

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Richland County
L. Casey Manning, Circuit Court Judge
Appellate Case No. 2016-000415

S.C. SUPREME COURT

CLINTON FOLKES,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

**MOTION TO HOLD APPEAL IN ABEYANCE WHILE PETITIONER CORRECTS
ERRORS IN PETITION FOR A WRIT OF CERTIORARI**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

During its November 2007 term of court, the Richland County Grand Jury indicted Petitioner for assault and battery with intent to kill (2007-GS-40-06654). E. Deon O’Neil, Esquire, and Luke Shealey, Esquire of the Richland County Public Defender’s Office represented Petitioner. The State was represented by Assistant Solicitors Heather Weiss and Andrew Rogers for the Fifth Circuit Solicitor’s Office. On July 7, 2008, Petitioner proceeded to jury trial before the Honorable James R. Barber, III. On July 9, 2008, the jury convicted Petitioner as indicted. On July 9, 2008, Judge Barber sentenced Petitioner to life imprisonment without parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior convictions.

Petitioner appealed his conviction and sentence. Appellate Defender M. Celia Robinson of the South Carolina Commission of Indigent Defense-Division of Appellate Defense represented him on this appeal. Following briefing, the South Carolina Court of Appeals affirmed Petitioner's conviction and sentence in an unpublished opinion. State v. Clinton Folkes, 2010-UP-420 (filed September 24, 2010). The Remittitur was sent on October 18, 2010.

On October 26, 2010, Petitioner filed a *pro se* application for post-conviction relief, alleging he was being held in custody unlawfully based on allegations of ineffective assistance of counsel and "judicial error." The State made its return on February 8, 2011, requesting an evidentiary hearing be held. Thereafter, on March 12, 2014, Petitioner, through counsel Tara D. Shurling, filed an amended application alleging twenty-one additional grounds for relief. Evidentiary hearings into Petitioner's application were held on July 17, 2014 and September 25, 2014, before the Honorable Casey L. Manning. At the evidentiary hearings, Petitioner proceeded forward on the twenty-one allegations as set forth in this amended application. In support of his application, he testified on his own behalf and presented testimony from Chief Appellate Defender Robert Dudek, former Appellate Defender M. Celia Robinson, Officer David Battiste, and trial counsels Deon O'Neil and Luke Shealey.

At the conclusion of the hearings, the post-conviction relief court requested proposed orders from both parties. Following his review of both parties and the transcript of the evidentiary hearings, the court denied and dismissed Petitioner's application by written order filed January 14, 2016. Thereafter, Petitioner filed a notice of appeal.

II.

On October 4, 2016, following five extensions, Petitioner filed his Petition for a Writ of Certiorari, Appendix, and Motion to Exceed the Page Limits as set forth in Rule 243(E),

SCACR. Respondent did not object to Petitioner's Motion and on November 9, 2016, this Court issued an Order granting Petitioner's Motion and accepting the Petition as filed.

III.

While preparing the State's Return to the Petition for a Writ of Certiorari, undersigned counsel discovered that in Section "C" of Petitioner's Petition for a Writ of Certiorari ("Summary of Evidence Adduced at Trial"), Petition has incorrectly cited the arguments of Petitioner's prior appellate counsel during his direct appeal rather than the trial transcript. Additionally, the pages which Petitioner references to support these facts cite to the Record on Appeal, which is not included in the Appendix before this Court. Furthermore, the Record on Appeal used during Petitioner's direct appeal is paginated differently than the transcript and omits portions of the trial transcript. Therefore, Respondent is unable to determine what portions of the Appendix Petitioner is citing in in his petition.

IV.

Upon realizing this error, undersigned counsel immediately called and emailed Petitioner's counsel to bring this error to her attention. Petitioner acknowledged this error and indicated she would promptly fix these citations and notify this Court. On February 7, 2017, Petitioner sent a letter to this Court explaining the error and her intention to fix her Petition in a timely manner. This letter is attached to this motion as Attachment A.

V.

Because Respondent is unable to ascertain what Petitioner intends to cite to for this portion of his Petition, Respondent is unable to file its responsive Return to the Petition for a Writ of Certiorari until Petitioner corrects these errors.

WHEREFORE, Respondent prays that the Court hold the time for filing the Return to the Petition for a Writ of Certiorari in abeyance pending Petitioner's correction of his Petition; hold the filing deadlines in abeyance pending resolution of this motion; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General

By: 
Megan Harrigan Jameson

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

February 8, 2017

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vs.

STATE OF SOUTH CAROLINA,


Respondent.

PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Motion to Hold Appeal in Abeyance by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tara D. Shurling, Esquire
3614 Landmark Drive, Suite A
Columbia, SC 29204

I further certify that all parties required by Rule to be served have been served.
This 8th day of February, 2017.


MEGAN HARRIGAN JAMESON
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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**TARA DAWN SHURLING, PA**

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February 7, 2017

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

Re: Clinton Folkes, #216506 v. State of South Carolina; 2016-000415.

Dear Mr. Shearouse:

It is my understanding that Respondent's Return is due for filing tomorrow, February 8, 2017. The due date for that Return has been previously extended twice. Since the second extension was granted it has been brought to my attention that the Appendix cites in a portion of my Petition for Writ of Certiorari are inaccurate. On pages eleven through fifteen, in the subsection of my Petition labeled "Summary of Evidence Adduced at Trial", the page references to the Appendix are incorrect. Somehow, I inadvertently cited to the pages in the Final Brief of Appellant wherein the quoted portions of the trial record were cited. Unfortunately, the page references used by Appellate Counsel are to the Record on Appeal. I will now need to go back and reconcile the Appendix pages cited in this portion of the Certiorari Petition to the entire trial transcript as it appears in the Appendix filed in this matter. The entire trial transcript, as opposed to the Record on Appeal, is contained in the Appendix. I certainly hope to get that done quickly. I apologize to the Court and to Respondent for this inadvertent error.

It is my understanding that Counsel for Respondent, Megan H. Jameson, attends to file a request for a third extension in this matter. I would of course consent to that request and would in fact appreciate the Court granting Ms. Jameson the additional time in light of the citation errors acknowledged above. Thank you very much.

Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

cc: Megan H. Jameson, Assistant Attorney General (by email and U. S. Mail)