

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM Horry COUNTY  
Court of Common Pleas  
G. Thomas Cooper, Jr., Circuit Court Judge

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Appellate Case No. 2015-002511

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**RECEIVED**

**OCT 31 2016**

**S.C. SUPREME COURT**

LEMONDE C. HOLLAND,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

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**REPLY TO RETURN  
TO PETITION FOR WRIT OF CERTIORARI**

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**TARA DAWN SHURLING**  
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**ATTORNEY FOR PETITIONER.**

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## ARGUMENT

Petitioner, acting through undersigned Counsel, would offer the following in Reply to certain points made by Respondent in the State's Return. With regard to all other issues, Petitioner relies on the arguments and authorities presented in his Petition for Writ of Certiorari previously filed with this Honorable Court.

### QUESTION I

Petitioner relies on the arguments and authorities presented in his Petition for Writ of Certiorari.

### QUESTION II

In the first Order issued by the Court in this PCR action, the Court expressly found Trial Counsel was deficient in his representation of Petitioner for failing "to sufficiently examine Dr. Proctor by providing the specific scenario as to the Victim and the alleged assailant (Holland) *as well as* counsel's failure to recall Dr. Proctor to the witness and following the testimony of Bennick ..." May 19, 2015 Order; App. p. 642. (Emphasis added) In said Order, the lower court made very specific findings of fact which supported the finding that Petitioner had met his burden of proof concerning his claim that counsel's representation fell below prevailing norms with regard to this claim. May 19, 2015 Order; App. p. 642- p. 643.

The Rule 59(e), SCRCF, Motion to Alter or Amend, Respondent filed after the May 19, 2015 Order granting Petitioner a new trial, did not specifically argue for reconsideration of the PCR Court's grant of a new trial on this issue. While the motion acknowledged that relief was granted on two grounds, the arguments advanced therein only addressed Trial Counsel's failure to further cross-examine Dr. Proctor. App. p. 646- p. 652. In the Order of Dismissal subsequently issued by the PCR Court following Respondent's Rule 59(e) Motion, SCRCF, the Court summarized Trial Counsel's testimony relevant to the claim that he was ineffective for not adequately cross-

examining Dr. Proctor at Petitioner's trial. September 2, 2015, Order of Dismissal; App. p. 664. In the Court's rulings on Petitioner's Sixth Amendment claims, there are specific findings with regard to Counsel's failure to further cross-examine Dr. Proctor. September 2, 2015, Order of Dismissal; App. pp. 665-667. Interestingly, the Court did not specifically address Petitioner's claim that Trial Counsel was ineffective for failing to recall Dr. Proctor following the testimony of Bennick. While the Order of Dismissal orders that Petitioner's Application be denied and dismissed, it does not reverse its earlier grant of a new trial on this specific allegation. Previous Counsel for Respondent, not the current attorney assigned to this case, prepared the proposed order which was ultimately adopted by the PCR Court and filed September 2, 2015. Once that Order, which did not reverse the previous grant of relief *on this ground* was filed, Respondent did not file a Rule 59(e), SCRCP, asking for a new ruling on this Sixth Amendment claim in addition to the express findings of fact and rulings of law found in the Order regarding Question I advanced by Petitioner. Neither did Respondent file an appeal from the PCR Court's May 19, 2015 ruling on this ground. Therefore, the grant of relief on the issue addressed in Question II is not only the law of the case, but is not properly before this Honorable Court for appellate review in light of Respondent's failure to appeal that ruling in the May 19, 2015 Order.

In light of the above, Petitioner asserts that the May 19, 2015 Order granting Petitioner a new trial based upon Trial Counsel's failure to recall Dr. Proctor remains in effect. The May 19, 2015 Order made a very specific finding that Trial Counsel was ineffective for failing to recall Dr. Proctor following Bennick's testimony. It should be noted that the issue advanced in Question II is distinct from the claim found in Question I inasmuch as the issue at the core of Question II was Trial Counsel's failure to *recall* Dr. Proctor based upon the intervening testimony of Bennick. The Order granting Petitioner a new trial expressly ruled on this issue and found that Petitioner had satisfied both prongs of the standard set forth in *Strickland, supra*. May 19, 2015 Order; App. pp. 642- p. 643.

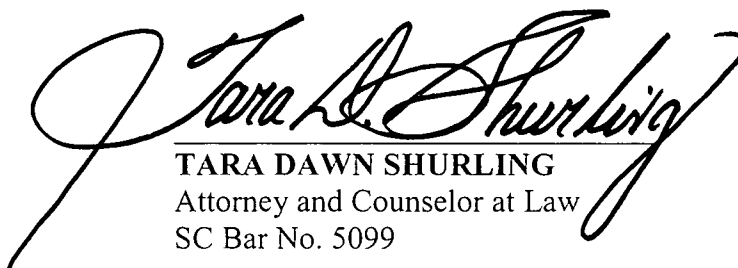
Inasmuch as the subsequent Order of Dismissal does not reverse the earlier grant of a new trial on this ground, and Respondent did not file a timely appeal from the May 19, 2015 Order, Petitioner asserts that his judgment and sentence have been vacated pursuant to the May 19, 2015 Order. Respondent has very specifically argued that this issue *is not* addressed in the Order of Dismissal. Petitioner would argue that Respondent has effectively conceded that the only ruling of the PCR Court on this issue stands.

Alternatively, should this Honorable Court find that the Order of Dismissal does adequately rule on this issue, Petitioner relies upon the arguments and authorities addressed in his petition.

CONCLUSION

Petitioner asks for this Court's finding that the PCR Court's ruling on Question II, as found in the Order entered by the Court on May 19, 2015, stands and that Petitioner's case to the should be remanded Horry County Court of General Sessions for a new trial. Alternatively, Petitioner seeks this Court's finding that the PCR Court's original order granting Petitioner a new trial was proper and that a new trial was warranted based on the Sixth Amendment allegations raised and properly developed by Petitioner.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

This 27<sup>th</sup> day of October, 2016.

STATE OF SOUTH CAROLINA  
In The Supreme Court

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S.C. SUPREME COURT

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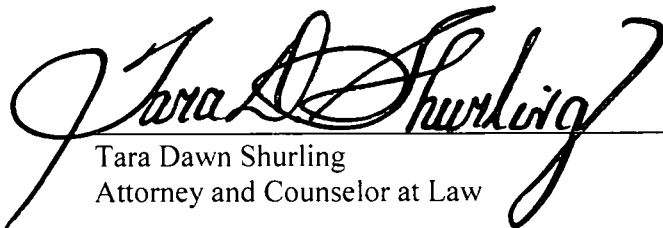
STATE OF SOUTH CAROLINA,

RESPONDENT.


**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a copy of the Reply to the Return to the Petition for Writ of Certiorari in the above-entitled case has been served upon opposing counsel this the 27<sup>th</sup> day of October, 2016, by depositing one (1) copy of the same in the U.S. Mail, postage prepaid addressed to:

Jessica Kinard  
Assistant Attorney General  
Office of the Attorney General  
P. O. Box 11549  
Columbia, SC 29211

  
Tara Dawn Shurling  
Attorney and Counselor at Law

SWORN TO BEFORE me this 27<sup>th</sup> day  
of October, 2016.

  
Notary Public for South Carolina  
My Commission Expires: 2/28/24

LAW OFFICE OF



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October 27, 2016

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

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OCT 31 2016

S.C. SUPREME COURT

RE: Lemonde C. Holland, 322379 v. State of South Carolina;  
Appellate Case No. 2015-002511.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of the Reply to State's Return to Petition for Writ of Certiorari and my Certificate of Service in the above-captioned case. I would appreciate your clocking and returning the extra two (2) copies of the Reply in the envelope provided. Thank you for your assistance in this matter. I remain,

Sincerely yours,

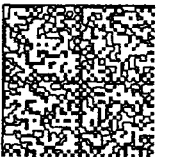
A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is written in a cursive, flowing style.

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sm

Enclosures

cc: Jessica Kinard, Assistant Attorney General (w/enclosures)  
Lemonde C. Holland, #322379 (w/enclosure)  
James Holland (w/ enclosure)



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The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
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