

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUL 13 2016

SC SUPREME COURT

Appeal from Dorchester County

Honorable James E. Lockemy, Circuit Court Judge

MARION BOWMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213468

**MOTION TO FILE EIGHT RATHER THAN
THIRTEEN COPIES OF THE APPENDIX
FOLLOWING ONE ISSUE CERTIORARI GRANT**

Pursuant to Rule 240, SCACR, counsel for Marion Bowman respectfully moves that this Court allow Petitioner to file eight rather than thirteen copies of the appendix following the one sentencing phase issue certiorari grant in this case. In support of this motion, which opposing counsel kindly consents to below, counsel for petitioner would show:

1. The petition for writ of certiorari and appendix in this case was filed on October 18, 2013. The return to petition for writ of certiorari was filed on March 24, 2014. The reply to return to petition for writ of certiorari was filed on May 5, 2014.

2. There were seven issues in the petition for writ of certiorari:

1. Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by

failing to investigate and prepare for the impeachment of Taiwan Gadson and by failing to impeach the testimony of Taiwan Gadson in any meaningful way, including, but not limited to, the fact that the state threatened Gadson with the death penalty in his plea agreement, how Gadson's prior inconsistent statements showed that his story changed, and the fact Gadson had access to the murder weapon.

2. Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment of Travis Felder and by failing to impeach the testimony of Travis Felder in any meaningful way, including impeaching Felder with a videotape that would have shown Felder lied to the jury about buying the gas to burn the decedent's car, impeaching Felder on bias with his original charges, and impeaching Felder with his prior inconsistent statements.
3. Trial counsel rendered ineffective assistance, in derogation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution by failing to investigate and prepare for the impeachment Hiram Johnson and by failing to impeach the testimony of Hiram Johnson by cross-examining Johnson on his prior inconsistent statement which, critically, did not include his allegation at trial that petitioner confessed to the murder.
4. Petitioner is entitled to a new trial because the state withheld information necessary for impeachment and necessary for defense in violation of petitioner's due process rights under the Fourteenth Amendment and under the rules of discovery, those items being a memorandum of a law enforcement interview with Ricky Davis who heard Gadson confess to the murder, Gadson's mental health evaluation, and the fact that Hiram Johnson had unindicted pending charges at the time of his testimony.
5. Trial counsel rendered ineffective assistance of counsel because counsel had a conflict of interest between two of her clients -- Petitioner Bowman and Ricky Davis -- that caused counsel to fail to call Ricky Davis as a witness, despite Davis' statement that exculpated Petitioner Bowman and established Gadson shot the victim.
6. Defense counsel was ineffective for failing to object to the solicitor's examination of James Aiken regarding favorable prison conditions and recreational facilities available to inmates since this Court had long ago in *State v. Plath*, 281 S.C. 1, 313 S.E.2d 619 (1984), held such evidence was impermissible because it did not relate to the character of the defendant or the nature of his crime. This evidence was highly prejudicial in the eyes of the jury, and the failure to object to it properly at trial also barred consideration of this winning issue on petitioner's direct appeal.

7. Petitioner's rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and under state law were violated because the trial judge failed to properly consider his application as evidenced by the PCR court's wholesale adoption of the state's proposed order

3. On April 15, 2016, the petition for writ of certiorari was granted as to Petitioner's Question Six, a sentencing phase issue, by this Court. Certiorari was denied on the remaining questions.

4. The appendix in this case is twenty-three (23) volumes long.

5. The total page length for each set of the appendix is ten thousand (10,000) pages.

6. The petition for writ of certiorari and the return to the petition for writ of certiorari only cited between pages 4500-10000 of the Appendix when discussing issue six. However, since this is a death penalty case counsel understands the necessity of an entire record being before this Court, and the need to expeditiously process this case.

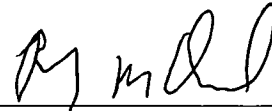
7. Counsel intends to file the brief of petitioner in the very near future, hopefully on Friday, July 22, 2016. This Court granting this motion would respectfully save resources for the Indigent Defense System.

8. Counsel for opposing counsel, Assistant Attorney General Alphonso Simon, graciously consents to this request as shown by his signature below.

9. Counsel makes this request in good faith and not for purpose of delay. Counsel hopes for a quick resolution of this motion, and he is working on the brief of petitioner to be filed in the very near future given his administrative duties and caseload, but he respectfully requests that the time limit for filing the brief of petitioner and the appendices be held in abeyance pending a ruling on this motion.

WHEREFORE, the undersigned counsel respectfully requests that the Court grant counsel's motion to file eight rather than thirteen copies of the appendix following the one sentencing phase

issue certiorari grant in this case. Counsel also requests that the time limits be held in abeyance pending a ruling on this motion.



Robert M. Dudek
Chief Appellate Defender

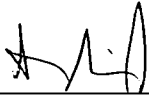
David Alexander
Appellate Defender

Michael Anzelmo
Nelson Mullins Riley & Scarborough

ATTORNEYS FOR PETITIONER

July 13, 2016

I Consent:



Alphonso Simon, Esquire
Assistant Attorney General