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SC SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2015-001507

Robert F. Herbert, #231709 Petitioner,

v.

State of South Carolina, Respondent.

MOTION TO COMPEL PETITIONER TO SUPPLEMENT APPENDIX

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for Respondent moves for this Court to compel Petitioner to supplement the Appendix in this case. In support of this motion, Respondent would present the following facts:

1. Petitioner filed the Petition for Writ of Certiorari and Appendix in this matter on November 13, 2015.
2. This Court has granted Respondent's request for an extension of time in which to file the Return to Petition for Writ of Certiorari. The Return is due on March 31, 2016.

3. In reviewing the Appendix in preparation for Respondent's Return to Petition for Certiorari, Respondent noticed the Appendix does not contain the transcript from the reconvened hearing held on February 11, 2015, before the Honorable DeAndrea G. Benjamin. The transcript is pertinent to the case. Respondent submits that this transcript should be included in the Appendix as part of the full and complete record.

4. Counsel for Respondent has contacted counsel for Applicant to include this transcript from the post-conviction relief, as both documents are part of the lower court record.

5. Inasmuch as this transcript is relevant and pertinent material under Rule 243(f), SCACR that should be included in the Appendix, Counsel moves this Court to compel Petitioner to include the same in a Supplemental Appendix.

WHEREFORE, as the Appendix is incomplete, counsel for Respondent requests this Court: (1) grant the motion to compel Petitioner to supplement the Appendix; and (2) hold the time limits for the filing of the Return to Petition for Writ of Certiorari in abeyance until the motion is ruled upon.

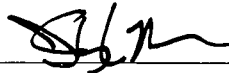
[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

ALAN WILSON
Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General
S.C. Bar No. 101443

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

By:  _____

ATTORNEYS FOR RESPONDENT

March 9, 2016

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2015-001507

Robert F. Herbert, #231709,.....Petitioner,

v.

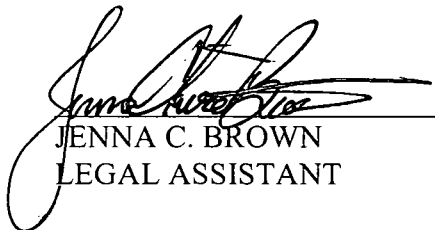
State of South Carolina,.....Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Motion to Compel Petitioner to Supplement Appendix** has been served upon the applicant by mailing two (2) copy in the United States mail, postage prepaid, addressed to Petitioner's counsel:

**Robert M. Pachak, Esquire
S.C. Commission of Indigent Defense
1330 Lady Street, Suite 401
Columbia, SC 29201**

This 9th day of March, 2016



JENNA C. BROWN
LEGAL ASSISTANT



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SC SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

March 9, 2016

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

Re: Robert F. Herbert, #231709 v. The State of South Carolina
Appellate Case No. 2015-001507
Lower Court Case No. 2013-CP-32-03974

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of **Motion to Compel Petitioner to Supplement Appendix** in the above-referenced case. By copy of this letter we are serving petitioner today.

Sincerely,

J. Clayton Mitchell
Assistant Attorney General
S.C. Bar No. 101443

JCM/jcb
Enclosures

cc: Robert M. Pachak, Esquire