

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO LEXINGTON COUNTY
The Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Trial Court Case No. 2011-CP-32-0402
Appellate Case No. 2013-002473

RECEIVED

OCT 30 2014

S.C. Supreme Court

Timothy J. Wilson,..... Respondent/Petitioner,

v.

State of South Carolina, Petitioner/Respondent.

**MOTION TO DISMISS CROSS-APPEAL
OF RESPONDENT/PETITIONER**

Petitioner/Respondent (the State) hereby makes this motion pursuant to Rules 240 & 243, SCACR, to dismiss Respondent/Petitioner's (Wilson) cross-appeal for failure to timely submit a cross-petition for a writ of certiorari. The State respectfully submits the following:

I.

Wilson was indicted at the March, 2008 term of the grand jury for Lexington County for four counts of first-degree criminal sexual conduct (CSC) with a minor (Indictment Nos.: 2008-GS-32-789, -790, -791, & -792). He was subsequently indicted at the July, 2008 term of the grand jury for one count of lewd act on a minor under the age of sixteen (Lewd Act) (Indictment

No.: 2008-GS-32-2293). On July 29, 2008, a jury trial was commenced at the Lexington County Courthouse in front of the Honorable William P. Keesley, at the conclusion which the jury found Wilson guilty as indicted. (App.p.731, line 21-p.735, line 25). Wilson was sentenced to imprisonment for concurrent terms of fifteen (15) years for Lewd Act (Indictment No.: 2008-GS-32-2293), thirty (30) years for CSC, 1st Degree (2008-GS-32-789), thirty (30) years for CSC, 1st Degree (2008-GS-32-791), fifteen (15) years for CSC, 1st Degree (Indictment No.: 2008-GS-32-792), and a consecutive term of fifteen (15) years for CSC, 1st Degree (Indictment No.: 2008-GS-32-790), for an aggregate sentence of forty-five (45) years' imprisonment. (App.p.13-p.47; p.746, line 20-p.748, line 7). A timely Notice of Appeal was filed on Wilson's behalf and an appeal was perfected by Wanda H. Carter, Esquire, of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals dismissed Wilson's appeal and affirmed his convictions "after a thorough review of the record and counsel's brief pursuant to Anders v. California . . . and State v. Williams." State v. Wilson, Op. No. 2010-UP-472 (S.C. Ct. App. filed October 28, 2010). The Remittitur was issued on November 17, 2010. (App.p.758-p.781).

II.

On February 1, 2011, Wilson filed an application for post-conviction relief (PCR) alleging ineffective assistance of trial counsel. (2011-CP-32-0402). (App.p.1-p.8). On September 7, 2011, the State submitted a Return requesting an evidentiary hearing to resolve Wilson's claims. (App.p.48-p.52). On March 23, 2012, Tricia A. Blanchette, Esquire, was substituted as Wilson's counsel. On December 21, 2012, Wilson submitted an Amendment to his Application for PCR alleging fourteen (14) specific allegations of ineffective assistance of trial counsel and/or appellate counsel. On January 29, 2013, an evidentiary hearing was held in

the Lexington County Courthouse before the Honorable R. Lawton McIntosh. In an order dated September 24, 2013, filed October 9, 2013, and received by the State on October 18, 2013, Judge McIntosh granted Wilson's Application for PCR. (App.p.782-p.811). Neither party submitted a motion to alter or amend the judgment pursuant to Rule 59(e), SCRPC. On November 15, 2013, the State filed a notice of appeal with this Court and on November 19, 2013, Wilson filed a notice of cross-appeal. (App.p.812-p.815).

III.

On June 12, 2014, the State served and filed a Petition for Writ of Certiorari as well as an Appendix, which included a transcript of the proceedings in the lower court. On June 24, 2014, the State filed a Motion to serve and file a Supplemental Appendix seeking to include copies of Wilson's exhibits 1-19, which were presented at the PCR hearing but mistakenly excluded from the Appendix. In that motion, the State also requested: "that the time for serving and filing the **Return to Petition for Writ of Certiorari** on behalf of Respondent/Petitioner, Timothy J. Wilson, be set thirty (30) days from service of the supplemental appendix." On July 15, 2014, this Court granted the motion to supplement the appendix and the Supplemental Appendix was accepted as filed, presumably making Wilson's Return to Petition for Writ of Certiorari due to be filed on August 15, 2014.

IV.

On August 12, 2014, Wilson wrote the Court to "request my first 30 day extension" and referenced **ONLY** his "Return to Petition for Writ of Certiorari." In an order dated August 13, 2014, this Court granted the request but referenced the due date for the "Petition for Writ of

Certiorari” being extended until September 12, 2014, despite the fact that no request had been made for more time to file a cross-petition.

V.

On September 12, 2014, Wilson wrote the Court “to request my second 30 day extension” and again **ONLY** referenced his “Return to Petition for Writ of Certiorari.” In an order dated September 15, 2014, this Court granted the request and properly referenced the new due date for the “**Return** to the Petition for Writ of Certiorari” being **extended until October 13, 2014**.

VI.

On September 26, 2014, approximately two weeks before the October 13, 2014 due date, Wilson timely served and filed his “Return to Petition for Writ of Certiorari.” However, on October 20, 2014, a week **after** the previously extended October 13, 2014 due date for his Return, Wilson wrote the Court “to request my first 30 day extension” for filing his “Petition for Writ of Certiorari.” Wilson’s letter was first received by the State, via United States mail, on October 21, 2014.¹ However, in an order issued October 20, 2014, the same date as the request, and before the State was given an opportunity to respond, this Court issued an order finding: “The request for an extension to serve and file the Respondent-Petitioner’s Petition for Writ of Certiorari is granted and extended until November 20, 2014.”

VII.

The State respectfully submits this Court’s October 20, 2014 Order should be rescinded for failing to properly allow for the time limits set forth in the Appellate Court Rules to respond

¹ Although Wilson’s letter does not indicate it was delivered by hand, facsimile, or email to this Court, it appears the Court somehow received it October 20, 2014, the day it was written and mailed.

to a motion. See Rule 240(e), SCACR (“Any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file an original and six copies of his return . . .”).

The State also respectfully requests that this Court accept this “Motion to Dismiss Cross-Appeal of Respondent/Petitioner” as its response to Wilson’s October 20, 2014 motion for an extension.

VIII.

The State submits Wilson’s request for an extension should be denied, and his cross-petition should be dismissed for two reasons.

First, as recognized even by Wilson, the October 20, 2014 letter was Wilson’s “first” request for an extension of time to file his cross-petition for a writ of certiorari, even though that cross-petition was due to be served and filed on or before **August 15, 2014**, the deadline established when this Court accepted the Supplemental Appendix. See Rule 243(d), SCACR (“Within thirty (30) days of receipt of the transcript, petitioner shall serve a copy of the . . . petition for writ of certiorari on opposing counsel.”). The State submits that by failing to timely file the cross-petition, and then by failing to request an extension to file that cross-petition for more than sixty (60) days beyond the due date, Appellant has abandoned any right to pursue any further appeal from the lower court’s decision, particularly where the PCR judge granted relief.

Second, even if this Court construes its prior extensions of time to encompass both Wilson’s return AND his cross-petition, despite Wilson never having asked for an extension to file his cross-petition, his current extension request was untimely. Wilson’s request for additional time was made seven (7) days beyond the latest due date previously granted by this Court.

WHEREFORE, having made its “Motion to Dismiss Cross-Appeal of Respondent/

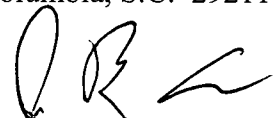
Petitioner”, the State respectfully requests that this Court: (1) rescind its October 20, 2014, Order for failing to properly allow for the time limits set forth in the Appellate Court Rules to respond to a motion, (2) deny Appellant’s untimely request for an extension, and (3) dismiss Wilson’s cross-petition for a writ of certiorari as untimely, for the reasons set forth above.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General
S.C. Bar #8729

P.O. Box 11549
Columbia, S.C. 29211

By: 

Attorneys for Petitioner/Respondent

October 30, 2014

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO LEXINGTON COUNTY
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R. Lawton McIntosh, Circuit Court Judge

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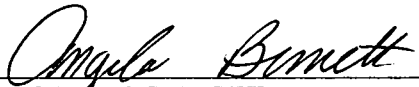
State of South Carolina, Petitioner/Respondent.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Motion to Dismiss Cross-Appeal of Respondent/Petitioner on Respondent/Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, Tricia A. Blanchette, Esquire P.O. Box 12725, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 30th day of October, 2014.



ANGELA BENNETT
Administrative Assistant

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Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

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October 30, 2014

S.C. Supreme Court

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

Re: Timothy J. Wilson v. The State
Appellate Case No: 2013-002473

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Motion to Dismiss Cross-Appeal of Respondent/Petitioner along with proof of service in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Assistant Attorney General
S.C. Bar No: 8729

JBA/ab
Enclosures

cc: Tricia A. Blanchette, Esquire
Ms. Trisha Allen