

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Berkeley County  
Honorable Kristi L. Harrington, Circuit Court Judge

\_\_\_\_\_  
Appellate Case No. 2014-002281

**RECEIVED**

NOV 10 2014

**S.C. Supreme Court**

MARQUITA SMITH, #323834,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

\_\_\_\_\_  
RETURN TO PETITION FOR LEAVE TO FILE A  
PETITION FOR WRIT OF CERTIORARI  
TO THE SOUTH CAROLINA COURT OF APPEALS  
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Procedural History

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to order of commitment of the Clerk of Court for Berkeley County. The Petitioner was indicted at the August 2007 term of the Berkeley County Grand Jury for accessory before the fact of murder (2007-GS-08-1748) and accessory before the fact of armed robbery (2007-GS-08-1751). V. Craig Jones, Jr., Esquire, represented the Petitioner. The Petitioner proceeded to trial on August 27-30, 2007, after which the jury found her guilty as indicted. The Honorable Deadra L. Jefferson sentenced the Petitioner to confinement for thirty years for each conviction. The sentences were to run concurrently.

A timely Notice of Appeal was filed on the Petitioner's behalf and an appeal was perfected. On appeal, the Petitioner was represented by Tommy Thomas, Esquire, and Tricia A. Blanchette, Esquire. Following full briefing by both sides, the Court of Appeals affirmed the Petitioner's conviction and sentence. State v. Smith, Op. No. 4662 (S.C. Ct. App. filed March 24, 2010). The Court of Appeals denied the Petitioner's Petition for Rehearing and Petition for Rehearing *En Banc* by Order dated June 4, 2010. The Remittitur was issued on July 13, 2010.

The Petitioner filed an application for post-conviction relief (PCR) on August 24, 2010 and amended the application on November 17, 2011. The Respondent made its Return on February 4, 2011. An evidentiary hearing into the matter was convened on November 17, 2011 at the Charleston County Courthouse. The Petitioner was present and presented by Tara Dawn Shurling, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

The Petitioner testified on her own behalf at the hearing. Petitioner's trial counsel V. Craig Jones, Jr., Esquire, appellate counsel Tricia A. Blanchette, Esquire, and co-defendant Kerry Hollins also testified at the hearing. By Order dated January 30, 2012, the Honorable Kristi L. Harrington denied and dismissed with prejudice the Petitioner's application for post-conviction relief. On February 16, 2012, the Petitioner filed a Rule 59(e) Motion to Alter or Amend. The Respondent submitted a Return and Motion to Dismiss the Motion to Alter and Amend on February 27, 2012. An Amended Order of Dismissal dismissing the Petitioner's application was signed by Judge Harrington and filed on April 19, 2012.

The Petitioner filed a second application for post-conviction relief on July 10, 2012. By Order filed July 23, 2012, the Petitioner and Respondent consented to a belated review of the Petitioner's previous PCR pursuant to Austin v. State. The Petitioner filed a Notice of Appeal on

August 8, 2012. On January 23, 2012, the Petitioner filed a Petition for Writ of Certiorari in this Court. On June 3, 2013, the Respondent filed a Return to Petition for Writ of Certiorari. This Court transferred this matter to the Court of Appeals which issued an order denying the petition on July 23, 2014. On August 6, 2014, the Petitioner filed a Petition for Rehearing and Request for Rehearing *En Banc*. The Court of Appeals denied this Petition on September 18, 2014. A Petition for Leave to File a Petition for Writ of Certiorari to the South Carolina Court of Appeals was filed on October 20, 2014. This Return follows.

#### Argument

The Respondent submits this Court should deny the Petitioner's Petition for Leave to File a Petition for Writ of Certiorari to the South Carolina Court of Appeals because this Court has expressly stated it will not entertain on appeal the denial of PCR Petition for Writ of Certiorari by the Court of Appeal. The Respondent submits the Petitioner's claims are without merit and this Court should deny this petition because the Petitioner is not entitled to review by this Court of a denial of petition for writ of certiorari.

In Haggins v. State, 377 S.C. 135, 137, 659 S.E.2d 170 (2008), this Court held it would not entertain petitions for writ of certiorari to review "letter denials" in post-conviction relief matters. In Missouri v. State, this Court extended its holding in Haggins and held this Court would not entertain petitions for writ of certiorari to review an order denying a petition for writ of certiorari in a post-conviction relief matter. 378 S.C. 594, 663 S.E.2d 480 (2008) holding modified by Ellison v. State, 382 S.C. 189, 676 S.E.2d 671 (2009). The Respondent submits this Court has explicitly stated it will not entertain denials of post-conviction relief petition for writ of certiorari. This Court should follow its holding in Missouri and refuse to entertain the Petitioner's denial of petition for writ of certiorari.

The arguments raised in the Petition seems to suggest that the Petitioner's case is in some way special or unique from other post-conviction relief cases in which the Court of Appeals denies a petition for writ of certiorari. However, there is nothing in the Petitioner's case which indicates it warrants any special treatment by this Court. There is also nothing to suggest that the Court of Appeals did not extend to the Petitioner's case the same thorough review it extends to all post-conviction relief cases it reviews. A decision by the Court of Appeals to grant or deny a writ of PCR certiorari is a matter committed to that court's discretion. Haggins, 377 S.C. at 136-37, 659 S.E.2d 170. The Court of Appeals in its discretion concluded the Petitioner's claims did not warrant briefing, oral argument, and the issuing of a formal opinion. The Respondent submits the Court of Appeals exercised its discretion in denying further review and the Petitioner has failed to provide any valid reason for this Court to depart from its holding in Missouri v. State.

Lastly, the Petitioner asserts this Court's refusal to entertain denials of petition for writ of certiorari in PCR cases "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." The Respondent submits this Court addressed this very issue in Missouri v. State by holding "neither Haggins, nor our extension of Haggins herein, constitutes a violation of constitutional rights." Missouri v. State, 378 S.C. 594, 595-96, 663 S.E.2d 480, 481 (2008) holding modified by Ellison v. State, 382 S.C. 189, 676 S.E.2d 671 (2009).

Requiring the Court of Appeals to issue a full formal opinion in every case in which it denies a petition for writ of certiorari would abrogate the Court's discretion to decide which cases warrant briefing, oral argument, and a full formal opinion. The Respondent respectfully

asks this Court to deny this Petition and avoid carving out the unwarranted exception that the Petitioner is requesting.

Respectfully submitted,

ALAN WILSON  
Attorney General

ASHLEIGH R. WILSON  
Assistant Attorney General

BY:   
\_\_\_\_\_  
Ashleigh R. Wilson

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

November 10, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal From Berkeley County  
The Honorable Kristi L. Harrington, Circuit Court Judge  
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MARQUITA SMITH

Petitioner,

v.

STATE OF SOUTH CAROLINA,

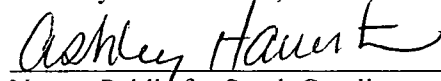
Respondent.

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned hereby certifies that a true copy of the Return to Petition for Leave to File a Petition for Writ of Certiorari to the South Carolina Court of Appeals Has been served upon the respondent's attorney, Tara D. Shurling, this 10<sup>th</sup> day of November 2014.

  
\_\_\_\_\_  
Anne R. Henley  
Legal Assistant

SWORN to before me this  
10th day of November, 2014.

 (L.S.)  
Notary Public for South Carolina.  
My Commission Expires: 3-18-23



ALAN WILSON  
ATTORNEY GENERAL

November 10, 2014

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NOV 10 2014

S.C. Supreme Court

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

RE: Marquita Smith, #323834 v. State of South Carolina  
Appellate Case No. 2014-002281

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Leave to File a Petition for Writ of Certiorari to the South Carolina Court of Appeals in the above matter for filing in your office. By copy of this letter we are serving opposing counsel with this Return to Petition for Leave to file a Petition for Writ of Certiorari to the South Carolina Court of Appeals.

With highest regards,

Ashleigh R. Wilson  
Assistant Attorney General

ARW/arh  
Enclosures

cc: Tara D. Shurling, Esquire  
Clerk, SC Court of Appeals