

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of General Sessions
Thomas W. Cooper, Jr., Circuit Court Judge

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S.C. SUPREME COURT

C/A No. 2016-CP-43-829
Capital PCR

Stephen Corey Bryant, SCDC #5252,

Petitioner

vs.

State of South Carolina,

Respondent

Appellate Case No. 2016-002228

**MOTION TO STAY FILING TIME FOR PETITION AND RETURN PENDING
CONSIDERATION OF PETITIONER'S RULE 243(C), SCACR EXPLANATION AND
DECISION ON WHETHER THE NOTICE OF APPEAL SHOULD BE DISMISSED**

On November 16, 2016, Petitioner filed his required explanation pursuant to Rule 243(c), SCACR.¹ Petitioner seeks to file a petition for writ of certiorari on or about December 28, 2016. (See Letter dated December 14, 2016). However, this Court has not yet issued a ruling on whether the notice should be summarily dismissed. Therefore, Respondent seeks to stay all filing times pending the Court's initial consideration. In support of the motion, Respondent would respectfully submit:

1. Rule 243(c), SCACR requires an explanation with the notice of appeal when the PCR action at issue was dismissed as successive and/or untimely. The "explanation must

¹ With the explanation, Petitioner also moved to stay consideration of his explanation until this Court issued a ruling in *Robertson v. State*, Appellate Case No. 2012-205909 (argued October 8, 2015). The motion for stay became moot in light of the issuance of this Court's opinion in that case. *Robertson v. State*, Opinion No. 27691 (S.C.Sup.Ct. filed Dec. 14, 2016).

contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper.” Id. The rule also provides that this Court may dismiss the appeal “[i]f the petitioner fails to make a sufficient showing” the PCR judge erred in summarily dismissing the action.

2. This Court has summarily dismissed notices where the explanation fails to make the required showing. *See, e.g., Kelly v. State*, 404 S.C. 365, 366, 745 S.E.2d 377, 378 (2013); *Richardson v. Stewart*, 386 S.C. 282, 282, 688 S.E.2d 124, 124 n. 1 (2010) (noted as part of litigation history); *Smith v. State*, 412 S.C. 472, 475, 772 S.E.2d 286, 288 (Ct. App. 2015) (noted in procedural history).

3. To comply with the intent and function of Rule 243(c), Respondent moves to stay the time for filing a petition and return pending the Court’s consideration of the explanation and decision as to whether the notice should be dismissed.

Respectfully submitted,

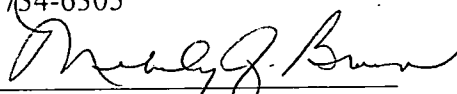
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By: 
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SC Bar No. 14244

ATTORNEYS FOR RESPONDENT

December 19, 2016
Columbia, South Carolina.

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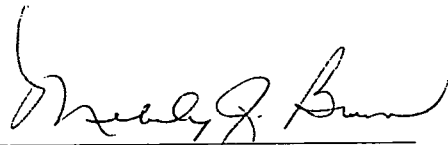
CERTIFICATE OF SERVICE

I, Melody J. Brown, Senior Assistant Attorney General, certify that I have served the Respondent's foregoing *Motion to Stay Filing Time for Petition and Return Pending Consideration of Petitioner's Rule 243(C), SCACR Explanation and Decision on Whether the Notice of Appeal Should be Dismissed* on Petitioner by depositing one copy of same in the United States mail, postage prepaid, addressed to his counsel as follows:

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December 19, 2016.
Columbia, South Carolina.