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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Honorable Edward W. Miller, Circuit Court Judge
Appellate Case No. 2015-002294

Norman Hayes,

Respondent,

vs.

State of South Carolina,

Appellant.

RETURN TO MOTION TO STRIKE

Petitioner would respectfully show unto this Court as follows:

The State filed its Petition for Writ of Certiorari on November 13, 2015. On December 1, 2015, Respondent served his Motion to Strike asking this Court to strike a paragraph in Petitioner's Petition for Writ of Certiorari that cited to an unpublished opinion Martin v. SCDC, Op. No. 2010-UP-367 (Ct. App. July 14, 2010) (Shearhouse Adv. Sh. No. 28 at 6).

Though the Respondent argues Martin "lacks the factual background and legal analysis contained in the Court of Appeal's opinion," Petitioner submits that Martin is undoubtedly applicable to the factual context in Hayes v. State, 413 S.C. 553, 777 S.E.2d 6 (2015). Both Martin and Hayes deal with the exact same issue of whether a defendant is entitled to credit for time previously served against a sentence imposed at a probation revocation hearing, where the credit for time served had previously been applied to defendant's original sentence. Despite the same issue being addressed, two different Court of Appeals panels came to opposite conclusions. Although unpublished, Martin was decided in 2010 some five years prior to the opinion in

Petitioner certainly acknowledges that Martin has no precedential effect; however, Martin is certainly instructive to the issue before this Court.


WHEREFORE, Petitioner asks this Court to deny Respondent's Motion to Strike.

Respectfully submitted,

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By:


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ATTORNEYS FOR APPELLANT

December 11, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
The Honorable Edward W. Miller, Circuit Court Judge
Lower Court Case No. 2011-CP-32-3630
Appellate Case No. 2015-002294

NORMAN HAYES,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Motion to Strike**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Laura R. Baer, Esquire
South Carolina Commission on Indigent Defense
Post Office Box 11589
Columbia, South Carolina 29211

This 11th day of December, 2015



CAROLINE COLLINS
LEGAL ASSISTANT