

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal From Cherokee County  
The Honorable J. Michael Baxley, Circuit Court Judge  
Appellate case No. 2012-212107

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SEP 24 2014

S.C. Supreme Court

JONATHAN KYLE BINNEY,

Petitioner-Respondent,

vs.

THE STATE,

Respondent-Petitioner.

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MOTION TO REQUIRE PETITIONER-RESPONDENT TO FILE  
SUPPLEMENTAL APPENDIX

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Respondent-Petitioner (the State) would respectfully move this Court for an for an Order requiring Petitioner-Respondent, Jonathan Kyle Binney, to file a Supplemental Appendix that includes copies of Binney's school records and the medical records of his mother (as appropriately redacted in accordance with *In re Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings*, 407 S.C. 607, 757 S.E.2d 421 (S.C. S.Ct., Order filed Apr. 14, 2014)) that were introduced as part of Applicant's Exhibit 15 at the PCR hearing but which are not included in the Appendix to the Petition for Writ of Certiorari filed by him.

The State reasonable believes that these documents are necessary for this Court to appropriately address the following Additional Sustaining Ground, which Binney has raised in his “Brief of Respondent by Petitioner-Respondent:”

The PCR Court's order granting Petitioner a new sentencing trial should also be sustained because trial counsel provided ineffective assistance in the penalty phase when, despite knowing that Petitioner's birth mother was an alcoholic who drank heavily throughout her pregnancy, they failed to investigate, retain an appropriate expert, and present mitigating evidence that Petitioner suffers from Fetal Alcohol Spectrum Disorder.

**Brief of Respondent by Petitioner-Respondent, p. 1.**

These documents were, quite obviously, introduced at the PCR hearing, they were relied upon by Binney’s experts in reaching their opinions, and they were considered by the PCR judge before he denied relief on this claim. **App. p. 5501.** These records have also been relied upon by both parties in their pleadings before this Court.

On page 12 of his pleading, Binney specifically references both his mother’s medical records and his school records, in support of his claim of ineffective assistance of counsel:

First, Dr. Novick-Brown reviewed extensive records - none of which were obtained by trial counsel - documenting that Gayle Dove, Petitioner's birth mother, consumed alcohol and other drugs during her pregnancy. App. pp. 4213-14.Fn10

FN10/ .... Trial counsel never: (a) spoke to any of Petitioner's aunts, uncles, cousins or other extended relatives; (b) interviewed any of Petitioner's former teachers or guidance counselors.; (c) spoke to any childhood friends or people who knew Petitioner and his family; (d) visited any of the places where Petitioner had lived; or, (e) collected any information regarding Petitioner's biological mother. App. pp.4524-4525; pp.4665-4666; Applicant's PCR Exhibit 15. Furthermore, trial counsel failed to collect the overwhelming majority of Petitioner's social history records. App. pp.4666-67. Dr. Novick Brown explained that this body of information, which trial counsel failed to collect, was "essential" to an accurate evaluation and diagnosis of Petitioner's FASD. App. p.4205.

**Return to Respondent-Petitioner’s Petition, p. 11 & n. 10.**

Likewise, the State has relied upon his mother's birth records and his school records in the Reply Brief of Respondent-Petitioner, which it submitted to this Court on May 18, 2014. With respect to his school records, the State has specifically relied upon the Cornerstone Christian Academy School records; the Zanesville Christian School records; the Rose Park Baptist Academy records; the Dublin Christian Academy records; the Victory Family Ministries School records; and the Freedom Academy Record See **Reply Brief, pp. 15-18,**

The undersigned counsel for the State attempted to resolve the absence of these important documents from the Appendix filed with this Court by contacting lead counsel for Petitioner-Respondent, Emily C. Paavola, Esquire. In a telephone conversation on Monday, September 8, 2014, Ms. Paavola very politely indicated to the undersigned that she understood the importance of these documents to the issue before the Court and indicated that she would get back to the undersigned about the preparation of a Supplemental Appendix that includes these documents. However, she has not, to date, prepared a Supplemental Appendix.

On September 22, 2014, this Court notified the parties that “[t]his case will likely be considered during the December 2014 term of Court.” Rule 206, SCACR, provides that “[w]here more than one party serves a notice of appeal, the party whose notice of appeal is first received by the appellate court shall be designated as the primary appellant and shall be responsible for performing all duties required of the appellant under Rules 207 and 210.”

Therefore, the State respectfully moves for an Order requiring Petitioner-Respondent Binney to file a Supplemental Appendix that includes copies of Binney's school records and the medical records of his mother, as appropriately redacted in accordance with *In re Revised Order Concerning Personal Identifying Information, supra.*

Respectfully submitted,

ALAN WILSON  
Attorney General

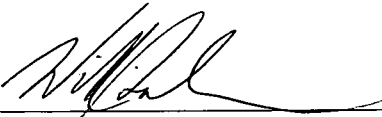
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September 24, 2014.

By:   
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ATTORNEYS FOR RESPONDENT-  
PETITIONER

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**PROOF OF SERVICE**

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The undersigned certifies that on the 24<sup>th</sup> day of September, 2014, he served the Motion to Require Petitioner-Respondent to File Supplemental Appendix on counsel for the Petitioner-Respondent by depositing two (2) copies of same in the United States mail, first class, postage prepaid, and addressed as follows:

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**WILLIAM EDGAR SALTER, III**  
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