

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Saluda County
The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case Number: 2013-001199

RECEIVED

APR 21 2014

S.C. Supreme Court

FRANK TOLEN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Petition to Exceed Page Limit for Petition for Writ of *Certiorari*

The petitioner, Frank Tolen, petitions this Court for an order allowing him to exceed the page limit for his petition for writ of *certiorari*. Mr. Tolen respectfully request this Court allow him to file a petition that is forty (40) pages long, not including the tables of contents and authorities. This motion on based on the following grounds:

1) For an incident that occurred on October 2, 1996, the State charged Mr. Tolen with armed robbery and possession of a handgun by a person previously convicted of a crime of violence.

2) The State first tried Mr. Tolen on these charges from January 27-28, 1998 before the Honorable James W. Johnson, Jr. and a jury. The jurors convicted, and Judge Johnson sentences Mr. Tolen to life with the possibility of parole pursuant to S.C. Code §17-25-45 for armed robbery and five years imprisonment for possession of a firearm by a person convicted of a crime of violence. The sentences were concurrent. Mr. Tolen did not appeal the convictions or sentences. On April 15, 1998, Mr. Tolen filed an

application for post-conviction relief (hereinafter "PCR"). A. 316-19. By order dated November 15, 2000, the Honorable Rodney A. Peoples allowed a belated appeal pursuant to *White v. State*, 263 S.C. 110, 108, S.E.2d 35 (9174). This Court affirmed the convictions and sentences. *Tolen v. State*, (S.C.S.Ct. Op. No. 2002-MO-024) (Filed March 22, 2002).

3) On May 17, 2002, Mr. Tolen filed a PCR Application. On April 17, 2003, the Honorable Kenneth Goode, Jr. convened a PCR hearing. By written order dated, June 17, 2003, Judge Goode granted post-conviction relief. This Court granted the State's petition for writ of *certiorari*. On December 19, 2005, the Court "dismiss[ed] *certiorari* as improvidently granted with respect to the PCR court's ruling on the issue of the State's failure to given proper notice of intent to seek a sentence of life imprisonment without parole pursuant to S.C. Code § 17-25-45(H) (2003)." The Court also held, "The remainder of the holdings of the PCR court are vacated, and the matter is remanded for a new trial." *Tolen v. State*, S.C.S.Ct. Memorandum Op. No. 2005-MO-061 (filed December 19, 2005).

4) The State tried Mr. Tolen a second time during the week of November 11, 2006 before the Honorable William P. Keesley and a jury. The jurors convicted Mr. Tolen, and Judge Keesley sentenced him to life imprisonment without the possibility of parole for armed robbery pursuant to S.C. Code § 17-25-45 and five years concurrent for possession of a firearm by a person convicted of a crime of violence. Mr. Tolen appealed. The Court of Appeals affirmed the convictions and sentences. *State v. Tolen*, (S.C.Ct.App. Unpublished Op. No. 2009-UP-220) (filed May 26, 2009). A. 743-44.

5) On June 30, 2009, Mr. Tolen filed a PCR application. The Honorable R. Lawton McIntosh convened a hearing on January 30, 2013. By written order dated March 25, 2013, Judge McIntosh denied PCR. On April 12, 2013, Mr. Tolen filed a Rule 59(e) motion. 911-14. Judge McIntosh denied that motion on or about April 23, 2013. A. 917-18. This petition for writ of *certiorari* follows.

6) The Appendix for this appeal is 918-pages long. Counsel has identified six potential issues. Four of those issues allege ineffective assistance of counsel regarding guilt-innocence issues during the trial. A fifth issue concerns sentencing. The sixth issue involves ineffective assistance of appellate counsel.

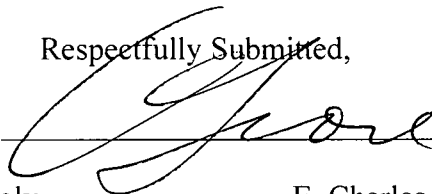
7) Counsel believes the extra length is necessary to adequately address each issue raised in the petition.

Mr. Tolen, therefore, respectfully request this Court allow him to file a petition that is forty (40) pages long, not including the tables of contents and authorities

IT IS SO MOVED.

Respectfully Submitted,

By



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Counsel for the Petitioner

April 16, 2014

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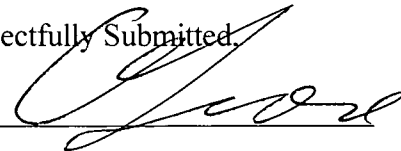
Certificate of Service

I certify that I have served the **Petition for Writ of Certiorari, Appendix, and Petition to Exceed Page Limit for Petition for Writ of Certiorari** on the State of South Carolina by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

J. Walt Whitmire, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

Respectfully Submitted,

By



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April 16, 2014
Greenwood, South Carolina

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April 16, 2014

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

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S.C. Supreme Court

Re: Frank Tolen v. State of South Carolina
Appellate Case No. 2013-001199

Dear Mr. Shearouse:

Enclosed please find the following:

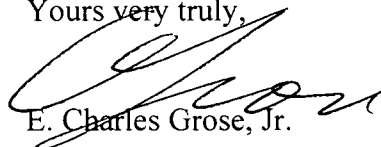
- 1) Original and six copies of a petition for writ of *certiorari*.
- 2) Two copies of the Appendix and certificate of service. One copy of the Appendix is not bound.
- 3) Original and six copies of the Petition to Exceed Page Limit for Petition for Writ of *Certiorari*.
- 4) Certificate of Service of these documents.

By copy of this letter to Mr. Whitmire, I am serving copies of these documents on the Attorney General's Office.

Thank you for your attention to this matter.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

cc: Stephen D. Geoly, Esquire
J. Walt Whitmire, Esquire