RECEIVED
FEB 11 2014
S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
Court of Common Pleas
The Honorable Diane S. Goodstein, Circuit Court Judge

2006-CP-38-00273
Appellate Case No. 2013-000637

LEVI BING, JR.,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General
SC Bar No. 100108

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

INDEX

ISSUES PRESENTED

1. Can an allegation of ineffective assistance of trial counsel be raised to the circuit court by a motion under Rule 60(b) of the South Carolina Rules of Civil Procedure (SCRCP), or must such an allegation be raised by filing a new application for post-conviction relief?
2. Did the lower court err in its determination that Petitioner's motion pursuant to Rule 60(b), SCRCP, was improper, untimely, and meritless?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Petitioner was indicted during the March 2004 term of the Orangeburg County Grand Jury for Murder (2003-GS-38-2411), Grand Larceny (2003-GS-38-2412), and Possession of a Weapon during the Commission of a Violent Crime (2003-GS-38-2413). Petitioner was represented by John Delgado, Esquire, and Michael R. Culler, Jr., Esquire. The State provided notice to Petitioner and his counsel of its intent to seek the death penalty if Petitioner was convicted of murder. On March 15, 2005, Petitioner appeared before the Honorable Deadra L. Jefferson, where he pled guilty as indicted. Pursuant to negotiations between Petitioner and the State, Judge Jefferson sentenced Petitioner to forty years imprisonment for Murder, ten years imprisonment for Grand Larceny, and five years for Possession of a Weapon during the Commission of a Violent Crime, with all sentences to be served concurrently. Petitioner did not seek appellate review of his convictions or sentences.

Thereafter, Petitioner filed an application for post-conviction relief on March 7, 2006, listing general allegations of ineffective assistance of counsel and involuntary guilty plea. Respondent made its Return on March 29, 2007, requesting an evidentiary hearing be convened. An evidentiary hearing was held before the Honorable Diane S. Goodstein on June 25, 2007. At the hearing, Petitioner testified on his own behalf and presented testimony from trial counsels John Delgado and Michael R. Culler, Jr., and his father, Levi Bing, Sr. Additionally, Petitioner introduced a fourteen-page list of seventeen specific allegations that he wanted to amend his application to include, which was admitted without objection.[1] Respondent introduced three

[1] These seventeen allegations do not include any reference to any claim of ineffective assistance of counsel or involuntary guilty plea based on parole eligibility.

exhibits from trial counsels' file, which were also admitted without objection. Judge Goodstein dismissed Applicant's post-conviction relief application with prejudice by Order dated September 7, 2007. Applicant did not file a Rule 59(e), SCRCP, Motion to Reconsider, Alter, or Amend or any other post-hearing motions.

Petitioner filed a timely notice of appeal and was represented by Deputy Chief Appellate Defender Wanda H. Carter of the South Carolina Commission on Indigent Defense. Following the submission of counsel's Johnson[2] Petition for Writ of Certiorari, Applicant filed an "Initial *Pro Se* Brief of Petitioner," where he raised the issue of "whether the (PCR) judge erred, by failing to find defense counsel ineffective, for advising petitioner with incorrect parole eligibility that included involuntary plea" for the first time. The South Carolina Court of Appeals denied the petition and granted counsel's motion to be relieved on June 10, 2009. The Remittitur was sent on June 29, 2009.

On July 1, 2009, Applicant filed a *pro se*[3] Petition for Writ of Habeas Corpus in United States District Court, asserting ineffective assistance of counsel and involuntary guilty plea based on counsels' alleged incorrect advice regarding parole eligibility. On October 8, 2009, respondents to the action filed a Motion for Summary Judgment, asserting that Petitioner was procedurally barred from relief because there was no ruling on the issue below and that the argument was without merit. Petitioner, through counsel, filed a Reply and Memorandum of Law in Opposition to Motion for Summary Judgment on November 23, 2009, asserting that the issue was properly ruled upon by the post-conviction relief court. A Report and Recommendation from United States Magistrate Judge Robert S. Carr was issued on February

[2]Johnson v. State, 294 S.C. 310, 346 S.E.2d 201 (1988).
[3] After filing his *pro se* Petition for Writ of Habeas Corpus, Petitioner retained counsel, Tara D. Shurling, Esquire, to represent him in this action.

23, 2010, recommending that respondent's motion for summary judgment be granted based on procedural default. Thereafter, Petitioner filed "Objections to the Report and Recommendation of the Magistrate Judge," wherein Petitioner again argues his claim was addressed and properly ruled upon by the post-conviction relief court. On May 28, 2010, United States District Court Judge R. Bryan Harwell issued an Order granting the Respondent's Motion for Summary Judgment, finding that the claim was both procedurally barred and failed on the merits.

On June 28, 2010, Applicant filed a Notice of Appeal of the judgment to the United States Court of Appeals for the Fourth Circuit.[4] On January 13, 2011, the United States Court of Appeals issued a Notice of Judgment dismissing Petitioner's appeal. Petitioner filed a Petition for Rehearing on January 27, 2011, which was denied on February 23, 2011. The Mandate by which the Notice of Judgment took effect was issued on March 3, 2011.

On February 13, 2012, Petitioner filed a Motion for Relief from Order of Dismissal with Prejudice Pursuant to Rule 60(b), SCRCP," asking the post-conviction relief court to "reopen the Order of Dismissal and properly rule upon [the issue as to whether counsel misadvised Petitioner regarding parole eligibility]." Respondent filed its Return to the motion on May 18, 2012. A hearing on this motion was convened September 6, 2012, at the Orangeburg County Courthouse before the Honorable Diane S. Goodstein. Petitioner was present alongside counsel, Tricia A. Blanchette, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. Following argument from Petitioner and Respondent, the court denied Petitioner's motion pursuant to Rule 60(b), SCRCP, by written Order dated November 6, 2012 and filed on November 13, 2012. Petitioner filed a Motion for

[4] The United States District Court denied Petitioner a certificate of appealibity, finding that he failed to make "a substantial showing of the denial of a constitutional right."

Rehearing Pursuant to Rule 59(a), SCRCP, and Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP, on November 29, 2012. Respondent filed its Return to this Motion on January 2, 2013. The lower court denied Petitioner's Motion pursuant to Rules 59(a) and (e), SCRCP, by written Order dated January 8, 2013.

Petitioner thereafter filed a Petition for Writ of Certiorari. This Return follows.

STANDARD OF REVIEW

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). For an issue to be preserved for appellate review, the allegation must have been raised by an applicant and the post-conviction relief court must have made specific finding of fact and conclusions of law regarding the allegation. Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992). "Even after an order is filed, [post-conviction relief counsel] has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasoning for those findings as required by 17-27-80 and Rule 52(a), SCRCP." Pruitt v. State, supra. Failure of an applicant to make such a motion asking the post-conviction relief court to make specific findings of fact and conclusions of law as to rejected post-conviction challenges renders those challenges waived for appellate review, precluding further review on the merits. Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007).

The movant in a Rule 60(b), SCRCP, motion has the burden of presenting evidence proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). To be granted relief under Rule 60(b), SCRCP, the movant must also show the existence of a meritorious defense. See Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988). Additionally, Rule 60(b)(5), SCRCP, states: "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken."

ARGUMENT

I. An allegation of ineffective assistance of trial counsel cannot be raised to the circuit court by a motion under Rule 60(b) of the South Carolina Rules of Civil Procedure (SCRCP), but rather such an allegation must such be raised by filing a new application for post-conviction relief.

By Order of this Court, both parties were instructed to address whether an allegation of ineffective assistance of counsel can be raised for the first time by a motion under Rule 60(b), SCRCP, or must such an allegation be raised by filing a subsequent application for post-conviction relief. This Court directed the parties' attention to Hendricks v. State, 378 S.C. 221, 692 S.E.2d 892 (2010), where this Court held that a petitioner was not entitled to seek relief based on a new claim of ineffective assistance of counsel by filing a motion under Rule 60(b), SCRCP. In his Petition for Writ of Certiorari, Petitioner concedes that a motion pursuant to 60(b), SCRCP, cannot be used to assert a new claim of ineffective assistance of counsel that was not previously raised and ruled upon by the post-conviction relief court; however, Petitioner argues that as his claim was previously raised before the lower court and merely not ruled upon, a motion pursuant to Rule 60(b), SCRCP, is proper.[5]

Respondent agrees with Petitioner that a motion pursuant to 60(b), SCRCP, cannot be used to raise a new claim for post-conviction relief not previously before the lower court. In Hendricks, this Court examined the interaction between Rule 60(b), SCRCP, and the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§17-27-10- to -120 (1985). This Court noted

[5] It is important to note that Petitioner's argument that this issue was previously raised and not ruled upon is completely contradictory to the argument Petitioner made multiple times during his federal habeas corpus proceeding. See App. 282 ("Furthermore, as a practical matter, the Petitioner would submit that the claim *was* addressed in the Order of Dismissal. The PCR court clearly found that the Petitioner understood the consequences of his plea, notably failing to differentiate between direct and collateral consequences, as well as the sentences that he was facing. See PCR App. pp. 181-183. Considering that the Petitioner's entire claim that he did not understand the consequences of his plea and the scope of his sentence, due to counsel's misadvise, ***the Order of Dismissal appears to squarely address the Petitioner's claim.***") (Emphasis added). Petitioner's incongruent stance as to whether the issue was indeed ruled upon appears to shift based on which court he is currently before.

that when the General Assembly has provided a specific procedure to be followed in post-conviction relief cases, and that method is inconsistent with the more general procedure of the SCRCP, the statutory procedure must be followed, citing Rule 71.1, SCRCP. Hendricks, supra. Based on this finding, this Court held that the petitioner was not entitled to seek relief on a new post-conviction relief allegation pursuant to Rule 60(b), SCRCP, and dismissed the petitioner's appeal.

The present case is directly in line with Hendricks. Here, Petitioner is attempting to raise an allegation of ineffective assistance of trial counsel that was not previously raised and ruled upon by the post-conviction relief court pursuant to Rule 60(b), SCRCP. At the conclusion of his post-conviction relief hearing, Petitioner presented a detailed list of seventeen allegations with which he wished to amend his application, which was admitted without objection. (App. pp. 164-177). None of these seventeen detailed allegations pertain to the claim that Petitioner is currently attempting to assert whatsoever. Furthermore, the initial comment from trial counsel Delgado regarding whether Petitioner would be parole eligible was merely a gratuitous response in reply to questioning as to why he did not file an appeal on Applicant's behalf. A review of the record clearly reveals that this was not an issue on which Applicant planned to proceed forward, as he was not initially questioned regarding parole eligibility while on the stand and was only questioned on the issue when he took the stand in reply to the testimony presented from trial counsels. See App. pp. 40-74; pp. 156-160. At the close of the post-conviction relief hearing, Petitioner did not make a motion to amend his application to conform to the evidence, as required by Rule 15(b), SCRCP, to include this allegation.[6] Because this allegation was not

[6] In his Petition for Writ of Certiorari, Petitioner asserts that "the issue of counsel's misadvice was clearly raised at the evidentiary hearing and before the lower court pursuant to Rule 15(b), SCRCP." PWC p. 14. However, Rule

presented to the lower court, Petitioner's motion pursuant to Rule 60(b) SCRCP, is not proper and this appeal should be dismissed.

II. The lower court did not err in its determination that Petitioner's Motion pursuant to Rule 60(b), SCRCP, was improper, untimely, and without merit.

Petitioner asserts that the lower court erred in its determination that his "Motion for Relief from Order of Dismissal with Prejudice Pursuant to Rule 60(b), SCRCP," was improper, untimely, and without merit. In this motion, filed four-and-a-half years after the Order of Dismissal was entered, Petitioner asserts that the lower court did not address whether counsels were ineffective for misadvising Petitioner regarding parole eligibility and requests that the lower court "reopen the Order of Dismissal and properly rule upon this issue." (App. p. 366-369). However, this argument is without merit, as the lower court properly discerned that Petitioner's motion was improper, untimely, and without merit.

The post-conviction relief court properly determined that Petitioner's motion was improper, as Petitioner did not raise the issue regarding alleged incorrect advice of trial counsels during his post-conviction relief hearing. As an initial point, Petitioner's assertions that this issue was raised but not ruled upon is wholly incongruous to the position he asserted during his federal habeas corpus petition, thereby negating any credibility in Petitioner's current argument. In both his "Reply and Memorandum of Law in Opposition to Motion for Summary Judgment" and "Objections to the Report and Recommendation of the Magistrate Judge," Petitioner asserts over and over again that the very issue was ruled upon by the post-conviction relief court. (App.

15(b), SCRCP, clearly states that "to raise these issues requires either express or implied consent." As Applicant failed to move to conform to the evidence or amend his application to include this ground, Respondent cannot be held to have consented, either expressly or implicitly, to this new ground for relief on which they had no prior notice. In contrast, Respondent expressly consented to the seventeen specific allegations Petitioner raised in Applicant's Exhibit One. (App. pp. 164-177).

pp. 276-287; pp. 309-325). Petitioner goes as far as stating that "[c]onsidering that the Petitioner's entire claim was that he did not understand the consequences of this plea and the scope of his sentence, due to counsel's misadvise, ***the Order of Dismissal appears to squarely address the Petitioner's claim.***" (App. p. 282) (Emphasis added). Petitioner's current and entirely contradictory claim that the issue was not ruled upon appears to have developed after two separate reviewing bodies in the federal court system found that this issue was not only not preserved, but ***without merit.*** See App. p. 334-339; pp. 349-351. In contrast, Respondent, both during this action and Petitioner's prior federal habeas corpus action, has consistently maintained that Petitioner did not raise this issue before the post-conviction relief court and that the issue is devoid of merit.

Despite Petitioner's newfound claim that this issue was raised and simply not ruled upon, the lower court properly held that this issue was not raised in Petitioner's post-conviction relief action. As discussed above, the record shows that Petitioner simply did not specifically raise this issue in his application for post-conviction relief or at the evidentiary hearing on his application. However, Petitioner did explicitly raise seventeen specific allegations, as set forth in Applicant's Exhibit 1, none of which pertained to misadvice regarding parole eligibility. (App. pp. 164-177). Applicant asserted this issue for the first time in his *pro se* "Initial Pro Se Brief of Petitioner" following his counsel's no-merit Johnson Petition. (App. pp. 203-215). It is improper for Petitioner to seek relief pursuant to Rule 60(b), SCRCP, to rule upon an issue that was not brought before the court and raised for the first time on appeal. Both Hendricks and the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§17-27-10- to -120 (1985), make it clear that Petitioner's Motion pursuant to Rule 60(b), SCRCP, is improper.

Additionally, the lower court was correct in determining that Petitioner's motion pursuant to Rule 60(b), SCRCP, was untimely. South Carolina Rules of Civil Procedure Rule 60(b)(5) states: "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) ***not more than one year after the judgment, order or proceeding was entered or taken***." (Emphasis added). The post-conviction relief court executed its Order of Dismissal upon which Petitioner's current motion is made on September 7, 2007. Petitioner made his motion under Rule 60(b), SCRCP, on February 13, 2012, well over four years after the judgment dismissing his application for post-conviction relief had been entered. In Petitioner's motion and during the hearing on said motion, Petitioner did not assert which ground under Rule 60(b), SCRCP, he was seeking relief; however, in his subsequent Motion for Rehearing Pursuant to Rule 59(a), SCRCP, and Motion to Alter or Amend Pursuant to Rule 59(e), SCRCP, Petitioner asserts for the first time that he is seeking relief pursuant to Rule 60(b)(1) &(2), SCRCP.[7] Petitioner's motion is clearly untimely, as it was not filed within one year of the judgment, order or proceeding was entered or taken. Rule 6(b)(5), SCRCP.

In his Motion, Petitioner asserts that his filing is timely as it is "within one year of the final decision of the federal court on the Order at issue." However, Petitioner's argument is without merit.[8] The Order at issue is the post-conviction relief court's Order of Dismissal, entered on September 7, 2007; therefore, the time at which the clock begins to run on Applicant's period to file a Motion pursuant to Rule 60(b), SCRCP began on September 7, 2007.

---

[7] In this Motion pursuant to Rule 59(a)&(e), SCRCP, Petitioner asserted that he did indeed raise the specific grounds under Rule 60(b), SCRCP, that he was seeking relief. However, a thorough review of both Petitioner's Motion pursuant to Rule 60(b), SCRCP, and the hearing on this motion shows that Petitioner did not assert that he was seeking relief pursuant to Rule 60(b) (1) &(2), SCRCP, until his Rule 59(a) and (e), SCRCP Motion.

[8] Petitioner appears to abandon this argument in favor of an equitable tolling argument in his Petition for Writ of Certiorari.

Rule 60(b), SCRCP, is a state court rule governing relief from judgments or orders in South Carolina State Courts; federal court proceedings are not mentioned within the rule, nor are any tolling provisions for subsequent federal court proceedings involving the same parties and issues. Petitioner has failed to cite to any authority to support his position that his motion is timely because it was filed within one year of the Mandate in his federal habeas corpus proceeding. Furthermore, Petitioner was made aware of the United States Court of Appeals for the Fourth Circuit's ruling that the issue was procedurally barred on January 13, 2011, more than one year from when he filed his motion pursuant to Rule 60(b), SCRCP. (App. pp. 347-352).

In his Petition for Writ of Certiorari, Petition urges this Court to apply equitable tolling principles to excuse the late filing of a motion that he acknowledges "may be considered untimely under a strict reading of Rule 60(b)(1)&(2), SCRCP." (PWC p. 16). However, this Court has consistently held that "equitable tolling is a doctrine rarely applied in South Carolina" and is "reserved for extraordinary circumstances." Pelzer v. State, 387 S.C. 516, 520, 662 S.E.2d 618, 620 (2008) (citing Hooper v. Ebenezer Senior Svcs. and Rehabilitation Ctr., 377 S.C. 217, 230, 659 S.E.2d 214, 219 (Ct. App. 2008)). Specifically, in post-conviction relief actions, the only time South Carolina Courts have allowed for equitable tolling is when mental incompetence prevented timely filing. See Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009). In Pelzer, this Court refused to apply an equitable tolling doctrine when an applicant timely mailed an application for post-conviction relief, albeit to the wrong location. Pelzer, supra. Petitioner asserts that because he has been "diligent in his filings," he is entitled to proceed on a motion that is clearly untimely. Whether Petitioner was "diligent" or not in his subsequent filings following his post-conviction relief hearings does not rise to a level of "extraordinary

circumstances" excusing significant delay beyond the time limits set forth in Rule 60(b)(5), SCRCP.

Furthermore, the post-conviction relief court correctly determined that Petitioner's motion was without merit, as did the United States District Court in Petitioner's federal action. During his evidentiary hearing, trial counsel Culler explicitly stated that Petitioner would have to serve his forty year sentence day-for-day. (App. p 126). Respondent's Exhibit Number 3, entered into evidence at the evidentiary hearing, reveals that Petitioner was clearly informed that under the State's plea offer, ***he would not be released until the end of his sentence.*** (Supp. App. p. 5) (Emphasis added). Additionally, neither trial counsel Delgado nor Culler ever testified that they advised Applicant that he would be eligible for parole. To the contrary, they were only asked whether they thought now that Petitioner would be eligible for parole and Delgado stated that he would have to serve eighty-five percent of his sentence and Culler testified that Petitioner would have to serve the entire forty years day-for-day. (App. pp. 98-99; p. 126.) Petitioner's assertions that counsel Delgado testified that he misadvised Petitioner regarding parole eligibility are clearly erroneous and not supported by the record. Furthermore, Petitioner's own self-serving statements that counsel advised him that he would be eligible for parole should not be given equal weight, as the post-conviction relief court found "***that every aspect of the Applicant's testimony regarding the deficiencies of his counsels' representation was not credible.***" (App. p. 181) (Emphasis added).

The record reveals that Petitioner knowingly and voluntarily accepted an extremely favorable negotiated plea offer from the State for a sentence of forty years imprisonment for murder, to run concurrently with all other sentences, in exchange for the State agreeing it would

no longer seek the death penalty. (App. pp. 2-3, 8). At the time of the guilty plea, Petitioner, while under oath, agreed with the State's version of the facts and stated that he was pleading guilty because he was in fact guilty of murder. (App. pp. 12-13).

Additionally, the following significant exchange occurred between Judge Jefferson and Petitioner during the plea:

> COURT: Sir, I want to explain to you that you may have discussed parole or parole eligibility with your lawyer or with other people, but until you're sentenced no one can tell you when, if ever, that you will be eligible for parole or under what conditions. ***You should assume that you will serve the entire time in jail that you're sentenced to.*** Do you understand that?
>
> BING: Yes, sir.

(App. p. 8). Therefore, even if counsels had misinformed Applicant in regards to parole eligibility, any misconception was cured at the plea hearing. Knox v. State, 340 S.C. 81, 86, 530 S.E.2d 887, 889 (2000) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005)[9]; Moorehead v. State, 329 S.C.329, 333, 496 S.E.2d 415, 416 (1998). Since any alleged misconception regarding parole advice was cured by the plea court's colloquy, there can be no prejudice to Petitioner.

Based on the foregoing, the lower court correctly denied and dismissed Petitioner's Motion pursuant to Rule 60(b), SCRCP, as improper, untimely, and without merit.

[9] Holding the issue of whether indictments' failure to allege element "absence from the scene of the crime" deprived trial court of subject matter jurisdiction to hear accessory before the fact charges was not preserved for review on appeal.

CONCLUSION

For the foregoing reasons, the State submits that the Petition for Writ of Certiorari should be denied. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General
SC Bar No. 100108

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

February 11, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County
The Honorable Diane S. Goodstein, Circuit Court Judge
Case No. 2006-CP-38-00273
Appellate Case No. 2013-00637

LEVI BING, JR., PETITIONER,

v.

STATE OF SOUTH CAROLINA, RESPONDENT.

PROOF OF SERVICE

I, Megan E. Harrigan, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
Post Office Box 12725
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 11th day of February, 2014.

Megan E. Harrigan

MEGAN E. HARRIGAN
Assistant Attorney General
S.C. Bar No. 100108

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
FEB 11 2014
S.C. Supreme Court

February 11, 2014

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

Re: **Levi Bing, Jr. v. The State of South Carolina**
Appellate Case No. 2013-00637

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of Respondent's Return to Petition for Writ of Certiorari.

Sincerely,

Megan E. Harrigan

Megan E. Harrigan
Assistant Attorney General
S.C. Bar No. 100108

MEH/ko
Enclosures

cc: Tricia A. Blanchette, Esquire
Trisha Allen, Victim's Services