

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County  
G. Edward Welmaker, Circuit Court Judge

CHARLES CHRISTOPHER WILLIAMS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2013-001945

**MOTION TO EXCEED TWENTY-FIVE PAGE LIMIT FOR A RETURN TO PETITION  
FOR WRIT OF CERTIORARI**

Respondent respectfully asks this Court to allow Respondent to file a return to the petition for writ of certiorari in excess of the twenty-five page limit imposed by Rule 243(g), SCACR. The Respondent's Return was served and filed in this capital PCR action was 168 pages. The Court should grant this motion because the lengthy Appendix (5072 pages) and numerous issues and sub-issues raised in the Petition for Writ for Writ of Certiorari (78 pages) and Amicus Brief of the Federal Republic of Germany (31) pages which the Petitioner incorporated by reference in his petition (Petition for Writ of Certiorari, p. 74) and caused Respondent to exceed the page limitation for certiorari returns.

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S.C. Supreme Court

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Respondent’s counsel mistakenly thought the motion to exceed had been included in an earlier extension request. The Return’s table of contents reflects the issues before the Court as addressed by Respondent:

STATEMENT OF THE CASE.....1

ARGUMENT ON WHY CERTIORARI SHOULD BE DENIED

I. The PCR Court reasonably concluded that 2005 counsel were not deficient in their reasonable investigation of Petitioner’s mental health and medical issues based upon their receipt of conflicting evidence of whether mother drank alcohol during the pregnancy and an MRI report indicated a normal brain. The defense provided the drinking information to most of their mental health expert witnesses who did not recommend further testing particularly for fetal alcohol syndrome Counsel reasonably presented evidence of mental illnesses and a troubled childhood. The PCR Court further properly concluded that any omission on counsel’s part was not prejudicial under Strickland when there is no reasonable probability that but counsel counsel’s failure to further investigate fetal alcohol syndrome, the result of the proceeding would not have been different.....2

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II. The PCR Court reasonably concluded that trial counsel was not deficient in failing to object to different portions of the closing argument. There was probative evidence to support the conclusion that the failures to object were either done for strategic reasons or counsel’s view that the comments were not prejudicial and therefore there was no deficient performance shown. Alternately, if deficient performance is shown, the PCR Court correctly applied the prejudice prong of Strickland based upon its review of the entire record in concluding that the prosecutorial comments did not undermine confidence in the verdict. Certiorari should be denied .....86

III. Respondent submits that Petitioner’s free-standing 8th Amendment claim that the death penalty in South Carolina (and Greenville County) is disproportionate to similar crimes and unconstitutional because of the existence of a kidnapping aggravating factor, as defined in S.C., is barred under Simmons v. State and Drayton v. Evatt. Similarly, his assertion that this Court (and the PCR Court) should have considered a different pool of cases must be rejected by the decisions in Copeland and Dickerson to the extent it can even be considered in this setting.....121

IV. Certiorari is not warranted where there is probative evidence that when trial counsel was aware that Williams was a U.S. citizen, counsel was not deficient in failing to seek any assistance from the consulate of the Federal Republic of

Germany due to the fact that the Petitioner's mother was born in Germany. The PCR Court reasonably applied Strickland in concluding that counsel was not deficient and that prejudice under the Sixth Amendment had not been proven based upon the speculative assertions raised before the lower court and this Court. Order, App. pp. 4197-4201. ....134

V. Certiorari is not warranted for a claim that Petitioner had a right to plead guilty and have jury sentencing where the claim is contrary to state law and the PCR Court reasonably rejected the showing as presented in an ineffective assistance of counsel claim where deficient performance and prejudice was not shown. ....156

VI. The stated issue "are aggravating circumstances required to be in the indictment?" is a free-standing statutory and constitutional claim which is not properly before this Court because it was not raised in this post-conviction action as an Eighth Amendment or Due Process claim the Circuit Court nor addressed in the PCR Order. Further, this claim would not be proper in the collateral action because it is not a substitute for an appeal under Drayton v. Evatt. Alternately, when a claim of ineffective assistance of trial or appellate counsel claim based upon a failure to object to the indictment was raised, the PCR court reasonably denied relief on each applying the proper standards of Strickland v. Washington in concluding that trial counsel had objected to the alleged omission prior to the trial and appellate counsel reasonably did not raise the issue in the Brief of Appellant in 2007 when the same claim had been specifically rejected by this Court previously. ....163

CONCLUSION .....168

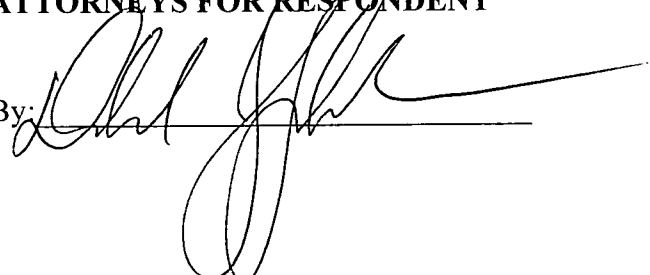
Petition diligently attempted to trim the return but finds it necessary to request the Court's permission to exceed the twenty-five page limit. Respondent respectfully requests an order from this Court granting Respondent permission to exceed the twenty-five page limit of Rule 243(g), SCACR.

Respectfully submitted,

DONALD J. ZELENKA  
Senior Assistant Deputy Attorney General

**ATTORNEYS FOR RESPONDENT**

By: \_\_\_\_\_



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#3,

Donald J. Zelenka  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
SC Bar # 5758  
803-734-6305

February 4, 2015

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**CERTIFICATE OF SERVICE**

I, **Donald J. Zelenka**, hereby certify that I have served the MOTION TO EXCEED TWENTY-FIVE PAGE LIMIT FOR A RETURN TO PETITION FOR WRIT OF CERTIORARI in the foregoing action by depositing copy in the United States Mail to:

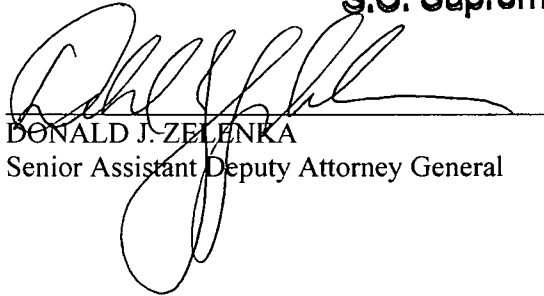
Mr. Derek J. Enderlin  
Ross and Enderlin, PA.  
330 East Coffee Street  
Greenville, South Carolina 29601

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This 4<sup>th</sup> day of February, 2014.

**S.C. Supreme Court**

  
DONALD J. ZELENKA  
Senior Assistant Deputy Attorney General