

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
Honorable Kristi L. Harrington, Circuit Court Judge

Appellate Case No. 2012-212672

RECEIVED

JAN - 2 2014

S.C. Supreme Court

NORRIS EARL WHITE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RESPONDENT'S MOTION TO STRIKE PURSUANT TO RULE 243(F)

COMES NOW, Respondent, above named, by and through undersigned counsel, making its Motion to Strike Pursuant to Rule 243(f) of the South Carolina Appellate Court Rules. The Respondent respectfully shows this Court:

I.

The Respondent respectfully submits that certain documents included in the Appendix and presented to this Court by the Petitioner should be stricken from the record as the documents were not a part of the lower court record and were not presented to the lower court for review. SCACR Rule 243(f) states the Appendix in post-conviction relief appeals shall contain: "(1) the entire lower court record, (2) copy of the final order entered after the post-conviction proceedings, [and] (3) an index setting forth the principal matters contained in the Appendix. This index shall be in the same form required for a Record on Appeal under Rule 210(e)."

SCACR Rule 210(e) states “[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal.”

The Respondent submits the following documents and pages included in the Appendix should be stricken:

Pages 45-53: Civil Action coversheet, summons, and complaint (2011-CP-10-8196)

Pages 55-58: North Charleston Police Department Complaint Affidavits

Pages 59-60: Correspondence with the North Charleston Police Department

Pages 61-68: North Charleston Police Department Officer Report date 12-11-2005

Pages 69-70: North Charleston Police Department Disciplinary Action Form

Pages 71-74: Correspondence with Captain Karen Cordray

Pages 75-82: Correspondence with the City of North Charleston Municipal Court

The lower court record reflects the documents referenced above were not made a part of the lower court’s records and should not be included in the Appendix for this matter. These documents were not referenced in the Petitioner’s post-conviction relief application as attachments (App. 3-9), were not submitted during the post-conviction relief hearing as exhibits (App. 15-29), and were not referenced in the Petitioner’s post-hearing memorandum to the Court (App. 30-36). Upon information and belief, the documents referenced above were never presented to the lower court or provided to the Respondent while the matter was pending in the lower court.

The Order of Dismissal further evidences the fact that the lower court did not have these documents to consider prior to the dismissal of the Petitioner’s application. The Order states “[t]his Court has reviewed the PCR Application, the uniform traffic ticket, the case history from the North Charleston Municipal Court, arguments of counsel, and the Supplemental Memorandum of Law in Support of Post-Conviction Relief submitted by Applicant’s Counsel, and make the following findings of fact and conclusions of law.” (App. 38-39). The Respondent submits the record reviewed by this Court on appeal should be the same record before the lower

court on the matter's initial review. The Respondent submits the documents submitted by counsel exceed the "lower court record" required in Rule 243(f) and includes matters not presented to the lower court.

II.

In view of the foregoing, it is respectfully requested that his Court strike the above referenced portions of the Appendix as the documents included were not a part of the lower court record or considered by the lower court before dismissing he Petitioner's application for post-conviction relief.

III.


WHEREFORE, it is respectfully requested that this motion be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General
S.C. Bar # 100269

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By: 

Attorney for the Respondent
Columbia, South Carolina
January 2, 2014

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Honorable Kristi L. Harrington, Circuit Court Judge

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NORRIS EARL WHITE,

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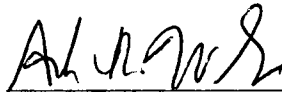
v.

STATE OF SOUTH CAROLINA,

Respondent.

PROOF OF SERVICE

I, Ashleigh R. Wilson, Counsel for the Petitioner, certify that I have today served the within Motion upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record, Milton Stratos, Esquire. I further certify that all parties required by Rule to be served have been served this 2nd day of January, 2014.



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S.C. Bar #100269
Attorney for the Respondent



ALAN WILSON
ATTORNEY GENERAL

January 2, 2014

Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

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S.C. Supreme Court

RE: Norris Earl White v. State of South Carolina
Appellate Case No. 2012-212672

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Respondent's Motion to Strike pursuant to Rule 243(F) in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this motion today.

With highest regards,

Ashleigh R. Wilson
Assistant Attorney General

ARW/arh
Enclosures

cc: Milton D. Stratos, Esquire