reply to Post Hearing Memorandum (filed in March, 2010)
- D. Respondent's proposed order
- E. Letter from Keir Weyble dated December 6, 2010 requesting oral argument
- F. Applicant's Post Rule 59 Brief/Memorandum.

Upon receipt of the Motion, Respondent's below signed counsel sent an email that date to appellate counsel Dudek. In the email, below-signed counsel stated:

I received your Motion for a transportation order this PM and I am reviewing it. However, my secretary Lonnie Brawley and I have no record of were receiving any request for any documents by email or otherwise in the Stokes appeal and our emails show no communication on this issue. In the motion, you notes that this office specifically responded by an email that "the documents were not available." Could you forward that email to me along with the particular request you made to this office at the time so I can determine what happened.

**Since some of your designation in your motion are not clear as to which party I will make my file open to you so that we can meet and resolve any items that need to be put in the appendix before it is prepared since I do not know what you have.**

There are many responses to various memorandum and emails including proposed orders to the Court that should be included. While I do not show that we have

possession of any copies of Plaintiff Exhibit 2 and 3 from the PCR hearing, I have copies of the other materials that you have requested and likely others which you may also need. We do not need to create a supplemental appendix with docs that you had not seen before you prepared your certiorari petition.

If you could forward a list of your designated matters this may expedite the process. I look forward to resolving this .

This is quite confusing to us.

*November 19, 2013 Email Zelenka to Dudek.*

After a follow-up email on November 27, 2013, appellate counsel Dudek advised counsel that an email requesting documents had been mistakenly copied to a member of the non-capital PCR staff of the Attorney General's Office rather than to below-signed counsel or his staff in the Capital Litigation Division. This staff member advised him that "we do not have any of these files in our database." However, this staff member does not have access to these death penalty PCR files. The staff member did not realize that it involved a death penalty matter or was being handled by the Capital Litigation staff and did not check with appropriate staff who were handling the case.

In addition, in response to below-signed counsel request to provide complete access to our files on the pleadings, on November 27, counsel Dudek indicated that he would meet and view Respondent's files on Tuesday December 3 due other time constraints that he was facing. Mr. Dudek did not come to the Attorney General's office on that date.

## II.

Respondents below-signed counsel has copies of the following requested matters that Petitioner asserts is missing (\*) and advised Petitioner's appellate counsel on November 19,

2013 of their availability, as well as additional pleadings which should be included in the Appendix. These include the following:

POST-HEARING PCR MEMORANDUMS, PLEADINGS AND PROPOSED ORDERS

- \*A. Applicant's Memorandum Clarifying Ground 9(d) and Motion to Supplement the Record with Affidavit of Sammie Stokes (filed in August, 2009)- dated August 18, 2009.
- \*B. Post Hearing Memorandums (filed in March, 2010)
  - a. Applicant's served February 15, 2010, sent to be filed March 1, 2010.
  - b. Respondent's served February 16, 2010.
- \*C. Applicant's Reply to Post Hearing Memorandum (served March, 1 2010).
- \*D. Respondent's Proposed Order of Dismissal sent to Judge Manning by email August 29, 2010.
- E. Applicant's Proposed Order Granting Relief - served October 1, 2010.
- F. Order of Dismissal filed October 22, 2010.
- G. Motion to Alter or Amend by Applicant, served November 15, 2010.
- H. Respondent's Response in Opposition to Rule 59 Motion, served November 29, 2010.
- \*I. Letter from Keir Weyble dated December 6, 2010 requesting oral argument.

- \*J. Applicant's Post Rule 59 Brief/Memorandum - styled "Supplemental Post-Hearing Memorandum in Support of Amended Application for Post-Conviction Relief," served January 27, 2012.
- K. Respondent's "Post-Hearing on Rule 59 Motion Memorandum," dated January 27, 2012.
- \*L. Respondent's Motion and Proposed "Order denying Rule 59 Motion" submitted March 28, 2012.
- M. Applicant's April 10, 2012 "Applicant's Objection to Adoption of Proposed Order and Motion for Appointment of New Counsel in light of Martinez v. Ryan.," filed April 12, 2012.
- \*N. Respondent's Motion and Proposed "Order Denying Rule 59 Motion and Denying Motion to Appoint Counsel, submitted April 19, 2012.
- a. Email April 19, 2012 to Judge Manning and opposing counsel.
- O. Order Denying Rule 59 Motion and Denying Motion to Appoint Counsel filed February 12, 2013.

Respondent submits these matters are appropriate for the appendix. However, counsel has additional emails which Petitioner may similarly consider including.

### III.

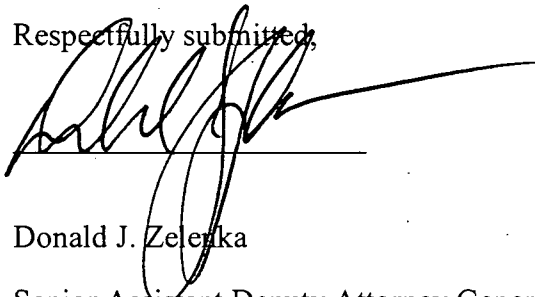
Respondents do not have copies of Plaintiff (Applicant) Exhibits 2 [Volume 1], 3 [Volume 2], [or 4] which Petitioner has identified in his motion, p. 3-4 in their possession.

IV.

Respondent's below-signed counsel submits that a reconstruction of the requested documents may not be necessary or appropriate. However, a reconstruction hearing related to Applicant's Exhibit 2 and 3 may be necessary because a copy of the exhibits had not been provided to below-signed counsel at the hearing. Below-signed counsel was given the opportunity to review the exhibits prior to the introduction at the hearing, as reflected in Hearing Tr. p. 69-70.

WHEREFORE, Respondent have made a Return to the Motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Donald J. Zelenka', written over a horizontal line. The signature is stylized and cursive.

Donald J. Zelenka

Senior Assistant Deputy Attorney General

S.C. Bar # 5758

Attorney for Respondent

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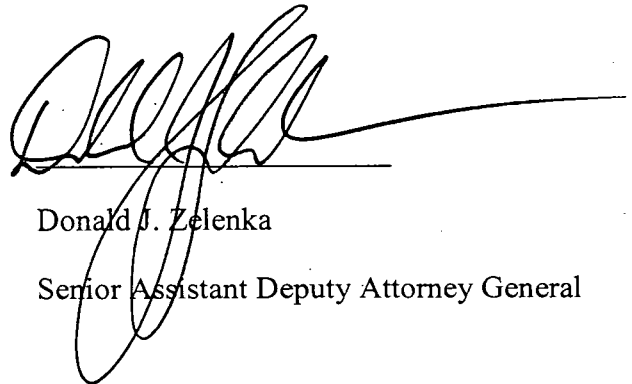
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CERIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Return to the Motion in the above referenced case has been served upon Robert Dudek, counsel for Petitioner by U.S. Mail postage prepaid to Division of Appellate Defense, PO Box 11589, Columbia, SC 29211-1589

This 4<sup>th</sup> day of December 2013



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Donald J. Zelenka

Senior Assistant Deputy Attorney General

Attorney for Respondent