

STATE OF SOUTH CAROLINA
In The Supreme Court

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MAR 30 2015

APPEAL FROM HORRY COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable J. Cordell Maddox Jr., Circuit Court Judge

Appellate Case No. 2014-000308

Derrick Hollingsworth, Petitioner,

v.

State of South Carolina, Respondent.

**MOTION TO STRIKE PETITION FOR WRIT
OF CERTIORARI PURSUANT TO AUSTIN V. STATE**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for Respondent moves for this Court to strike Petitioner’s “Petition for Writ of Certiorari pursuant to Austin v. State” and hold the time limits for responding to said petition in abeyance. In support of this motion, Respondent would present the following facts:

1. A jury convicted Petitioner of murder on April 13, 2000. The Honorable Howard P. King sentenced Petitioner to life imprisonment without the possibility of parole. The South Carolina Court of Appeals affirmed Petitioner’s convictions and sentences. State v. Hollingsworth, Op. No. 2001-UP-504 (S.C. Ct. App. filed Nov. 15, 2001). Petitioner filed an initial application for post-conviction relief on July 16, 2002. The Honorable John L.

Breeden Jr. dismissed the application by order filed June 1, 2006. Petitioner filed a second application on March 29, 2011. The Honorable J. Cordell Maddox convened an evidentiary hearing into the application on August 28, 2013. Judge Maddox granted Petitioner an appeal from his initial application pursuant to Austin v. State by order filed November 4, 2013. Judge Maddox denied Respondent's motion for reconsideration on February 7, 2014.

2. As directed by King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992), Petitioner filed a Petition for Writ certiorari, an Austin petition, and an Appendix on December 10, 2014. Respondent is filing contemporaneously with this motion its Return to the Petition for Writ of Certiorari.

3. In his Austin petition, Petitioner's Issue Presented is as follows: "Petitioner's case should be remanded with the appointment of counsel to see if the record can be reconstructed since no transcript is available from the first PCR hearing?" Respondent submits an Austin petition is not the proper vehicle to raise this issue. The Austin petition should include argument on "questions from the previous post-conviction relief order." King, 308 S.C. at 349, 417 S.E.2d at 868. The Austin petition in this case contains no argument on any issues raised in the order denying the initial application. Rather, it asks the Court to remand the case for a reconstruction hearing. Respondent appreciates Petitioner's efforts to comply with King. However, the relief sought in his Austin petition is more appropriately sought by a motion to remand.

4. Accordingly, Respondent moves this Court to strike Petitioner's Austin petition, and direct Petitioner to file either a motion to remand or an amended Austin petition

addressing questions from the initial post-conviction relief order. Should the Court grant this motion to strike, Respondent would further request this Court hold the time limits to respond to any motion to remand or amended Austin petition in abeyance until such time as the Court has ruled on the question presented in the Petition for Writ of Certiorari. Resolution of the question in the Petition for Writ of Certiorari affects the necessity of responding to a motion to remand or questions from the initial application. If the Court determines the lower court erred in granting an appeal pursuant to Austin v. State, it will be unnecessary to remand the case or address any issues from the initial application. Accordingly, in the interest of judicial economy, Respondent asks the Court to address the questions in the Petition for Writ of Certiorari prior requiring Respondent to respond to any issues from the initial application.

5. Alternatively, if the Court should deny this motion to strike, Respondent would request, for the reasons noted in Paragraph 4, supra, this Court hold the time limits to respond to the Austin petition in abeyance until such time as the Court has ruled on the question presented in the Petition for Writ of Certiorari.

WHEREFORE, counsel for Respondent requests this Court grant the motion to strike the Austin petition and hold in abeyance the time limits for responding to any motion or petition arising from Petition's initial post-conviction relief application until such time as the Court has ruled on the pending Petition for Writ of Certiorari.

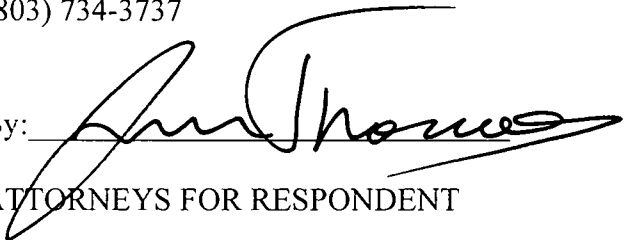
Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

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By: _____



ATTORNEYS FOR RESPONDENT

March 30, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

DERRICK HOLLINGSWORTH,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

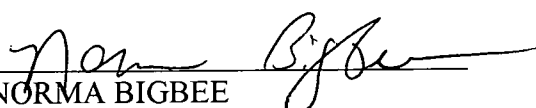
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari, Motion to Strike Petition For Writ of Certiorari Pursuant to Austin v. State and Motion to Compel Petitioner to Supplement the Appendix** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Chief Appellate Defender Robert M. Pachal
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 30th day of March, 2015



NORMA BIGBEE
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

March 30, 2015

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S.C. Supreme Court

VIA HAND DELIVERY

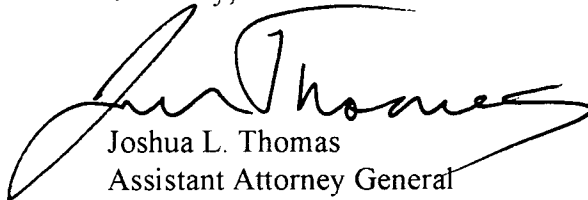
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Derrick Hollingsworth v. State of South Carolina
Appellate Case No: 2014-000308

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Petition for Writ of Certiorari, Motion to Strike Petition For Writ of Certiorari Pursuant to Austin v. State and Motion to Compel Petitioner to Supplement the Appendix** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,



Joshua L. Thomas
Assistant Attorney General
Bar No: 100777

JLT/nb
Enclosures

cc: Robert M. Pachak, Esquire (2 copies)