

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
The Honorable Michael G. Nettles, Circuit Court Judge

Common Pleas Case No. 2008-CP-43-00905
Appellate Case No. 2013-001968
(Capital PCR Action)

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DEC 18 2015

S.C. Supreme Court

BOBBY WAYNE STONE,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

MOTION TO STRIKE ARGUMENT FROM BRIEF OF PETITIONER

Comes now Respondent, above named, by and through the Office of the South Carolina Attorney General, and hereby respectfully moves to strike the arguments from the Brief of Petitioner filed on September 22, 2015 regarding Questions IB and IV from the Petition for Writ of Certiorari. This Court did not grant writ of certiorari for those two questions. Thus, inclusion of the arguments regarding those two questions is improper. In support of this Motion, Respondent would show this Court the following:

1. Petitioner filed and served a Petition for Writ of Certiorari on June 12, 2014. In the Petition, Petitioner raised the following questions:
 - I. Whether Petitioner's right to effective assistance of counsel during the guilt-or-innocence phase of trial was violated as a result of:

- (A) trial counsel's failure to secure necessary expert assistance to support the accident theory of the case; and,
 - (B) trial counsel's failure to object to the solicitor's improper statements in closing argument that Petitioner was planning to kill more police officers at the time of his arrest?
- II. Whether Petitioner's right to effective assistance of counsel was violated during the penalty phase as a result of:
- (A) trial counsel's failure to investigate and present evidence of Petitioner's low intellectual functioning and brain damage;
 - (B) trial counsel's failure to support the accident theory of the case; and
 - (C) trial counsel's failure to object to inadmissible victim impact evidence?
- III. Whether Petitioner's right to effective assistance of counsel was violated during the appellate proceedings?
- IV. Whether Petitioner was prejudiced as a result of the cumulative effect of counsel's multiple deficient acts and omissions?

Respondent subsequently filed a Return to Petition for Writ of Certiorari.

Petitioner filed a Reply to the Return to Petition for Writ of Certiorari.

2. By Order filed July 23, 2015, this Court granted the Petition for Writ of Certiorari as to all questions except for Questions IB and IV.

3. Petitioner subsequently filed and served his Brief of Petitioner on September 22, 2015. In the Brief of Petitioner, the Brief includes in the questions presented in Questions IB and IV of the Petition for Writ of Certiorari. (Brief of Petitioner, p. vii). Furthermore, the Brief of Petitioner includes argument regarding Questions IB and IV. (Brief of Petitioner, pp. 24-5, 53-5). In light of this Court's denial of writ of certiorari as to Questions IB and IV of the petition, Respondent submits the inclusion of these

arguments is improper under Rule 243(j), SCACR ("If the petition is granted, the Clerk shall notify each party or his attorney, specifying the question or questions to be considered, and the parties shall prepare briefs addressing the question(s)."). Thus, Respondent respectfully requests the arguments regarding Questions IB and IV in the Brief of Petitioner be stricken.

Wherefore, premises considered, Respondent respectfully requests this Court strike the arguments regarding Questions IB and IV in the Brief of Petitioner. Respondent requests any other relief this Court deems appropriate.

Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
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ALPHONSO SIMON, JR.
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By: 

ALPHONSO SIMON, JR.,
Assistant Attorney General

ATTORNEYS FOR RESPONDENT

December 18, 2015.

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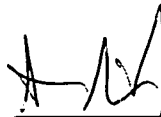
Respondent.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., do hereby certify that I have this date served the within Motion to Strike Argument from Brief of Petitioner in the foregoing action on the Petitioner by depositing two copies of the same via U.S. mail to his attorneys of record, Emily C. Paavola, Esq., Death Penalty Resource and Defense Center, 900 Elmwood Avenue, Ste. #200, Columbia, South Carolina 29201, and to John H. Blume, III, Esq., Blume, Norris & Franklin-Best, LLC, 900 Elmwood Avenue, Ste. #200, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 18th day of December, 2015.



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