

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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\_\_\_\_\_  
Certiorari to Abbeville County

R. Lawton McIntosh, Circuit Court Judge

**S.C. Supreme Court**

2009-CP-01-00105  
\_\_\_\_\_

MARSHALL RAY MILLER, #249557,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

\_\_\_\_\_  
**MOTION TO STRIKE**  
\_\_\_\_\_

The undersigned hereby respectfully moves this Court for the Following:

*Motion to Strike Appendix*

The Respondent also hereby moves that this Court strike from the Appendix with the following materials:

- 1) The Supplemental Appendix pages 1-13; and
- 2) The 2<sup>nd</sup> Supplemental Appendix.

These pages are not a part of the lower court record. This Court requires that a Petition for a Writ of Certiorari include the lower court record. Rule 243(f)(1), SCACR. The Respondent submits that the above was never put before the lower court, either as an

exhibit entered during a hearing or filed as a pleading or attachment to a pleading, during this post-conviction relief matter and therefore should not be included in the Appendix as part of the record.

*Motion to Strike Petition for a Writ of Certiorari*

Rule 243(d)(3) SCACR specifically states that the “total length of the petition shall not exceed twenty-five pages.” The Petitioner’s petition is 37 pages, including one page for the Questions Presented and another for the Conclusion. Accordingly, the movant requests that pages 26 through 37 be stricken for failure to comply with the above-mentioned rule.

*Request for Stay and Conclusion*

The movant therefore requests the parts of the Appendix that were not before the lower Court be stricken as well as pages 26-37 of the Petition. The movant also requests that the time limits for response to the Petition for a Writ of Certiorari be held in abeyance until this motion is ruled upon.

Respectfully submitted,

ALAN WILSON  
Attorney General

ASHLEY A. McMAHAN  
Assistant Attorney General

P.O. Box 11549  
Columbia, S.C. 29211  
(803) 734-3693

By:   
Attorneys for Respondent

November 5, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Abbeville County

R. Lawton McIntosh, Circuit Court Judge

2009-CP-01-00105

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Marshall Miller, #249557,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

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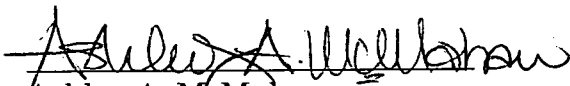
**PROOF OF SERVICE**

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I, Ashley A. McMahan, certify that I have served the within Motion to Strike on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Marshall Miller, #249557  
Lieber Correctional Institution, SB-56  
PO Box 205  
Ridgeville, SC 29472

I further certify that all parties required by Rule to be served have been served.  
This 5<sup>th</sup> day of November, 2014.

  
Ashley A. McMahan  
Assistant Attorney General  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211



ALAN WILSON  
ATTORNEY GENERAL

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November 5, 2014

**S.C. Supreme Court**

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

RE: Marshall Miller, #249557 v. State of South Carolina  
2009-CP-01-00105

Dear Mr. Shearouse:

Please find enclosed the original and six (6) copies of the Respondent's Motion to Strike.

Should you have any questions, please feel free to contact me at the number listed below.

Best regards,

Ashley A. McMahan  
Assistant Attorney General

AAM

cc: Marshall Miller, #249557