STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2014-000591
Lower Court Case No. 2012-CP-19-0304

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S.C. Supreme Court

FREDY DELEON, #304977,

RESPONDENT-PETITIONER,

v.

STATE OF SOUTH CAROLINA,

PETITIONER-RESPONDENT.

RETURN TO PETITIONER-RESPONDENT'S PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR RESPONDENT-PETITIONER.

INDEX

QUESTIONS PRESENTED

I.

Whether the lower court erred in concluding that an allegation of ineffective assistance of belated appeal counsel was a cognizable allegation under the Post-Conviction Relief Act?

II.

Whether there is any probative evidence to support the lower court's conclusion that appellate counsel was ineffective for failing to argue on appeal that the Respondent-Petitioner's Fourth Amendment rights were violated by the authorities' warrantless entry and search of his business?

III.

Whether the lower court erred in concluding that the proper remedy for an allegation of ineffective assistance of belated appeal counsel was a new belated appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974)?

IV.

Whether the lower court erred in concluding that it did not have to reach the merits of the Respondent-Petitioner's other arguments of ineffective assistance of appellate counsel?

STATEMENT OF THE CASE

The Respondent-Petitioner (hereinafter referred to as "Respondent"), Fredy DeLeon, was indicted in Edgefield County for one count of trafficking marijuana more than 100 pounds but less than 2,000 pounds. The Respondent's three co-defendants, Raphael Hernandez, Honorio Guerrero, and Alfredo Avila–Arjona, were also each indicted for trafficking marijuana. On March 23-25, 2004, the Respondent and his co-defendants proceeded to a joint trial by jury. This trial ended in a mistrial. On June 28-July 6, 2004, the Respondent and his co-defendants again proceeded to a joint trial by jury. The Respondent was represented at both trials by Jacque Hawk, Esquire, and Martin Puetz, Esquire. At the conclusion of the trial, the jury found all defendants guilty as charged. The Honorable William P. Keesley, presiding circuit judge, sentenced the Petitioner to twenty-five years' imprisonment.

The Respondent did not file a direct appeal following his trial; however, each of his co-defendants did. In a published opinion filed May 26, 2009, this Court reversed the co-defendants' convictions and found that Judge Keesley should have granted their motions for a directed verdict. State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009).

On August 31, 2005, the Respondent filed his first Application for Post-Conviction Relief. He was represented on this application by Michael Waddington, Esquire (hereinafter "appellate counsel"). On February 16, 2007, the Honorable R. Knox McMahon, filed an order granting the Respondent a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

On appeal from the Respondent's first PCR application, the Respondent was initially represented by appellate counsel, but Tricia A. Blanchette, Esquire was substituted as counsel late in the appellate process. On September 9, 2011, the Court of Appeals issued an unpublished opinion which granted a belated appeal pursuant to White v. State, and affirmed the Respondent's

conviction and sentence. DeLeon v. State, Op. No. 2011-UP-418 (S.C. Ct. App. filed Sep. 9, 2011).

On September 19, 2012, the Respondent filed his second Application for Post-Conviction Relief with the Edgefield County Clerk of Court's Office, alleging ineffective assistance of White v. State counsel. The State initially filed a Return requesting a hearing, which was dated May 16, 2013. However, the State subsequently served a Return and Motion to Dismiss on July 9, 2013. A hearing was held on the second PCR application on August 12, 2013, before the Honorable Edgar W. Dickson. The Respondent was represented by Jeremy A. Thompson, Esquire, at this proceeding. By order filed November 26, 2013, Judge Dickson granted the PCR application, finding appellate counsel ineffective, and granting the Respondent a second belated appeal pursuant to White. Both parties filed motions pursuant to Rule 59(e), SCRCP, to alter or amend the order. A hearing was held on these motions on January 17, 2014. By order filed March 6, 2014, Judge Dickson denied both Rule 59(e) motions.

The Petitioner-Respondent (hereinafter "Petitioner") served its certiorari petition on the Respondent on October 8, 2014. This Return follows.

STATEMENT OF FACTS

On May 14, 2002, border patrol authorities in El Paso, Texas, discovered an "anomaly" in a shipment of wooden furniture bound for South Carolina that was being shipped on a tractor trailer. Upon opening the trailer, the authorities found large amounts of marijuana hidden inside wooden chimneys. Instead of seizing the drugs in El Paso, the authorities decided to deliver the drugs to their destination in South Carolina to effectuate a controlled delivery. App. pp. 771-774. The manifest indicated that the furniture was to be delivered to the Respondent's grocery store located in Edgefield County.

On the morning of May 18, 2002, the authorities drove the tractor trailer to the Respondent's grocery store. There, they, along with the Respondent and two other individuals, unloaded one chimney and several other pieces of furniture into a small storeroom at the store. The authorities were then directed to follow the two unidentified individuals, who were in a Thunderbird, to another location called Billy's Super Store, which was located down the road from the Respondent's business. App. p. 857-863.

After waiting approximately twenty-five to thirty minutes, the authorities in the tractor trailer were approached by the individuals in the Thunderbird and the Respondent's co-defendants, who were driving a Ryder truck. The three vehicles then formed a convoy, with the Thunderbird leading, the Ryder truck in the middle, and the tractor trailer bringing up the rear. As they traveled down a dirt road, the Ryder truck became stuck in a ditch and they were unable to dislodge the truck. The authorities then decided to end the controlled delivery. The Respondent's co-defendants were arrested on the dirt road; however, the individuals in the Thunderbird fled and were never apprehended. App. pp. 863-876.

When the decision was made to end the operation, the authorities also entered the Respondent's business without first obtaining a search warrant. They entered the storeroom and seized the furniture contained there, including the chimney, which contained twenty bundles of marijuana. App. pp. 780-782. The total weight of all of the marijuana seized was approximately 892 pounds; each bundle weighed approximately 2.2 pounds. App. p. 1250, lines 15-23; p. 1269, lines 9-13.

ARGUMENT

Standard of Review

The Sixth and Fourteenth Amendments to the United States Constitution guarantee every criminal defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). This guarantee includes the effective assistance of counsel in the defendant's direct appeal. Evitts v. Lucey, 469 U.S. 387 (1985). In order to prove a claim of ineffective assistance of trial counsel, the moving party must show that defense counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Id. In other words, the Petitioner must show that but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Id. In the context of an allegation of ineffective assistance of appellate counsel, the operative question becomes whether but for appellate counsel's errors and omissions, the result on appeal would have been different. Smith v. Murray, 477 U.S. 527 (1986).

On appeal, a PCR court's findings will be upheld if there is any evidence of probative value supporting them. Cherry v. State, 300 S.C. 155, 386 S.E.2d 624 (1989). "The appellate court will reverse the PCR court only where there is either no probative evidence to support the decision or the decision was controlled by an error of law." Edwards v. State, 392 S.C. 449, 455, 710 S.E.2d 60, 64 (2011).

I. The PCR court properly concluded that the Respondent's allegations were cognizable under the PCR Act because they raise claims of ineffective assistance of appellate counsel.

A. How the Issue Arose Below

The Respondent's PCR application stated one general ground for relief: "Ineffective assistance of belated direct appeal counsel." App. p. 1678. Initially, the Petitioner filed a Return to this application requesting that a hearing be held "solely on the issue of ineffective assistance of appellate counsel." App. p. 1686. Subsequently, however, the Petitioner amended its Return to move for summary dismissal because "[t]he post-conviction relief act does not provide a remedy for ineffective assistance of PCR appellate counsel for performance related to a White v. State review." App. p. 1690. At the PCR hearing, the Petitioner further argued that the Respondent "does not have a right to counsel or right to effect[ive] assistance of counsel under the Sixth Amendment" on a belated direct appeal. App. p. 1718, lines 9-11.

The PCR court rejected the Petitioner's argument at the hearing, concluding that "[i]t's logical to me that direct appeal counsel should provide effective assistance regardless of whether it is belated appeal or direct appeal." App. p. 1724, lines 9-12. In its order granting relief, the PCR court concluded that the Respondent had the right to the assistance of counsel on his belated direct appeal because "[a] belated direct appeal is nothing more than a direct appeal that is conducted later in time than it should normally occur." App. p. 1804. After the PCR court's ruling, the Petitioner filed a Rule 59(e), SCRCP, motion, renewing its arguments. See App. pp. 1824-1825. The PCR court denied this motion. See App. pp. 1935-1939. The Respondent contends that the PCR court correctly ruled that the Respondent had the right to the effective assistance of counsel on his belated direct appeal.

B. Discussion

S.C. Code Ann. § 17-27-20(A)(1) permits "[a]ny person who has been convicted of, or sentenced for, a crime" to file for PCR when they allege "[t]hat the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State." Claims of ineffective assistance of counsel must be raised through PCR. See State v. Carpenter, 277 S.C. 309, 286 S.E.2d 384 (1982).

The Petitioner does not appear to contest the PCR court's finding that the Respondent was entitled to the assistance of counsel in his belated direct appeal. Instead, as the Respondent reads the Petitioner's argument, the Petitioner's central contention is that since this Court has never specifically announced that § 17-27-20 permits an allegation of ineffective assistance of belated appeal counsel, then the PCR court should have dismissed the Respondent's PCR. If the Respondent had the right to the assistance of counsel on his belated direct appeal, however, then § 17-27-20(A)(1) permits this filing under its broad terms. A specific pronouncement from this Court that such filings are permitted was not needed before the PCR court denied the Petitioner's motion to dismiss.

The Respondent did have a constitutional right to the effective assistance of counsel on his belated direct appeal. A belated direct appeal is nothing more than a direct appeal that is taken later than it normally would have been. See McCray v. State, 271 S.C. 185, 187-188, 246 S.E.2d 230, 231 (1978) (concluding that when White review is warranted, this Court will review the case "just as if a direct appeal had been taken to this Court" and that the "remedy sought is simply to restore to the [PCR applicant] the appeal rights of which he has been improperly deprived.") It is for this reason that this Court has held that the rights of a direct appellant are "coextensive" with the rights of a belated direct appellant. Id. at 188. If a defendant on direct appeal has the right to

the effective assistance of counsel, it logically follows, then, that the defendant on a belated direct appeal has the "coextensive" right to the effective assistance of counsel. Id. Multiple federal jurisdictions are in accord with the PCR court's conclusion on this issue. See United States v. Orozco-Ramirez, 211 F.3d 862 (5th Cir. 2000) (permitting claim of ineffective assistance of belated appeal counsel to proceed); United States v. Scott, 124 F.3d 1328 (10th Cir. 1997) (same). Accordingly, the Respondent had a constitutional right to the effective assistance of counsel on his White v. State appeal, and § 17-27-20 permitted him to file for PCR based on the deprivation of that right. The PCR court's ruling was correct.

The Petitioner also argues that "South Carolina already provides an alternative forum where [the Respondent] may already plead this allegation": the common law writ of habeas corpus. Petition at 10. The Respondent respectfully submits that this Court should reject this argument. Habeas relief is only available in this state through this Court's original jurisdiction. Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998) (footnote 4). There is no need to restrict allegations of ineffective assistance of belated appeal counsel to this Court's original jurisdiction, particularly where such allegations are cognizable under the Uniform Post-Conviction Procedure Act. See id. at 43, 495 S.E.2d at 431 ("[A]matter which is cognizable under the Act may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.") The Respondent respectfully requests that this Court reject the Petitioner's arguments and deny the certiorari petition with regard to this issue.

II. The PCR court properly concluded that appellate counsel was ineffective because the Respondent's Fourth Amendment rights were violated by the authorities' warrantless entry and search on his business property.

A. How the Issue Arose Below

1. The Fourth Amendment Claim

The Respondent's first trial began with his motion to suppress all evidence seized at his business—a grocery store—without a warrant as a violation of his Fourth Amendment rights. App. p. 22, lines 14-17. The State argued that the search was justified under the extended border search doctrine. To support this contention, the State presented the testimony of two witnesses: Agent Brian Mize with U.S. Customs[1] and Investigator Eric Owensby with the Aiken County Sheriff's Department. Agent Mize testified that he, the Applicant, and the two individuals in the Thunderbird unloaded thirteen pieces of furniture, one of which was a chimney containing marijuana, into the rear storeroom of the Respondent's business. App. p. 52, line 18-p. 55, line 15. Investigator Owensby testified that he conducted surveillance on the business after the furniture was delivered. App. p. 93, lines 1-24. At some point in time, the business opened and several individuals entered and exited the grocery store, some carrying bags. Investigator Owensby testified that the officers feared that the marijuana was being distributed under the cover of the grocery store, so they entered the business. App. p. 95, lines 4-13. The officers on the scene did not know where the furniture was located in the business, and they were taken to the storeroom by the Respondent's wife, who worked at the store. App. p. 108, lines 6-17. Investigator Owensby testified that he thought the door to the storeroom was closed. App. p. 110, line 25-p. 111, line 9. At the conclusion of the hearing, the trial court denied the motion.

[1] Now the U.S. Immigrations and Customs Enforcement.

At the Respondent's second trial, the Respondent again moved to suppress the evidence seized from his business. App. p. 535, lines 4-10. Agent Michelle Dowling, who was the supervising agent with U.S. Customs, testified that she simply directed the officers to enter the store after the Respondent's co-defendants were arrested. App. p. 596, line 1824-p. 597, line 6; see also p. 779, line 23-p. 780, line 8. The trial court denied the motion again, "incorporat[ing] [the testimony from the first trial] by reference," and concluded that the extended border search doctrine permitted the warrantless entry into the Respondent's business:

> [I]t appears that basically the law provides that when something crosses the border into the United States and there's evidence as was presented here that the items were sealed and then moved to another location in the United States, that basically the border is considered to move with those items.

App. p. 680, lines 3-12. Later at trial, the Respondent renewed his objection to the admission of both the marijuana and the chimney into evidence. App. p. 781, line 24-p. 782, line 10; p. 951, line 11-p. 956, line 9.

2. Appellate Counsel's Representation

The Respondent retained appellate counsel to represent him on his first PCR application, and then again on appeal from the order granting him a belated appeal pursuant to White v. State, *supra*. It soon became readily apparent that appellate counsel had no understanding of South Carolina's appellate practices and procedures. As noted in this Court's letter to appellate counsel dated February 15, 2008, appellate counsel's first round of filings contained numerous errors: (1) the brief and certiorari petition that he filed did not comply with the South Carolina Appellate Court Rules;[2] (2) he made incorrect statements of fact regarding the procedural history in the case in those documents; (3) the certiorari petition argued direct appeal error; and (4) he failed to file

[2] The brief, like the notice of appeal, was initially filed in the Court of Appeals. The brief contained a designation of matter. See App. p. 1605.

an Appendix. See Supp. App. pp. 3-5. In response to this letter, appellate counsel filed nothing, which resulted in the dismissal of the Respondent's appeal on March 27, 2008. See App. pp. 1613-1614. Appellate counsel then filed a motion to reinstate the appeal, which this Court granted with a reminder that appellate counsel had to "serve and file a petition for a writ of certiorari **and** a brief addressing the direct appeal issues ... along with an appendix." App. p. 1617 (emphasis in original).

Unfortunately, appellate counsel's troubled filings did not end there. Appellate counsel filed an amended certiorari petition that read in full:

> QUESTIONS PRESENTED
>
> 1. Did the petitioner knowingly and intelligently waive his right to direct appeal?
>
> STATEMENT OF THE CASE
>
> On July 6, 2004, the jury found the defendant guilty and sentenced him to imprisonment for twenty-five years. { Insert waiver of appeal facts here }
>
> {Procedural History – Jacque }
>
> On July 6, 2004, petitioner was convicted and was sentenced to twenty-five years imprisonment.
>
> Petitioner then brought this action seeking post-conviction relief in August 3, 2005. He alleged that trial counsel failed to file a perfect [sic] an appeal of the original conviction and sentence after being instructed to do so. The court denied the application on February 14, 2007, and a notice of appeal was served on February 15, 2007, and an Amended notice of appeal was served on December 5, 2007. Petitioner now seeks a writ of certiorari to review this denial.
>
> ARGUMENT
>
> 1. PETITIONER DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE THE RIGHT TO DIRECT APPEAL.

{Insert Argument for above }

App. p. 1620. Even this brief amount of text contains an error: the first PCR was granted, not denied. Appellate counsel's White brief raised two issues, both pertaining to allegations of juror misconduct. The juror misconduct hearing was held after the trial concluded. The White brief, however, does not contain a single reference to the record. Appellate counsel did not reference the record because he did not have the juror misconduct transcript when he wrote the brief. Instead, he wrote the brief based on conversations he had with trial counsel regarding the events of the transcript. See App. p. 1750, line 2-p. 1751, line 13. Years later, Attorney Blanchette actually secured the transcript and provided it to the Court of Appeals. See App. p. 1744, line 12-p. 1745, line 10.

Appellate counsel also had a strained and contentious relationship with the Respondent. Appellate counsel initially informed the Respondent that he planned to raise three issues on appeal: (1) the juror misconduct claim, which was actually raised; (2) the Fourth Amendment claim, which the PCR court granted relief on below; and (3) the denial of the directed verdict motion, which is the subject of the Respondent's certiorari petition. See Supp. App. pp. 6-8. Appellate counsel, however, only filed a brief challenging the juror misconduct claim. In a subsequent letter to the Respondent, appellate counsel informed the Respondent that he did not present the Fourth Amendment or directed verdict arguments because the Respondent's co-defendants presented those claims on their appeals, that they had lost, and that their arguments on those claims were stronger than the Respondent's. See Supp. App. p. 9. This letter contains two significant errors. First, the Respondent's co-defendants did not present the Fourth Amendment claim on appeal. Second, the Respondent's Fourth Amendment claim was significantly stronger than any claim his co-defendants could have made because he was the only individual with an expectation of privacy

in his business. Additionally, while appellate counsel was correct at the time he wrote the letter that the Respondent's co-defendants had lost on their directed verdict claims, they eventually succeeded on appeal to this Court.

On March 25, 2008, appellate counsel wrote the Respondent a letter enclosing "the appeal with the issue of the search and seizure added." Supp. App. p. 10. Notably, the Respondent's appeal would be dismissed two days later by this Court due to appellate counsel's failure to comply with the South Carolina Appellate Court Rules and this Court's letter to him dated February 15, 2008. In the March 25 letter, appellate counsel stated that he had raised the Fourth Amendment claim at the Respondent's insistence. No such argument was ever raised in any appellate filing. In a letter to the Respondent dated April 15, 2011, appellate counsel maintained that he had filed a brief that included the Fourth Amendment claim:

> In your last letter, you asked why I did not raise additional issues in your appeal. You and I have discussed this in person and through letters before I filed the appeal over two years ago. Before I filed the appeal, you made modifications and, *at your request, I included them in the appeal*. At this point, the appeal is pending. I am not sure why you are bringing up "new" issues now, when you already know that the appeal has been filed and is pending before the Court.

Supp. App. p. 13 (emphasis added). The Respondent testified at the PCR hearing that he never saw a brief with the Fourth Amendment claim included, though he thought that one had been filed based upon appellate counsel's letters. App. p. 1772, lines 6-12; p. 1774, line 24-p. 1775, line 2.

Over the course of the representation, the Respondent requested that appellate counsel be relieved as his attorney; however the Court of Appeals denied these requests. See App. p. 1775, lines 3-11. In the April 15, 2011, appellate counsel noted that the Respondent did not want him as his attorney, and he informed the Respondent that he was closing his practice to move to Puerto Rico in June 2011. Supp. App. p. 12. Appellate counsel told Attorney Blanchette that "he wasn't

too concerned about the letters and the orders that had been issued by the Court of Appeals of South Carolina because he was moving to Puerto Rico and they would have no power over him there." App. p. 1746, line 25-p. 1747, line 4. Appellate counsel in fact moved to Puerto Rico before the substitution process was completed. See App. p. 1743, lines 3-22; see also App. pp. 1873-1874.

3. The PCR Proceedings

In his PCR application below, the Respondent alleged that appellate counsel was ineffective for failing to raise the denial of his Fourth Amendment motion to suppress on appeal. See App. p. 1695. Following the evidentiary hearing, the PCR court granted relief on this claim. With regard to the question of deficient performance, the PCR court found that "[a]ppellate counsel's performance was abysmal, totally inadequate, and a complete abdication of a lawyer's duty to his client." App. p. 1812. With regard to the question of prejudice, the PCR court concluded that the extended border search doctrine did not permit the warrantless entry onto the Respondent's business and that had the issue been raised on appeal, there was a reasonable probability that the result on the appeal would have been different. App. pp. 1814-1820.

The Petitioner filed a Rule 59(e), SCRCP, motion which challenged the PCR court's rulings on this claim. See App. pp. 1822-1830. The PCR court denied the Petitioner's Rule 59(e) motion and reaffirmed its earlier findings, concluding that "th[e] failure to raise a meritorious issue as promised and the general shoddiness of Mr. Waddington's preparation and work product constitute *per se* prejudice against Applicant." App. p. 1937 (emphasis in original). The Petitioner now challenges the PCR court's findings on appeal to this Court.

B. Discussion

As with any claim of ineffective assistance of counsel, a reviewing court must determine whether or not counsel was deficient and whether or not that deficient conduct prejudiced his client. See Strickland, *supra*. The Respondent submits that the PCR court's findings on both prongs of Strickland are amply supported by the record. Accordingly, the Respondent respectfully requests that this Court deny the Petitioner's certiorari petition on this issue.

1. Appellate Counsel's Performance Was Deficient

As demonstrated above, appellate counsel's performance was appalling. His filings routinely failed to comply with the South Carolina Appellate Court Rules. His failure to comply with the rules resulted in the Respondent's appeal being dismissed, requiring reinstatement. The allegations that he raised were filed without the benefit of the transcript upon which he based his argument, and it fell to Attorney Blanchette, more than three years after the brief was filed, to supply that transcript. The arguments that he did raise in his brief were unsupported by the record, as the primary assertion of error was the trial court's refusal to ask questions propounded by trial counsel when in fact trial counsel never made any such requests. Compare App. pp. 1624-1636 (Brief of Appellant) with pp. App. pp. 1546-1563 (colloquy at post-trial hearing regarding additional questions to be asked). His letters to the Respondent include egregiously incorrect statements of fact and law, including, but not limited to: (1) not knowing what claims were raised in the co-defendants' appeal; (2) not understanding fundamental Fourth Amendment principles such as privacy interests in property; and (3) misleading the Respondent as to what claims were presented on appeal. After this horrific performance, appellate counsel abandoned the Respondent and informed the Respondent that he was closing his law practice and moving to Puerto Rico. Short of an appellate attorney not filing any documentation and the case being dismissed, the

Respondent submits that it is difficult to envision an appellate attorney performing in a more indefensible manner than appellate counsel performed in this case. Accordingly, the PCR court's conclusion that appellate counsel's performance was deficient is supported by significant probative evidence.

2. Appellate Counsel's Failure to Raise the Fourth Amendment Claim on Appeal Prejudiced the Respondent

A search of a person or a vehicle that is conducted at the border is *per se* reasonable. United States v. Ramsey, 431 U.S. 606 (1977). Customs agents may also conduct searches of "persons and things after they have entered the country" and have left the border under the "extended border search" doctrine. United States v. Richards, 638 F.2d 765, 771 (5th Cir. 1981). "The typical extended border search takes place at a location 'away from the border where entry is not apparent, but where the dual requirements of reasonable certainty of a recent border crossing and reasonable suspicion of criminal activity are satisfied.'" United States v. Stewart, 729 F.3d 517, 525 (6th Cir. 2013) (quoting United States v. Guzman-Padilla, 573 F.3d 865, 878-79 (9th Cir. 2009)).

While "'[b]order' is an elastic concept," however, "it cannot be stretched to include the interiors of dwellings or *business establishments*." Lee v. Raab, 576 F.Supp. 1267, 1272 (S.D. Ohio 1983) (quoting Ramsey, 431 U.S. at 616) (emphasis added). "The 'border search' exception does not justify searches of homes or *business establishments*." United States v. Saint Prix, 672 F.2d 1077, 1083 (2nd Cir. 1982) (footnote 2) (quoting Ramsey, 431 U.S. at 616) (emphasis added). The government does not "have the general right to make a warrantless search of a private warehouse or dwelling for the purpose of terminating a controlled delivery." United States v. Singh, 811 F.2d 758, 761 (2nd Cir. 1987); see also United States v. Mendoza-Ortiz, 262 F.3d 882 (9th Cir. 2001) (holding that 19 U.S.C. § 1595(a) requires Customs agents to obtain a warrant

whenever they want to enter a dwelling or business, and that the extended border search doctrine is inapplicable in such cases because the statute takes precedence).

The PCR court properly concluded that the extended border search doctrine did not excuse the warrantless search conducted in this case. In most extended border search cases, including most of those cited by the trial court in its ruling, the defendants challenge the search on the basis of their expectation of privacy in the object that was seized: either the tangible object or their persons. See generally Illinois v. Andreas, 463 U.S. 765, 771 (1983) (in discussing an extended border search controlled delivery, "whether an individual has a legitimate expectation of privacy in the contents of a previously lawfully searched *container*") (emphasis added); United States v. Yang, 286 F.3d 940 (7th Cir. 2002) (expectation of privacy in luggage);[3] United States v. Bilir, 592 F.2d 735 (4th Cir. 1979) (expectation of privacy in a suitcase);[4] United States v. Cardenas, 9 F.3d 1139 (5th Cir. 1993) (expectation of privacy of the defendant's person);[5] United States v. Gaviria, 805 F.2d 1108 (2nd Cir. 1986) (expectation of privacy in a shipment of goods).[6] Cardenas is particularly important to this case, because the trial court directly relied upon its holding to find the search in this case constitutional:

> [T]his court has determined that three factors must be demonstrated before an extended border search is deemed reasonable and hence constitutionally permissible: (1) a showing of a "reasonable certainty" or a "high degree of probability" that a border crossing has occurred; (2) a showing of a "reasonable certainty" that no change in the condition of the *person or vehicle* being inspected occurred from the time of the border crossing until the search and that the contraband found was present when the person or vehicle crossed the border; and (3) a showing of a "reasonable suspicion" that criminal activity was occurring.

[3] Cited at App. p. 131, lines 14-16.
[4] Cited at App. p. 131, lines 19-24.
[5] Cited at App. p. 132, lines 23-24.
[6] Cited at App. p. 132, line 25-p. 133, line 1.

9 F.3d at 1148 (emphasis added) (citing United States v. Espinoza-Seanez, 862 F.2d 526, 531 (5th Cir. 1988)); see App. p. 187, lines 22-24 ("The question goes to those three factors. We've been over those three factors.")

The trial court's ruling is controlled by an error of law because the Respondent did not challenge the validity of the search of the furniture. Instead, the Respondent argued that his expectation of privacy in his business was violated by the warrantless entry onto his property. As described above, in cases where the challenge arises out of an expectation of privacy in business, and not in the object seized, courts have routinely held that a warrant must be obtained before a search may be conducted and have suppressed the evidence from the unlawful search. See Saint Prix, *supra*; Lee, *supra*; Mendoza-Ortiz, *supra*. In the only case of a search of a business where such a warrantless search was upheld, the Second Circuit noted that the contraband that was seized on the business premises was "located just inside the open storeroom doors, under direct government surveillance and constructively in the government's possession." Singh, *supra*, 811 F.2d at 761. In other words, the evidence never left the government's possession, so a warrant was not needed to seize what it already possessed. Importantly, the Second Circuit clarified that the government did not possess "the general right to make a warrantless search of a private warehouse ... for the purpose of terminating a controlled delivery." Id. This distinction is important because the "warrantless search of a private warehouse ... for the purpose of terminating a controlled delivery" is precisely what occurred in this case. Investigator Owenby's testimony makes it clear that the authorities did not know where the furniture was located, that the furniture was not in plain view of the authorities, and that they had to enter into a closed storeroom to seize it.

Given the rulings in Saint Prix, Lee, Mendoza-Ortiz, and Singh, it is clear that the authorities needed a search warrant before entering the Respondent's business. Their failure to procure a search warrant constituted a Fourth Amendment violation, and the evidence seized as a result of that illegal search should have been suppressed by the trial court. The PCR court correctly concluded that there was a reasonable probability that the fruits of the search would have been suppressed had this claim been presented on appeal.

In an attempt to avoid the clear conclusion that the Respondent's constitutional rights were violated, the Petitioner offers several possible justifications for the search, many of which are frivolous. First, the Petitioner offers the same three-part test to justify an extended border search of persons or objects incorrectly utilized by the trial court, which has been shown to be error. See Petition at 14 (quoting the three-part test outlined in United States v. Yang, 286 F.3d 940 (7th Cir. 2002)). Notably, the Petitioner offers no cases where a warrantless search of a business has been upheld pursuant to the extended border search doctrine.

Second, the Petitioner argues that "Deleon did not have a reasonable expectation of privacy in decoy furniture housed with narcotics." Petition at 14. This argument misses the point, and demonstrates a fundamental misunderstanding of Fourth Amendment law. The location where the Respondent had a reasonable expectation of privacy was in his *business*. The authorities had to obtain a search warrant before they could legally search anything, including the furniture, in his business. If the furniture had been left on the side of the street instead of inside the Respondent's property, then perhaps the Petitioner's argument would hold water. Since the furniture was inside his business, however, the Petitioner's argument should be rejected.

Third, the Petitioner argues that "the entry into Tineda [sic] Deleon constituted an exigent circumstance under the plain view exception to the warrant requirement." Petition at 15. This

argument actually conflates two separate exceptions to the Fourth Amendment's warrant requirement, as the exigent circumstances exception and the plain view exception have different standards; however, neither exception is applicable here. Beginning with the plain view exception, "law enforcement officers may seize evidence in plain view, provided that they have not violated the Fourth Amendment in arriving at the spot from which the observation of the evidence is made." Kentucky v. King, ___ U.S. ___, 131 S.Ct. 1849, 1858 (2011). This exception does not apply because the evidence was not in plain view. The testimony at the first trial makes it clear that the authorities were not maintaining constant surveillance of the furniture and that they did not know where it was located when they entered the premises. App. pp. 108-111. If they did not know where the evidence was located, then it was certainly not in plain view.

Turning to the exigent circumstances exception, "[a]ny warrantless entry based on exigent circumstances must, of course, be supported by a genuine exigency." Id. at 1862. The only possible exigent circumstance was the fear that the marijuana was being given to the customers of the grocery store. Agent Dowling's testimony that she simply ordered the entry occur after the Respondent's co-defendants were arrested undermines this "exigency." See App. p. 779, line 23-p. 780, line 8. Similarly, Investigator Owensby testified that they "approached the store qui[et]ly" and "didn't storm the store or anything," showing that there was no real exigency at hand. App. p. 97, lines 8-12. Furthermore, this is not a true exigent circumstance since the Respondent's business was a grocery store. Customers entered the grocery store and exited with grocery bags. It is not "objectively reasonable" to believe that evidence may be in the process of being distributed or destroyed under those circumstances. Mincey v. Arizona, 437 U.S. 385, 394 (1978).[7]

[7] It is worth noting that despite appellate counsel's rampant deficiencies, even he noticed that exigent circumstances were not a sufficient basis for the entry and search. See Supp. App. p. 10.

Fourth, the Petitioner argues that the warrantless entry was justified "under the officer safety exception to the warrant requirement" because there was "increased foot traffic into the store from unknown persons, thereby creating a concern for public safety." Petition at 15. It is difficult to discern what basis the Petitioner offers for this exception, as there is no one defined "officer safety exception" to the Fourth Amendment's warrant requirement. There are exceptions for making protective searches while searching a vehicle, see Arizona v. Gant, 556 U.S. 332 (2009), or for making a protective sweep in a residence or other building when the authorities are there lawfully, see Maryland v. Buie, 494 U.S. 325 (1990), but those are clearly not at play here. Certainly, exigent circumstances may also come into play for officer safety, but exigent circumstances are not present here. Furthermore, the case the Petitioner cites for support, Brigham City, Utah v. Stuart, 547 U.S. 398 (2006) does not identify an "officer safety" exception; indeed, the words "safe or "safety" do not appear anywhere in the opinion.[8] Consequently, no matter what rationale the Petitioner offers the "officer safety exception" for, this exception is inapplicable and should be rejected.

Ultimately, "[n]o reason, except inconvenience of the officers and delay in preparing papers and getting before a magistrate, appears for the failure to seek a search warrant." McDonald v. United States, 335 U.S. 451, 455 (1948). The PCR court properly concluded that the authorities' entrance into the Respondent's business was unlawful and violated the Respondent's Fourth Amendment rights.

Turning to the question of prejudice, substantial evidence exists to support the PCR court's findings that the Respondent would have received a new trial had this claim been presented on

[8] Stuart found exigent circumstances when police officers responded to a home and "were confronted with *ongoing* violence occurring *within* the home." 547 U.S. at 405 (emphasis in original). That factual scenario is obviously not at play here.

appeal. The evidence against the Respondent was very weak. This Court concluded in the Respondent's co-defendants' opinion that there was no evidence that the co-defendants knew that the tractor trailer contained drugs. Similarly, there was a similar dearth of evidence with regard to the Applicant's knowledge of the existence of the drugs. There were no "acts, declarations, or specific conduct" presented at trial that showed that the Applicant knew that drugs were concealed in the furniture. Hernandez, *supra*, 382 S.C. at 605, 677 S.E.2d at 605. The furniture looked like ordinary furniture, and the Respondent did not direct that any particular piece of furniture be unloaded at his business. App. p. 899, lines 8-13. The State did not present any evidence that the Respondent had any prior dealings with the individuals in the Thunderbird, or that he even knew them in any way. The State had no evidence of any conversations the Respondent had with anyone in Mexico, other than the fact that his name was on the manifest. See App. p. 1127, line 4-p. 1128, line 14. The State presented no evidence that the Respondent knew his other co-defendants. See App. p. 1128, line 22-p. 1129, line 6. The State did not find any other circumstantial evidence that the Respondent engaged in drug dealings. The Respondent did not open up the chimney or ever actually possess the marijuana; in fact, he left soon after the delivery was completed. See App. p. 1205, lines 13-25. The Respondent did not travel with his co-defendants or with the other individuals in the Thunderbird. In short, the only evidence that the State had that the Respondent was involved in this conspiracy was the manifest and the furniture offloaded at his business. There is certainly a reasonable probability that the jury would have acquitted the Respondent had the evidence seized as a result of the illegal search been suppressed, as they would have only been left with the manifest.

This contention is borne out by the State's closing argument. The lynchpin of the State's argument as to the Respondent's involvement in the conspiracy was its theory that the Respondent

knew about all of the drugs in the tractor trailer because he would have received a cut of the drugs from the chimney left at his business:

> Once the trucks got stuck, they weren't gettin' out. The boys in the Thunderbird left. Sure they knew what was there. So did everybody else in this deal. They offloaded this stuff at Mr. DeLeon's store, *and he got one of the chimneys.*
>
> Now he stuck his neck out. *Ladies and gentlemen, I submit to you the evidence in this case just shows he's gettin' one chimney out of the cut. 100 grand right there. Mr. DeLeon. He was gonna distribute that out from there. He doesn't have to get paid in cash. Gettin' paid in drugs.* These agents many of 'em told you up here from the stand, that's typical of how somebody gets paid. It's not exchanged in cash. *He got it in drugs.* 'Cause they had that part of the furniture loaded back there in the back where they could very easily get it off at Fredy's.

App. p. 1384, lines 5-17 (emphasis added). This argument was repeated over and over again. See App. p. 1380, lines 22-23; p. 1385, line 6-p. 1386, line 6; p. 1387, line 23-p. 1388, line 2; p. 1392, lines 1-5. The State could not have made this argument had the evidence from the search been suppressed. Accordingly, the trial court's refusal to suppress the drugs prejudiced the Respondent, and the PCR court correctly concluded that there was a reasonable likelihood that this argument would have resulted in a new trial had it been presented by appellate counsel on appeal.

As a final matter, the Petitioner argues that "[t]he PCR Judge's error in finding White v. State counsel was further deficient compounded [sic] when he employed a cumulative error analysis in finding prejudice." Petition at 17. It is difficult to respond to this argument, as the Petitioner does not identify where the PCR court employed a cumulative error analysis, and the Petitioner wrote most of the argument as if the Petitioner was the presiding judge. See Petition at 17 ("*The Court* alternatively rejects Deleon's argument that *that this Court* should employ a cumulative prejudice analysis to ineffectiveness claims"); ("[*t*]*his Court* finds that such an analysis

is not constitutionally required and declines to employ that analysis") (emphases added).[9] The failure to identify how the PCR court erred, standing alone, should serve as a basis to reject this argument. Regardless, the PCR court did not employ a cumulative error analysis, as the PCR court never aggregated multiple claims into one finding of prejudice. Instead, the PCR court ruled that appellate counsel was ineffective for failing to raise the Fourth Amendment claim on appeal, and ruled that the deficient performance prejudiced the Respondent. In other words, the PCR court conducted a textbook Strickland analysis. There is no error here.

Given all of the above, the Respondent respectfully submits that this Court should deny the Petitioner's certiorari petition on this ground. Appellate counsel raised an objectively weak issue, failed to raise an objectively strong issue, and did so in a grossly incompetent fashion. Furthermore, appellate counsel lied to or misled the Respondent regarding the allegations that he had raised and then abandoned the Respondent near the conclusion of the appeal. The Respondent's constitutional rights were violated, and none of the myriad exceptions to the Fourth Amendment's warrant requirement that the Petitioner proffers as possible justifications for the search are applicable. The PCR court's findings on all of these issues are amply supported by the record and by the law, and they should be upheld.

[9] The Petitioner also argued that "it is inappropriate to consider the cumulative prejudice from various alleged errors that are not related, such as the failure to request a jury charge and the failure to introduce certain testimony." Petition at 18. The Respondent assumes that the Petitioner was making a hypothetical argument here, as these allegations were not made below, and appear to be allegations of ineffective assistance of trial counsel, which is not at issue in this case.

III. The PCR court erred in granting a second belated direct appeal; instead, the PCR court should have granted a new trial (Petitioner's Issue IV).

A. How the Issue Arose Below

In its order granting relief, the PCR court concluded that appellate counsel was ineffective pursuant to both prongs of Strickland. Instead of granting a new trial, the PCR court granted the Respondent a second belated appeal because "appellate counsel's ineffectiveness only impacted the validity and reliability of the outcome of the appeal." App. p. 1821. Both parties filed Rule 59(e), SCRCP, motions challenging the remedy, and both parties agreed that the appropriate remedy was a new trial. See App. pp. 1831-1832 (Petitioner's Rule 59(e) motion); pp. 1899-1901 (Respondent's Rule 59(e) motion). These positions were reiterated at the Rule 59(e) hearing. See App. p. 1909, lines 12-20 (Petitioner); p. 1916, line 6-p. 1919, line 13 (Respondent). In its order denying the Rule 59(e) motions, the PCR court reaffirmed its conclusion that the appropriate remedy was a second belated appeal:

> [T]his Court does not believe the granting of a new trial would be the "appropriate order" in this case, which was very well-tried and produced no claims of ineffective assistance of counsel at the trial level. ... It would be a waste of judicial resources to order a new trial in a complex case which was tried (twice) a decade ago, and has bounced up and down the South Carolina appellate and trial courts since. Surely, the law cannot require this case to be rest to zero and re-litigated from scratch. ... The Court orders that Applicant be allowed to reinstitute his appeal so that the meritorious issues he wished to raise in his belated appeal, and which Mr. Waddington represented to him would be raised, may be competently argued so that Applicant will have a fair shake at his constitutionally ensure appeal.

App. p. 1938.

In the Petitioner's certiorari petition, the Petitioner reasserts its arguments presented in its Rule 59(e) motion and argues that the PCR judge's remedy was invalid as a matter of law. See

Petition at 19-21. The Respondent agrees with the Petitioner that the PCR court erred with regard to this issue, and respectfully requests that this Court grant certiorari to review this claim.

B. Discussion

"White v. State is limited to situations where the PCR applicant did not knowingly and intelligently waive his right to a direct appeal." Douglas v. State, 369 S.C. 213, 215, 631 S.E.2d 542, 543 (2006). Where a claim of ineffective assistance of appellate counsel for failure to raise a claim on an appeal that was actually taken is brought, the reviewing court applies Strickland. See Southerland v. State, 337 S.C. 610, 615-616, 524 S.E.2d 833, 836 (1999). In Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (2001), this Court "granted th[e] petition for a writ of certiorari to determine the appropriate remedy for the ineffective assistance of appellate counsel" and concluded that "the appropriate remedy is a new trial." 345 S.C. at 313, 548 S.E.2d at 852. This Court found that this remedy was appropriate because to conclude that Strickland's second prong had been met, a reviewing court must conclude that there was a reasonable probability that the result of the appellate proceeding would have been different. Id. at 315-316, 548 S.E.2d at 853-854. This Court had reached similar conclusions in Southerland, *supra*, and in Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991). Indeed, in Ezell, this Court held that its result was "controlled by Southerland." 345 S.C. at 315, 548 S.E.2d at 853.

Despite the clear language used by Ezell, as well as the outcomes of Southerland and Simpkins, the PCR court concluded that "[i]t appears that the Supreme Court purposefully limited the Ezell holding to the facts of that case, and did not establish a bright line rule for all ineffective assistance of appellate counsel claims." App. p. 1937. This finding is simply incorrect as a matter of law. This Court specifically stated it accepted certiorari to create a bright-line rule in Ezell, and the bright-line rule announced was that meritorious allegations of ineffective assistance of

appellate counsel warrant new trials. The PCR court should have applied that rule to this case. Furthermore, there are no decisions of this Court or of the Court of Appeals where a belated appeal has been granted as the appropriate remedy; instead, this Court has consistently granted a new trial in such circumstances, as seen in Ezell, Southerland, and Simpkins.[10] The PCR court implicitly acknowledged this fact when it reached to other jurisdictions to support its remedy. See App. p. 1938 (citing decisions in Kentucky, Massachusetts, and the Seventh Circuit Court of Appeals). The law of those jurisdictions, however, is not the law of South Carolina. The PCR court's failure to apply the prevailing law in this state constitutes an error of law and should be reversed. See Edwards v. State, *supra*, 392 S.C. at 455, 710 S.E.2d at 64 ("The appellate court will reverse the PCR court only where ... the decision was controlled by an error of law.") The Respondent respectfully requests that this Court grant the Petitioner's certiorari petition on this issue and order that a new trial be granted.

[10] In its letter to appellate counsel regarding his multitudinous errors in his filings, this Court noted that the existence of a direct appeal "would most likely destroy his right to relief under White," which demonstrates that White relief only exists when a direct appeal has never been taken. Supp. App. p. 4.

IV. The PCR court erred in failing to rule on the Respondent's remaining claims of ineffective assistance of appellate counsel; however, a remand is not necessary because the record before this Court provides this Court an ample basis to review the merits of the claims (Petitioner's Issue III).

A. How the Issue Arose Below

The Respondent filed a memorandum of law in conjunction with his PCR application below, which alleged five individualized claims of ineffective assistance of appellate counsel. App. pp. 1693-1698. As discussed above, the PCR court found that appellate counsel was ineffective in failing to present the Fourth Amendment claim and found that the appropriate remedy for this ineffectiveness was a second belated appeal. The PCR court did not rule on the remaining four allegations presented in the PCR application and the supporting memorandum because the PCR court concluded that the Respondent should be permitted to raise those allegations anew in the new belated appeal. See App. pp. 1812-1813. Following the issuance of the PCR court's order granting relief, both parties argued in Rule 59(e), SCRCP, motions that the PCR court should have reviewed the other allegations on the merits. See App. pp. 1830-1831 (Petitioner's Rule 59(e) motion); pp. 1901-1902 (Respondent's Rule 59(e) motion). The PCR court denied these motions. See App. pp. 1935-1939.

On appeal, the Petitioner argues that "this Court's [sic] decision not to rule upon all five of Deleon's allegations that were raised and timely presented at constitutes [sic] an error of law." Petition at 18. The Petitioner contends that the remedy for this error is to remand back to the PCR court "for specific findings of fact and conclusions concerning whether Deleon met his burden to prove" the four allegations that the PCR court did not rule upon. Petition at 19. The Respondent agrees with the Petitioner that the PCR court's decision not to rule on the remaining allegations was erroneous; however, the Petitioner does not believe that a remand to the PCR court is

necessary at this Court is well-equipped to rule on these allegations without additional findings of fact or conclusions of law. Accordingly, the Respondent respectfully requests that this Court deny certiorari on this claim.

B. Discussion

"Pursuant to S.C. Code Ann. § 17-27-80 (2003), the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. The failure to specifically rule on the issues precludes appellate review of the issues." Marlar v. State, 375 S.C. 407, 408, 653 S.E.2d 266, 266 (2007). Where the final order contains no findings of fact or conclusions of law regarding an issue presented, a Rule 59(e), SCRCP, motion must be filed to preserve those issues for appeal. Id. at 410, 653 S.E.2d at 267.

The PCR court concluded that it did not need to rule on the merits of the Respondent's remaining allegations because it erroneously concluded that a belated appeal was the appropriate remedy for the Respondent's successful allegation of ineffective assistance of appellate counsel. Since the PCR court should have granted a new trial, the PCR court should have also ruled on the remaining allegations. The Respondent respectfully asserts, however, that this Court does not need to remand this case back to the PCR court for additional findings regarding the unaddressed claims, as the Petitioner proposes. Preliminarily, the Respondent is only pursuing one of these claims on appeal to this Court: the directed verdict claim. See Respondent's Certiorari Petition at 8-17. Moreover, each of the claims raised below is resolved pursuant to Strickland. The first prong—deficient conduct—has been thoroughly addressed by the PCR court, and it is difficult to discern what additional findings the PCR court would need to make regarding Strickland's first prong for any of the unaddressed claims. The second prong—prejudice—turns on whether or not there is a reasonable probability that the unaddressed claims would have been successful on appeal. This is

purely a legal inquiry, and this Court can address the merits of the claims without first requiring a PCR court's findings on the issues. This is certainly true with regard to the directed verdict claim, which is the only one before this Court, because this Court can readily review the state of the evidence without the benefit of the PCR court's view of the issue. Indeed, this Court already has one court's findings on those claims: the trial court's rulings. Accordingly, while the Petitioner is correct that the PCR court erred in refusing to rule on the Respondent's remaining allegations, the Respondent does not believe that this Court should grant certiorari and grant the Petitioner's requested remand. This Court has the record before it to rule on the merits of the Respondent's directed verdict claim, and a remand is unnecessary.

CONCLUSION

For the reasons stated, the Respondent asks this Court to grant the certiorari petition for the limited basis of reviewing the propriety of the remedy granted by the PCR court. The Respondent asks this Court to deny the certiorari petition with regard to the remaining arguments raised by the Petitioner.

Respectfully submitted,

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ATTORNEY FOR RESPONDENT-PETITIONER.

This 12th day of February, 2015.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2014-000591
Lower Court Case No. 2012-CP-19-0304

FREDY DELEON, #304977,

RESPONDENT-PETITIONER,

v.

STATE OF SOUTH CAROLINA,

PETITIONER-RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following documents in the above-captioned action have been served upon opposing counsel, J. Walter Whitmire, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by hand-delivery, this 12th day of February, 2015:

1. Two copies of the Return to the Petitioner-Respondent's Petition for Writ of Certiorari;
2. Two copies of the Respondent-Petitioner's Petition for Writ of Certiorari;
3. One copy of the Supplemental Appendix;
4. One copy of the Motion to File Supplemental Appendix;
5. One copy of the Motion to Exceed Page Limitations; and

6. One copy of the Motion to Relax Rule 243(i), SCACR.

JEREMY A. THOMPSON
ATTORNEY FOR RESPONDENT-PETITIONER

SWORN TO BEFORE me this 12th day
of February, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: 7/10/2022