

STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAR 27 2014

APPEAL FROM GREENVILLE COUNTY S.C. Supreme Court  
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2013-001047

Harold Anthony (Tony) Trout,..... Petitioner,

v.

State of South Carolina,..... Respondent.

**MOTION TO STRIKE APPENDIX**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for Respondent moves for this Court to compel Petitioner to strike portions of the Appendix in this case. In support of this motion, Respondent would present the following facts:

1. Petitioner was convicted after a jury trial of attempting to influence a juror by written or oral communication (2009-GS-47-0006, count 2). On March 31, 2011, the Honorable D. Garrison Hill sentenced Petitioner to six months imprisonment. Petitioner did not perfect a timely appeal.

2. Petitioner filed an application for post-conviction relief (PCR) on July 25, 2011 (2011-CP-23-4926) and an addendum on September 14, 2011. A hearing was held on

March 15, 2012. In an order filed March 4, 2013, the Honorable W. Jeffrey Young: (1) granted Respondent's partial motion to dismiss all issues related to the March 2011 trial as untimely and (2) granted a review of Petitioner's direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Judge Young denied Petitioner's subsequent motion to alter or amend pursuant to Rule 59(e), SCACR.

3. The Petition for Writ of Certiorari, Brief of Appellant Pursuant to White v. State, and Appendix in this case were received by Respondent on October 31, 2013. The Appendix, however, contains items that were not before either the trial judge or the PCR judge.

4. The Appendix contains what appears to be two transcripts of telephone calls between Petitioner and Ricardo Studart – one from April 17, 2007 and the second from September 17, 2007. (App.pp.1205-22; pp.1223-48). A review of the trial and PCR transcripts reveals this item was not before either the trial judge or the PCR judge in this case. As such, this item should not be included in the Appendix. Further, the provenance of these transcripts are unknown. There is no indication they were prepared by a certified court reporter and there are no certification pages that attest to the true and accurate nature of the transcriptions.

5. Inasmuch as the aforementioned items were not before the PCR judge, they are not a part of the lower court record. See Rule 243(f)(1), SCACR. As these items are not properly before this Court, counsel moves this Court to compel Petitioner to strike these items from the Appendix.

WHEREFORE, counsel for Respondent requests this Court to grant the motion to compel Petitioner to strike the aforementioned portions of the Appendix.

Respectfully submitted,

ALAN WILSON  
Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General  
S.C. Bar # 68331

Post Office Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

By:   
ATTORNEYS FOR RESPONDENT

March 27, 2014

STATE OF SOUTH CAROLINA  
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APPEAL FROM GREENVILLE COUNTY  
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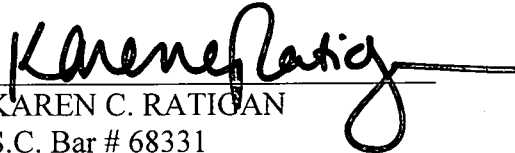
**CERTIFICATE OF SERVICE**

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I, Karen C. Ratigan, certify that I have today served the within Motion to Strike Appendix upon Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Jeffrey Falkner Wilkes, Esquire  
114 Whitsett Street  
Greenville, South Carolina 29601

I further certify that all parties required by Rule to be served have been served.  
This 27th day of March, 2014.

  
KAREN C. RATIGAN  
S.C. Bar # 68331  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

ATTORNEY FOR RESPONDENT



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MAR 27 2014

**S.C. Supreme Court**

ALAN WILSON  
ATTORNEY GENERAL

March 27, 2014

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

**RE: Harold Anthony (Tony) Trout v. State of South Carolina**  
**Lower Court Case No: 2011-CP-23-4926**  
**Appellate Case No. 2013-001047**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Motion to Strike Appendix** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Karen C. Ratigan  
Senior Assistant Deputy Attorney General  
SC Bar No. 68331

KCR/ck  
Enclosures

cc: Jeffrey Falkner Wilkes, Esquire  
Trisha Allen. Victim Services