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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF COMMON PLEAS

Appeal from Richland County
Hon. William A. McKinnon, Circuit Court Judge

Appellate Case № 2025-001597

Ricardo L. Middleton,..... Petitioner,

vs

State of South Carolina..... Respondent.

Motion to File Amended Brief

Pursuant to Rule 240 of the South Carolina Rules of Appellate Practice, Ricardo L. Middleton, the Petitioner herein, requests this court to permit the filing of an Amended Brief and to hold this appeal in abeyance until the Motion is ruled upon based upon the following:

1. Upon review of the Brief filed by the Respondent, counsel for the Petitioner realized he had failed to address one of the grounds for the dismissal of the Post Conviction Relief application as to the issue of the testimony of Marquez Johnson. Counsel briefed the issue of whether the testimony qualified as after discovered evidence. In addition, the lower court ruled that the testimony of Mr. Johnson was time barred as Mr. Johnson’s testimony was given on December 19, 2019 and the Post Conviction Application was filed on April 16, 2021. The direct appeal from the trial and conviction was dismissed on January 27, 2021. Counsel for Mr. Middleton did not brief this issue.

2. Under the two issues ruled, this Court would be required to hold the ground not briefed would be sufficient to deny relief on this issue. *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282 (2012). Under the present Appellate Practice Rules, there is no procedure for filing an Amended Brief. This Court should grant the relief request under the interest of justice. As the South Carolina Supreme Court has said, “All applicants are entitled to a full and fair opportunity to present claims in one PCR application.” *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). Permitting Mr. Middleton to file an amended brief would be in keeping with the spirit of statement and permit him to have his Post Conviction Application to be fully heard on appeal. The court has also, in the past, recognized the filing of an Amended Brief. The court said, “The amended brief was filed when plaintiff’s original brief was challenged for failure to comply with Supreme Court Rule 8, Section 3.” *Still v. Hampton & Branchville R. R.*, 258 S.C. 416, 426, 189 S.E.2d 15, 20 (1972)(note7).

3. Several states have a specific rule allowing the filing of an Amended Brief. Rule 9.040 of the Florida Rules of Appellate Practice provides, “(d) Amendment. At any time in the interest of justice, the court may permit any part of the proceeding to be amended so that it may be disposed of on the merits. In the absence of amendment, the court may disregard any procedural error or defect that does not adversely affect the substantial rights of the parties.” Rule 38.7 of the Texas Rules of Appellate Procedure provides, “A brief may be amended or supplemented whenever justice requires, on whatever reasonable terms the court may prescribe.” In interpreting this rule, the Texas court has said, “The decision to consider new matter is left to the sound discretion of the court and the interest of justice.” *Skillern v. State*, 890 S.W.2d 849, 882 (Tex. App. 1994), abrogated on other grounds by *Ex parte Pue*, 552 S.W.3d 226 (Tex. Crim.

App. 2018).

4. Missouri has no rule permitting the filing of an Amended Brief. In permitting the filing of an Amended Brief, the court said, “His position is, that absent a request to suspend the rules, there is no authority for the filing of the supplemental brief. While appellant's motion does not directly and expressly call for a suspension of the rules as authorized by rule 1.15, we construe said motion as an attempt in good faith to pray for that relief and have concluded that the interests of justice require the filing of the supplemental brief.” *Thumm v. Lohr*, 306 S.W.2d 604, 606 (Mo. App. 1957).

5. This request is timely made as full briefing has not been completed. Nor will the request unduly delay the case on appeal. The State would not be prejudiced by this request. The State will still be able to argue the information is barred by the one-year statute. Mr. Middleton should not be punished by the failure of counsel to brief this one issue. As this is Mr. Middleton’s only bite of the apple in his Post Conviction Relief Application, this court should grant the relief in the interest of justice.

For the foregoing reasons and in the interest of justice, this court should grant the relief requested. Furthermore, Ricardo L. Middleton requests this court hold this matter in abeyance until the ruling on this motion has been made.

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