

-STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appellate Case No. 2012-212698

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OCT 23 2014

S.C. SUPREME COURT

Marquita Smith,

Petitioner,

v.

State of South Carolina,

Respondent.

**PETITION FOR LEAVE TO FILE
PETITION FOR WRIT OF CERTIORARI
TO THE SOUTH CAROLINA COURT OF APPEALS.**

TARA DAWN SHURLING
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, S. C. 29204

(803) 738-8622 PHONE

(803) 738-1600 FAX

tdslaw@shurlinglaw.com

ATTORNEY FOR PETITIONER

NOW COMES the Petitioner in the above captioned Post-Conviction Relief appeal, acting by and through her undersigned counsel, seeking leave to file a Petition for Writ of Certiorari to the South Carolina Court of Appeals in this Post-Conviction Relief matter. Petitioner served and filed her PCR appeal in this Honorable Court on August 8, 2012 in compliance with Rule 243, SCACR. Petitioner subsequently filed her Petition for Writ of Certiorari in this Honorable Court. Following the filing of Respondent's Return, said appeal was subsequently transferred to the South Carolina Court of Appeals pursuant to Rule 243(l), SCACR, by Order dated July 29, 2013. In her PCR appeal, Petitioner addressed approximately twenty allegations in support of her claim that her right to effective assistance of counsel prior to and during her trial, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, was validated in the trial court. The Petition for Writ of Certiorari in this matter was denied by Order of the South Carolina Court of Appeals dated July 23, 2014 and attached hereto. Petitioner filed a Petition for Rehearing, and Request for rehearing *en banc*, on August 6, 2014. That petition was denied by the Court of Appeals on September 18, 2014.

Petitioner is mindful of the previous decisions of this Court finding that a Petitioner in her position may not seek review by this Honorable Court where a Certiorari Denial letter, or similar memorandum order, is issued. She is further aware that previous rulings of this Honorable Court have found that she, and similarly situated Petitioners, are prejudiced by denial of review by this Honorable Court where that denial of review doesn't stop a Petitioner from raising any of the issues decided by the Court of Appeals in a federal habeas action. See, *Haggins v. State*, 377 S.C. 135, 659 S.E.2d 170 (2008); *Missouri v. State*, 378 S.C. 594, 663 S.E.2d 480 (2008); *Ellison v. State*, 382 S.C. 189, 676 S.E.2d 671 (2009); *O'Sullivan v. Boerckel*, 526 U.S. 838, 119 S. Ct. 1728 (1999).

Notwithstanding the previous rulings of this Honorable Court, Petitioner now most respectfully prays that she might be granted leave to file a Petition for Writ of Certiorari seeking review of the Court of Appeals decision in her case. The Petition for Writ of Certiorari demonstrates filed in this case demonstrates that Petitioner meet her burden of proof in the circuit court and in the South Carolina Court



of Appeals with regard to multiple allegations of ineffective assistance of counsel. The case law of South Carolina is replete with examples of cases in which this Honorable Court has disagreed with, and indeed reversed, decisions of the South Carolina Court of Appeals. She respectfully submits that although her right to raise her Sixth Amendment claims in the U.S. District Court is preserved, under the current system she can never get back her right to have her PCR appeal heard by the highest Court in South Carolina. Petitioner asks this Court to take judicial notice of the fact that federal habeas corpus petitions pursuant to 28 U.S.C.A. § 2254 are won far less frequently than Petitioner for Writ of Certiorari before this Honorable Court. Under the current system, all PCR appeals are filed with this Honorable Court. An arbitrary number of those appeals are transferred to the Court of Appeals for review under this Court's authority pursuant to Rule 243 (l), SCACR. Once transferred to the Court of Appeals, Petitioner's right to have this Honorable Court *ever* review the collateral claims raised in the Court of Appeals may be forever barred depending upon *the format* in which the Court of Appeals decision is issued. Petitioner now respectfully asserts that this system deprives her, and others similarly situated, of the right to equal protection and due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution, as well as Article I, §3, of the Constitution of South Carolina. U.S. Const art. XIV, §1 and S.C.Const. art. I, §3.

Petitioner would further most respectfully argue that the procedure as it currently is applied had a chilling effect on Petitioner, and others similarly situated, being able to obtain full written opinion in their PCR appeals heard by the South Carolina Court of Appeals. Petitioner does not suggest that the Court of Appeals would deliberately forego issuing a full written decision addressing its reasoning, and the authorities relied upon, in denying certiorari for the purpose of evading review by this Honorable Court. The fact remains however, that by issuing their decision in one of these abbreviated formats, the Court of Appeals may escape any chance of review of their decision by this Honorable Court. Whether unconscious or not, over time this policy will no doubt lead to fewer full written opinions by the Court of Appeals in PCR appeals thus depriving the Petitioner, and those similarly situated, insight as to the reasoning behind the Court's decision. Ultimately, this policy will not only deprive Petitioner, and others, of an

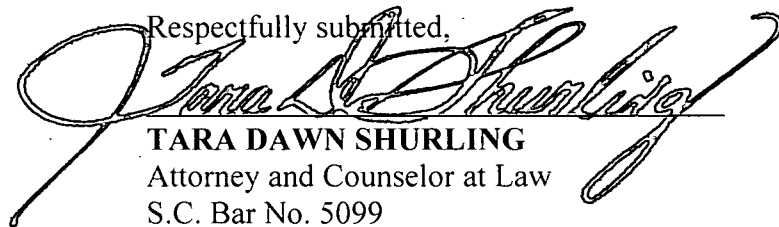


understanding as to why the Court of Appeals found that they did not deserve relief, but further, will deprive them of valuable insights which might be used to further refine the arguments presented in a subsequent habeas corpus petition in the United States District Court pursuant to 28 U.S.C.A § 2254.

CONCLUSION

For all the reasons set forth above, the Petitioner now asks for leave of this Honorable Court to submit for this Court's review a Petition for Writ of Certiorari to the South Carolina Court of Appeals addressing her claims of ineffective assistance of counsel as argued in the circuit court below and in the South Carolina Court of Appeals.

Respectfully submitted,



TARA DAWN SHURLING
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, S.C. 29204
803-738-8622
803-738-1600 Fax
E-mail: tdslaw@shurlinglaw.com

This 20th day of October, 2014.

ATTORNEY FOR PETITIONER

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Kristy L. Harrington, Circuit Court Judge

Appellate Case No. 2012-212698

MARQUITA SMITH, 323834,

PETITIONER,

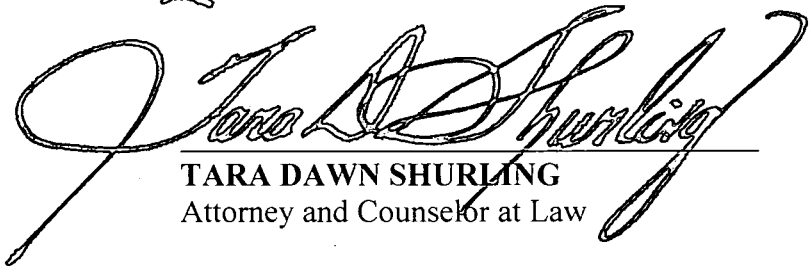
v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

CERTIFICATE OF SERVICE

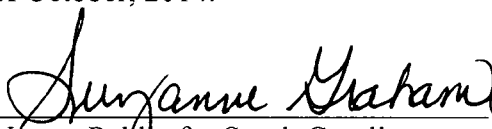
The undersigned attorney hereby certifies that a copy of the Petition for Leave to File Petition for Writ of Certiorari to the South Carolina Court of Appeals in the above-entitled case has been served upon opposing counsel, Ashleigh R. Wilson, Assistant Attorney General, via U.S. Mail, postage prepaid, this 20th day of October, 2014.



TARA DAWN SHURLING
Attorney and Counselor at Law

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 20th day
of October, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/2015

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S.C. SUPREME COURT

LAW OFFICE OF



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TARA DAWN SHURLING, PA

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

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(803) 738-8622

(Fax) (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

October 20, 2014

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

RE: Marquita Chemere Smith, 323834 v. State of South Carolina;
Case No. 2012-CP-08-1994 - (Austin Review of 2010-CP-08-2985)
Appellate Case No. 2012-212698

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of my Petition for Leave to File Petition of Writ of Certiorari to the South Carolina Court of Appeals and the Certificate of Service in the above-captioned case. I would appreciate your returning two (2) clocked copies of the Petition and the Certificate of Service in the enclosed self-addressed envelope. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is written in a cursive style with a long, sweeping tail that loops back up towards the end of the line.

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosures

cc: Ashleigh R. Wilson, Assistant Attorney General (w/enclosure)
Marquita Chemere Smith, 323834 (w/enclosure)
Namon & Rosemary Smith (w/enclosure)