

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge
Trial Court Case No. 2010-CP-26-6653

Appellate Case No. 2011-191878

Somjai Fung Fue Starnes

Petitioner,

v.

State of South Carolina

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S RETURN TO
PETITIONER'S PETITION TO SUPPLEMENT APPENDIX

On November 13, 2011, Petitioner received Respondent's Return to her Petition to Supplement the Appendix¹. Respondent seems to suggest Petitioner seeks to introduce evidence on a topic not addressed in the record. This is incorrect. Petitioner only seeks to introduce documents that relate to an issue raised in Petitioner's PCR Application and discussed at trial which is evident by the

¹ Respondent's Return bears no post mark but the postage meter used by their office is dated November 9, 2012. However, Petitioner checked her mail on Saturday, November 10th, and the Return did not arrive. Due to the holiday, the Return arrived on Tuesday, November 13th, providing Petitioner with one day to prepare and file her Reply.

Petitioner mentions this not to suggest Respondent did not mail the document as stated. Petitioner regularly receives Columbia intra-city mail late and sometimes up to as much as 30 days after the postmark. Petitioner points this out to this Court so it will be aware of the serious problems faced by attorneys due to the increasing unreliability of the United States Post Office.

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trial transcript.

More importantly, Petitioner only seeks to supplement her Appendix with some of the documents Respondent previously stipulated should be entered into the trial record. It was the lack of experience of Petitioner's counsel that led to her failure to realize the parties' previous discussion with the court reporter would be insufficient to enter the documents into the record.

Respondent's objections are disingenuous. Although Respondent previously agreed these documents should be part of the record, now circumstances have changed since the time of their agreement and Respondent is afforded the benefit of hindsight. Based on their previous stipulation, Petitioner asked Respondent to consent to her supplementing the trial record so these documents would be in the record below. But Respondent decided to renege on their previous agreement presumably to gain an unanticipated benefit without any concern for the impact their decision had on Petitioner's right to a full and fair review of her case. Interestingly enough, this is yet another example of the exact same behavior which Petitioner brings before this Court for judicial review.

Without the benefit of the documents which Respondent previously agreed should be part of the record, this Court cannot afford Petitioner a full and adequate review and therefore Petitioner requests that her Petition be granted.

For these reasons, Petitioner asks that her Petition be granted.

Respectfully submitted,



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CERTIFICATE OF TRANSMITTAL

I certify I transmitted the following in the manner described below:

Date: November 14, 2012 (Wednesday)


Document(s): Petitioner's Reply to Respondent's Return

VIA US MAIL:

SC Supreme Court
Post Office Box 11330
1231 Gervais Street
Columbia, SC 29201

Christina J. Catoe
Office of Attorney General
Post Office Box 11549
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↓
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