

J. FALKNER WILKES

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April 7, 2014

Hon. Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

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APR 10 2014

S.C. Supreme Court

Re: Harold Anthony Trout v. State of South Carolina
Case No.: 2011-CP-23-04926
Appellate Case No.: 2013-001047

Dear Mr. Shearouse,

Enclosed please find the original and six copies of the Petitioner's Return to the State's Motion to Strike the Appendix.

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)
Counsel for Petitioner

c.
Karen Ratigan, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF STATE GRAND JURY
D. Garrison Hill, Circuit Court Judge

Case No.: 2009-GS-47-00006

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APR 10 2014

S.C. Supreme Court

State of South Carolina, Respondent,

v.

Harold Anthony Trout, Petitioner.

RETURN

J. Falkner Wilkes, (SC Bar #12893)
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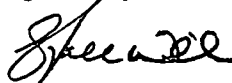
S.C. Supreme Court

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Appellate Case No.: 2013-001047

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Counsel for Appellant

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RETURN OF PETITIONER

The State has moved to strike from the record transcripts that were included by the Petitioner in the Appendix in this case. The Respondent's Motion confuses Rule 243(f)(1) with Rule 210(c). The material submitted is not prohibited by Rule 243(f)(1) and is appropriate for this Court to consider in determining the issues presented in the Petition for Writ of Certiorari.

In this case, during the post conviction relief hearing the Petitioner was allowed to present only one issue, the loss of his right to direct appeal. Despite a clear intent to do so, the Petitioner was not allowed to offer *any* additional issues at his PCR hearing. (App. 57-63). The Petition in this case includes two issues. The first is the denial of the Petitioner's right to a direct appeal. The second is based on the PCR court's refusal to allow the Petitioner to raise any additional issues, despite other issues being raised in his pleadings. The Applicant has included in the Appendix transcripts he would have offered if given the opportunity at the PCR hearing. These transcripts are offered in support of his *petition* as a proffer to establish that the Petitioner had additional evidence he sought to offer which required an evidentiary hearing. The transcripts in question required an evidentiary inquiry by the PCR. The transcripts, although not the only evidence which the Petitioner intended to offer, establish clearly the error in the

PCR court's limitation of the Petitioner's case.

The State's Motion confuses Rule 243(f)(1), SCACR, which is applicable to the Appendix in petition for writ of certiorari in a PCR case, and Rule 201(c), SCACR, which is applicable for a Record on Appeal in a direct appeal. Rule 243 is a rule of inclusion which requires, among other things, the entire lower court record. The language of Rule 243, however, does not prohibit the inclusion of other matter. Rule 210(c), on the other hand, requires the inclusion of all matter designated by the parties to a direct appeal, and excludes matter which was not presented to the lower court or tribunal. Rule 243 does not have the same exclusionary language of Rule 210(c), and therefore, the Petitioner is entitled to include material relevant to the issues raised in his Petition for Certiorari. More importantly, the language of Rule 243 does not require this Court to exclude any material that it finds might be relevant to the issues presented in a petition for writ of certiorari. The language of Rule 243 allows it, and in this case due process requires it.

During his PCR, the Petitioner attempted to raise additional issues and offer witnesses and evidence. The State objected to the Petitioner raising any issue other than the loss of his right to a direct appeal. (App. 57-60). The trial court, without an adequate inquiry, summarily granted the State's motion limiting the Petitioner's

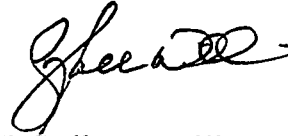
PCR hearing to that one issue. The PCR court refused to allow the Petitioner to speak, and thus failed to conduct any inquiry into additional issues raised by the Petitioner's Application. As a result of its failure to allow the Petitioner to respond to the State's motion, and the court's subsequent limitation of the Petitioner's PCR to a single issue, the trial court's ruling was unsupported and constitutes an abuse of discretion. This resulted in a denial of due process at the circuit court level. The Petitioner now seeks to have this Court review the lower court's ruling, which would be aided by the review of the transcripts in question.

The transcripts in question do not require a credibility analysis by this Court as the State appears to argue. The transcripts in question *did* require a credibility analysis by the PCR court, which it failed to conduct. The State prevented the Petitioner from obtaining an evidentiary hearing on all other issues. (App. 57-60). The resulting limitation by PCR court prevented Petitioner from making an offer of the transcripts at issue, as well as any other evidence. Continued efforts by the State to prevent judicial review at the appellate level of the proceedings only furthers the injury resulting from the PCR court's denial of due process. As a result, the transcripts are appropriate matter for the Appendix as an example of the evidence the Petitioner was prevented from presenting, or even discussing, in the PCR hearing.

The propriety of inclusion of transcripts in the Appendix, as relevant to the Petition, is completely independent from the issue of whether the transcripts may be relied on by this Court in reviewing the direct appeal issues. In his direct appeal brief the Petitioner indicated in a footnote that the transcripts in question were included in the Appendix. Petitioner also included in his Statement of Issues Presented for Appeal, whether this Court should consider evidence improperly excluded in the PCR [the transcripts in question]. The issue of inclusion of the transcripts in the Appendix to support the Petition is completely independent of the question of whether the transcripts could also be considered by this Court in the direct appeal. Regardless of the answer as to the Court's consideration for direct appeal purposes, the transcripts are nevertheless proper for the Court to consider as support for the Petition for Writ of Certiorari. As the Appendix must contain both the matter for the Petition and the matter for direct appeal, the transcripts may be included in the Appendix under Rule 243(f)(1).

Wherefore, the Respondent's motion to strike the Appendix should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Falkner Wilkes". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

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Counsel for Petitioner

April 6, 2014.

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APPEAL FROM GREENVILLE COUNTY
COURT OF STATE GRAND JURY
D. Garrison Hill, Circuit Court Judge

Case No.: 2009-GS-47-00006

State of South Carolina, Respondent,

v.


Harold Anthony Trout, Petitioner.

CERTIFICATE OF SERVICE

I certify that I have served a copy of Appellant's Return to the State's Motion to Strike Appendix on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, this 7th day of April, 2014, addressed as follows:

Karen Ratigan, Asst. Atty. Gen.
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

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