

# RPWB

RICHARDSON, PATRICK, LLC  
WESTBROOK & BRICKMAN LLC

Matthew A. Nickles, Esq.  
843.727.6675 Direct  
843.881.6183 Fax  
[mnickles@rpwb.com](mailto:mnickles@rpwb.com)

Jena L. Borden (IL & MO only) • James C. Bradley • Michael J. Brickman • Nina Fields Britt  
Elizabeth Middleton Burke • J. David Butler • Aaron R. Dias • D. Charles Dukes  
Jerry Hudson Evans • H. Blair Hahn • Daniel S. Haltiwanger • Gregory A. Lofstead  
Christiaan A. Marcum • Katie McElveen • Christopher J. Moore • Matthew A. Nickles  
Karl E. Novak • Misty Black O'Neal • Kimberly Keevers Palmer • Charles W. Patrick, Jr.  
Terry E. Richardson, Jr. • Thomas D. Rogers • A. Hoyt Rowell, III • Brady R. Thomas  
T. Christopher Tuck • James L. Ward, Jr. • Edward J. Westbrook • Kenneth J. Wilson  
Robert S. Wood • Of Counsel: Gordon C. Rhea (CA, DC & USVI only) David L. Suggs (MN & NY only)

**RECEIVED**  
OCT 08 2015  
S.C. SUPREME COURT

October 1, 2015

Via USPS First Class Mail

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

**Re: James Bowers v. Warden Joseph McFadden  
Appellate Case No. 2015-001946**

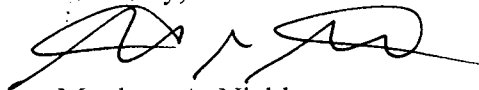
Dear Mr. Shearouse,

Attached is a courtesy copy of Petitioner's Consent Motion for the Inclusion of Additional Materials filed before the District Court for the District of South Carolina, Charleston Division, in the action Bowers v. McFadden, No. 0:14-cv-358-RMG, on October 1, 2015.

I am sending a courtesy copy of this motion pursuant to Rule 244(b), SCACR, which requires me to notify the Supreme Court of a motion to have the certifying court submit additional materials from the record.

Please contact me with any questions or concerns.

Sincerely,



Matthew A. Nickles

Enclosures

cc: Donald John Zelenka  
Attorney for Respondent, Warden McFadden

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

James Bowers, # 279049,	)	
	)	USDC No. 0:14-cv-358-RMG-PJG
Petitioner,	)	
	)	SC Appellate Case No. 2015-001946
v.	)	
	)	
Warden Joseph McFadden,	)	
	)	
Respondent.	)	
_____	)	

**PETITIONER’S CONSENT MOTION FOR THE INCLUSION OF ADDITIONAL MATERIALS**

Pursuant to Rule 244(b), SCACR, Petitioner moves, with the consent of counsel for the Respondent, for additional materials from the record before the certifying court to be sent to the South Carolina Supreme Court. Specifically, Petitioner requests that the District Court submit to the Supreme Court the indictment discussed in *State v. Lindsey*, 583 S.E.2d 740 (S.C. 2003), and included in the record at ECF No. 62-1.

By order dated September 11, 2015, the District Court certified certain questions to the South Carolina Supreme Court. ECF No. 64. As part of the certification order, the District Court provided certain documents from the record to the Supreme Court. Those documents were attached to the certification order as Exhibits A, B, C, and D. ECF No. 64-1. Under Rule 244(b), SCACR, those documents are the only materials that the South Carolina Supreme Court will consult in ruling on the certified questions. *Id.* (“The Supreme Court will not consider any documents or other evidentiary materials unless the certifying court has submitted those materials.”). However, if a party believes that additional materials from the record before the certifying court are necessary for the Supreme Court’s consideration, the party may move for the certifying court to submit those materials to the Supreme Court. *Id.* (“In the event a party

believes that additional materials from the record before the certifying court are necessary, it shall notify the Supreme Court and the certifying court so that the certifying court can determine if the additional materials will be submitted.”).

Here, Petitioner asserts that the indictment discussed in *State v. Lindsey*, 583 S.E.2d 740 (S.C. 2003), and included in the record at ECF No. 62-1, should be provided to the Supreme Court. Petitioner asserts this document is relevant to the Supreme Court’s consideration of the District Court’s second and fourth questions:

2. If a court may consider extrinsic evidence to determine a prior common law offense falls within a listed ‘serious’ or ‘most serious’ offense under § 17-25-45, which, if any, of the record evidence provided to the Court and referenced above would be proper for the Court to consider?

...

4. If the Court may use extrinsic evidence to determine if a common law offense is the equivalent of a listed serious offense, is the available record evidence legally sufficient to establish that the Petitioner’s 1976 conviction constituted first or second degree criminal sexual conduct?

ECF No. 64 at 7.

Accordingly, Petitioner requests that the District Court grant the relief sought in this motion. Specifically, Petitioner requests that the District Court submit to the South Carolina Supreme Court a copy of the indictment discussed in *State v. Lindsey*, 583 S.E.2d 740 (S.C. 2003), and included in the record at ECF No. 62-1, for the Supreme Court’s consideration when answering the certified questions. Respondent does not oppose the relief sought in this motion.

Pursuant to Rule 244(b), SCACR, and simultaneous with the filing of this motion with the District Court, Petitioner is providing a courtesy copy of this motion to the South Carolina Supreme Court.

Respectfully submitted,

/s/ Matthew A. Nickles

Matthew A. Nickles

SC Bar. No. 80364

RICHARDSON, PATRICK, WESTBROOK &  
BRICKMAN, LLC

1017 Chuck Dawley Blvd. (29464)

Post Office Box 1007

Mount Pleasant, South Carolina 29465

843.727.6500

[mnickles@rpwb.com](mailto:mnickles@rpwb.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on Thursday, October 01, 2015, a true and correct copy of Petitioner's Consent Motion For The Inclusion of Additional Materials was sent to the following counsel of record by electronic mail through ECF filing in accordance with the Federal Rules of Civil Procedure and the local rules of the United States District Court for the District of South Carolina:

Donald John Zelenka  
SC Attorney General's Office  
Post Office Box 11549  
Columbia, South Carolina 29211

*Attorney for Respondent*

I further certify that on Thursday, October 1, 2015, a true and correct copy of Petitioner's Consent Motion For The Inclusion of Additional Materials was sent to the S.C. Supreme Court via U.S. Mail.

/s/ Matthew A. Nickles  
Matthew A. Nickles, Esquire

October 1, 2015



RICHARDSON, PATRICK,  
WESTBROOK & BRICKMAN, LLC

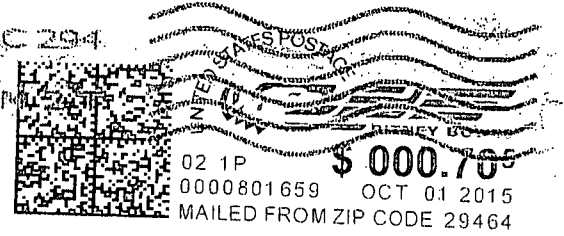
P.O. BOX 1007 (29465), 1017 CHUCK DAWLEY BLVD., MT. PLEASANT, SC 29464



Linda Hambleton

CHARLESTON, SC 294

01 OCT 2015 PM



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

29211+1330

