

STATE OF SOUTH CAROLINA
In The Supreme Court

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MAY 31 2016
SC SUPREME COURT

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Appellate Case No. 2015-002140

Kenneth Hilton..... Petitioner,

v.

State of South Carolina, Respondent.

MOTION TO SUPPLEMENT APPENDIX

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

1. The Cherokee County Grand Jury indicted Petitioner for kidnapping and waived presentment on the charge of assault with intent to commit second-degree criminal sexual conduct. On January 23, 2013, Petitioner pleaded guilty before the Honorable J. Derham Cole. Judge Cole sentenced Petitioner to consecutive terms of twenty-five years for kidnapping and twenty years for assault with intent to commit second-degree criminal sexual conduct ("CSC").

2. Petitioner did not appeal his conviction or sentence.

3. Petitioner filed an application for post-conviction relief (PCR) May 1, 2013 (2013-CP-11-0302). On April 10, 2014, a hearing was held at which Petitioner moved before the Honorable J. Derham Cole to have his appointed counsel relieved. Judge Cole granted Petitioner's request and filed an order on July 22, 2014, relieving appointed counsel. A merits hearing was held on March 27, 2015, at which time Petitioner proceeded pro se. The Honorable Roger L. Couch denied and dismissed the PCR in an order filed September 28, 2015.

4. The Petition for Writ of Certiorari and Appendix in this case were filed on October 13, 2015. The Appendix, however, does not contain the transcript from the April 10, 2014, hearing before Judge Cole, a filed copy of the Order relieving counsel, the Appointment of Counsel Order from the Cherokee County Clerk of Court, or two motions to relieve counsel filed by Petitioner on February 7, 2014, and April 1, 2014, with the Cherokee County Clerk of Court. These documents are all a part of the lower record. Without these documents, the appellate record is incomplete and, as such, it must be included in the Appendix. Further, Respondent cannot address the merits of Petitioner's allegations without being able to reference these documents.

5. Inasmuch as these documents are relevant and pertinent material under Rule 243(f), SCACR that should be included in the Appendix, counsel respectfully requests 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 time limits for the filing of the Return to Petition for Writ of Certiorari in abeyance until the motion is ruled upon.

Respectfully submitted,

ALAN WILSON
Attorney General

ALICIA A. OLIVE
Assistant Attorney General
S.C. Bar # 102089

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

By: 

ATTORNEYS FOR RESPONDENT

May 31, 2016.

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SC SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Cherokee
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-002140

KENNETH HILTON,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

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

Robert M. Pachak, Esquire
SC Commission of Indigent Defense
Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 31st day of May, 2016



ASHLEY HAWORTH
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

May 31, 2016

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SC SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: Kenneth Hilton v. State of South Carolina
Appellate Case No.: 2015-002140

Dear Mr. Shearouse:

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

Sincerely,

Alicia A. Olive
Assistant Attorney General
SC Bar No. 102089

AAO/ah
Enclosures

cc: Robert M. Pachak, Esquire