

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JAN 13 2017

Appeal from Kershaw County
Honorable James R. Barber, Circuit Court Judge
Appellate Case No. 2016-002345

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

EARNEST MAURICE ALLEN,

PETITIONER.

(Reply)

RESPONSE TO RESPONDENT'S RETURN

Earnest M. Allen#310134
Pro'Se Petitioner
M.C.C.I. F3-B-120
386 Redemption Way
McCormick, S.C. 29899

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TABLE OF AUTHORITIES

Cases:

State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015)

Statutes:

S.C. Code 16-3-29

Other Authorities:

Rule 208(b)(7), SCACR

STATEMENT OF ISSUE ON CERTIORARI

The Court of Appeals did not act on and correctly deny Petitioner's Motion To Supplement a Final Brief because the Petitioner never received anything from the South Carolina Court of Appeals, nor Appeal Counsel in regards to the status of that motion.

STATEMENT OF THE CASE

Procedural History

After timely filing Initial Brief on January 6, 2015, the Court of Appeals handed down its ruling in State v. King on April 22, 2015. That decision deals squarely with the intent required for conviction under S.C. Code 16-3-29. Therefore, the case was brought to appeal counsel's attention. On February 24, 2016, a Motion To Supplement A Final Brief Based On Recently Decided Case Law containing this information was submitted to the Court in the effort to bring this matter to the Court's attention before it made a decision regarding petitioner's appeal. But on April 6, 2016, the court made the decision to affirm the petitioner's convictions for Attempted Murder without applying its holding reached in State v. King.

In response to the decision of the Court, the petitioner contacted his appeal counsel and requested that he submit A Petition For A Rehearing as soon as possible, but again it was to no avail. The petitioner then asked if appeal counsel would submit a motion to the Court to relieve himself as counsel, but again it was to no avail because appeal counsel was under the impression that he would automatically be taken off of the case due to the fact that the Court had made its decision; saying, "Please be advised that our office will be closing your case along with this letter."; and "In short, counsel would not seek relief through the Direct Appeal process on Petitioner's behalf."

With no other way to file A Petition For A Rehearing on time, the Petitioner filed Pro'Se on April 20, 2016, and it was responded to by Assistant Attorney General Mark R. Farthing on April 27, 2016, requesting that the Court not consider the petition due to "Hybrid Representation." The letter from the Attorney General's Office was then used to show appeal counsel that he hadn't been removed automatically as he thought he would be, and that he indeed needed to file a Motion To Be Relieved As Counsel if the petitioner wished to file pro'se.

It wasn't until May 3, 2016, that appeal counsel made the initiative to submit that motion, and because of his mistake appeal counsel requested that the Court allow the petitioner to re-file the prior pro'se petition for a

rehearing and suggested that the petitioner resend the petition to the Court if he wished the Court to consider it; petitioner did so, but again it was to no avail.

Finally, on July 15, 2016, the petitioner received a letter from the Court informing him that the Motion To Be Relieved As Counsel had been granted and that the petitioner could now proceed pro'se. But on July 18, 2016, the Court sent the Remittitur. . .

When the petitioner received a Remittitur, and not a response to the Petition For A Rehearing, petitioner took it to mean that the Court was not going to consider it and submitted a motion to the Court requesting that it recall the remittitur; and on September 9, 2016, the Court found reason to grant it. However, on October 21, 2016, the Court found reason to deny the petition. Therefore, the petitioner is now bringing this issue before the Supreme Court.

ARGUMENT

The Court of Appeals did not act on and correctly deny petitioner's Motion To Supplement A Final Brief because the petitioner never received anything from the South Carolina Court of Appeals, nor Appeal Counsel in regards to the status of that motion.

In the Return To Petitioner For Writ Of Certiorari, the Respondent contends that on March 28, 2016, the Court of Appeals denied petitioner's Motion To Supplement, and herein is where the problem lies. The petitioner never received anything from the Court of Appeals or Appeal Counsel in regards to that motion. Had the petitioner received an order from the Court denying the motion, the petitioner would have included a copy of that motion in the Appendix. Furthermore, had the petitioner been informed that the motion was denied, he would have been appealing the fact that the motion was denied by the Court, instead of arguing that the Court failed to rule on the motion.

Had the petitioner been informed that the motion was denied, the petitioner would have argued against the Court's decision to deny it in the Petition For A Rehearing that was submitted on April 20, 2016. Nowhere in the Record did the petitioner mention that he was aware of the fact that the motion had been denied. But everywhere in the Record it shows that the petitioner was unaware of the status of that motion.

Had the Court of Appeals or Appeal counsel sent the petitioner a copy of the order denying the motion the petitioner's Petition For A Rehearing, and the petitioner's Petition For Writ Of Certiorari would have been based on that because SCACR Rule 208(b)(7) states that, "When pertinent and significant authorities come to the attention of a party after his Initial Brief has been served and filed, the party shall promptly advise the clerk of the Appellate Court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to an issue to the citations to which the citations pertain, but the lesser shall, without argument, state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited."

Therefore, the issue should not be whether or not the issue was abandoned by the petitioner. But rather did the Court of Appeals err by failing to act on petitioner's Motion To Supplement A Final Brief with the issue of trial Judge's erroneous instructions to the jury that "a specific intent

to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury." State v. King, 412 S.C. 403, 772 S.E.2d. 189 (2015)?

This is the essential issue of the petitioner's Writ Of Certiorari and the focal issue which the petitioner is asking the Court to review and address because contrary to the ascertain by the Respondent that the petitioner's Motion To Supplement was ruled on and denied, petitioner has received no such motion hearing, judgment, ruling, or order from any Court denying his Motion To Supplement the Record in his appeal.

CONCLUSION

Therefore, for all the foregoing reasons, it is respectfully submitted that the Petition For Writ Of Certiorari should be granted.

Respectfully submitted,

Earnest M. Allen
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Pro'Se

January 6, 2017

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THE STATE,

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EARNEST MAURICE ALLEN,

PETITIONER,

AFFIDAVIT OF SERVICE

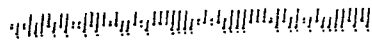
I, Earnest M. Allen, certify that I have served the within Response To Respondent's Return on the Supreme Court by depositing two copies of the same the United States mail, postage prepaid, addressed to:

Daniel E. Shearouse, Clerk Of Court
Post Office Box 11330
Columbia, S.C. 29211

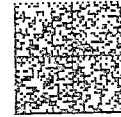
I further certify that all parties required by Rule to be served have been served. This 6th day of January, 2017.

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