

ORIGINAL

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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STATE SUPREME COURT

WILLIS WEARY,

vs.

STATE OF SOUTH CAROLINA,

Respondent

On Writ of Certiorari to the Court of Appeals  
Appeal from Richland County  
G. Thomas Cooper, Jr., Trial Judge  
James R. Barber, III, Post-Conviction Relief Judge

Opinion No. 2016-UP-132 (S.C. Ct.App. Filed March 9, 2016)  
Appellate Case No. 2016-001534

**Return to State of South Carolina's Motion to File a Petition for Writ of Certiorari and Supplemental Appendix Out of Time**

Counsel for Petitioner Willis Weary respectfully objects to the State's motion to file a petition for writ of certiorari out of time. Petitioner was granted post-conviction almost five years ago in a written order filed October 3, 2011, and signed by the Honorable James R. Barber. The State filed a notice of intent to appeal. On December 16, 2011, the State filed a petition for writ of certiorari. On May 14, 2012, Respondent Weary filed a return to the State's petition for writ of certiorari.


On March 5, 2014, the South Carolina Court of Appeals granted the State's petition for writ of certiorari and asked for further briefing. On June 25, 2014, the State filed the brief of petitioner.

The brief of respondent was filed on December 19, 2014. On February 2, 2015, a three judge panel of the South Carolina Court of Appeals heard arguments in the case. On March 9, 2016, the Court of Appeals reversed the grant of relief by the PCR judge, finding deficient performance on the part of trial counsel but no prejudice. Both the State and Weary filed petitions for rehearing and both petitions were denied on June 24, 2016. Petitioner Weary filed a timely petition for writ of certiorari and appendix on July 25, 2016. The State failed to file a timely petition for writ of certiorari and appendix and now seeks to file out of time.

The State did not file a timely petition for writ of certiorari because, as the prevailing party, it interpreted Rule 220(c), SCACR, as allowing the State to present the issues raised in the petition for rehearing in the return to Weary's petition for writ of certiorari and only moves to file a petition and appendix out of time "upon further reflection and out of an abundance of caution." (Motion p. 2). It does not appear that the failure to file a timely petition for writ of certiorari was due to an inadvertent calendaring error. Counsel for Petitioner Weary takes no position on the State's interpretation of Rule 220(c). Counsel for Petitioner Weary does not oppose the filing of a supplemental appendix. Counsel for Petitioner Weary, however, opposes the State's motion to file a petition for writ of certiorari out of time. Counsel respectfully submits that allowing the State to file a petition for writ of certiorari out of time will further delay this post-conviction relief action that has already been pending in the appellate courts for almost five years.

Counsel respectfully requests that this Court deny the State's motion to file a petition for writ of certiorari out of time and order briefing in an expeditious manner and as the Court deems just and proper.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender

This 6th day of September, 2016.

STATE OF SOUTH CAROLINA  
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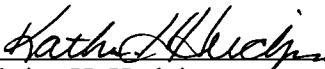
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CERTIFICATE OF SERVICE

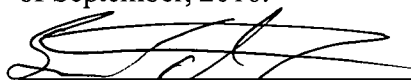
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The undersigned attorney hereby certifies that a true copy of the Return to the State's Motion to File a Petition for Writ of Certiorari Out of Time in the above-entitled case has been served upon Megan Harrigan Jameson, Esquire, this 6th day of September, 2016.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 6th day  
of September, 2016.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.