

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable L. Casey Manning, Circuit Court Judge
MAR 14 2017
S.C. SUPREME COURT

Appellate Case No. 2016-000415

CLINTON FOLKES, 216506,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**MOTION FOR LEAVE TO FILE AMENDED
PETITION FOR WRIT OF CERTIORARI**

NOW COMES the Petitioner in the above captioned matter seeking leave to file an Amended Petition for Writ of Certiorari. The Petition for Writ of Certiorari was originally filed on this matter on October 7, 2016. Thereafter, Counsel for Respondent brought it to the attention of undersigned Counsel for Petitioner that the citations to the record found in the Summary of Evidence Adduced at Trial, found at pages 11-17 of this Petition, were to the Record on Appeal from the direct appeal rather than the Appendix before the Court in this Post-Conviction Relief appeal. Thereafter, Respondent filed a "Motion to Hold Appeal in Abeyance While Petitioner Corrects Errors in Petition for a Writ of Certiorari" on February 8, 2017, based upon these errors



in the citation to the record below. By agreement of the parties these citations were subsequently corrected in the Petition previously filed with the Court to conform with the portions of the Appendix wherein the cited testimony was located. This Court's Order dated February 9, 2017 gave Respondent thirty (30) days to file its Return.

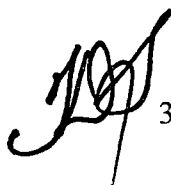
The Summary of Evidence Adduced at Trial, wherein these references were found, was taken largely from the Final Brief of Appellant on direct appeal. After the citations to the record found in this portion of the Certiorari Petition were corrected, Respondent advised Counsel of the State's position that this portion of the Petition was still inadequately supported by citations to the trial record. Respondent asserted that the Summary of Evidence Adduced at Trial contained several factual statements made without adequate citations to the trial record to indicate where the testimony supporting those assertions was located. This claim was not made in Respondent's earlier Motion to Stay. Counsel nevertheless verified that some of the factual statements in the Summary of Evidence Adduced at Trial did in fact not include citations to the trial record. As noted in the original Certiorari Petition, that summary of the evidence was taken from the Final Brief of Appellant, submitted on Petitioner's behalf by the Appellate Division of the South Carolina Commission on Indigent Defense. Counsel would no doubt have noted the omission of adequate citations to the trial record, and corrected the same, had the content of this section directly related to the ineffective of appellate counsel claim raised by Petitioner.

Counsel has now gone back through the portion of the Certiorari Petition in question and added additional citations to the trial record. In order to distinguish those citations to the record which were in the Brief of Appellant from those added by Counsel in this PCR appeal, Counsel has placed the additional citations to the record added by her in brackets, and has so noted in footnote 2 of the Certiorari Petition. In one instance Counsel determined that a statement

contained in the Brief of Appellant was actually not directly supported by trial testimony. Counsel amended that statement to more correctly reference trial testimony, provided appropriate citations to the appendix and added a footnote to indicate the change made from the language found in the Brief of Appellant. In one other instance, Counsel was unable to find any trial testimony supporting a factual statement included in the Brief of Appellant. For that reason, that sentence was stricken from the Certiorari Petition.

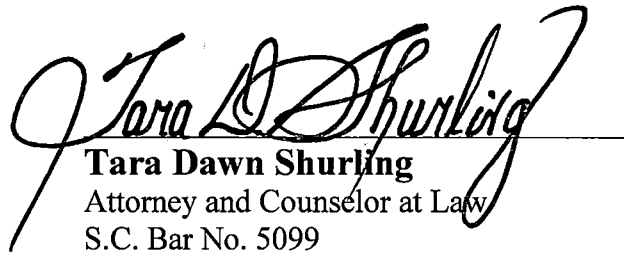
All the changes made in this Certiorari Petition were contained on pages 11-15 of the original version filed and the corrected pages subsequently submitted. With the additional changes addressed herein, it was necessary to replace pages 11-17 because of changes in pagination which resulted on pages 16 and 17 after these changes were made. The corrected pages were served on opposing counsel by email on March 8, 2017. By return email, Respondent indicated that the State had no objections to these changes. *See*, Attachment A, Email thread regarding corrections. Since Respondent had no objections to these pages, my staff took an appropriate number of copies of pages 11-17 to the Court and substituted them for the pages in the original, and the copies, on file at the Court on that same date. It was Counsel's understanding that Respondent understood that this substitution was being made and had no objection to that procedure. Unfortunately, Counsel's staff advised her that Respondent had sent an email indicating they had no objections to the corrected pages, but neglected to add that the email also indicated Respondent had no objection to the filing of an Amended Petition. Had Counsel been aware of that language in the Respondent's email she would have clarified Respondent's position and filed a motion at that time.

Respondent has once again confirmed that they have no objection to the corrections made on these pages or to the filing of an Amended Petition for Writ of Certiorari. Respondent filed

A handwritten signature in black ink, appearing to be the initials 'MS' with a stylized flourish extending downwards. To the right of the signature is a small number '3'.

its Return in this matter Monday, March 13, 2017. Respondent has asked, in the interest of a clear record, that Counsel file a formal Amended Petition for Writ of Certiorari with this Honorable Court. Counsel for Petitioner, therefore, now seeks leave to file an Amended Petition for Writ of Certiorari containing corrected pages 11-17. An original and six copies of the Amended Petition for Writ of Certiorari, along with Certificate of Service have been submitted to the Court along with this matter.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

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Columbia, South Carolina 29204

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tdslaw@shurlinglaw.com
ATTORNEY FOR PETITIONER

This 14th day of March, 2017

ATTACHMENT A

TDSLAW

From: Megan Jameson [MJameson@scag.gov]
Sent: Wednesday, March 08, 2017 1:28 PM
To: TDSLAW
Subject: RE: Clinton Folkes v State

I have no objection to these changes or to the filing of an amended Petition.

Thank you!

Megan Harrigan Jameson
Assistant Attorney General
Criminal Appeals Division

From: TDSLAW [mailto:tdslaw@shurlinglaw.com]
Sent: Wednesday, March 08, 2017 12:32 PM
To: Megan Jameson
Subject: Clinton Folkes v State
Importance: High

Hey Megan:

Attached are the final corrections for pages 11-17 in Clinton Folkes as you and Tara just discussed. Please let us know as soon as possible **if you have no objections** to these changes. Thank you.

Suzanne
Paralegal

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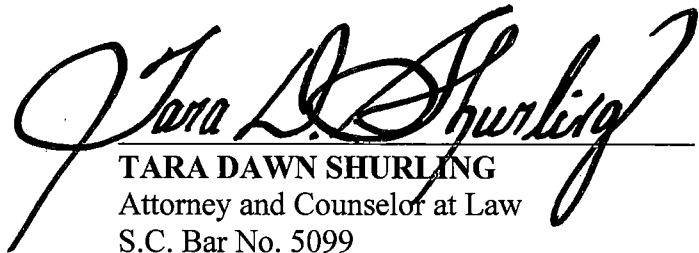
STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

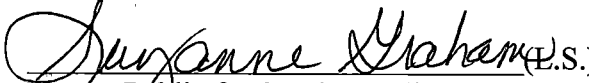
The undersigned attorney hereby certifies that a copy of the Motion for Leave to File Amended Petition for Writ of Certiorari in the above-entitled case has been served upon opposing counsel this the 14th day of March, 2017 by mailing one (1) copy in a stamped envelope properly addressed to:

Megan H. Jameson
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211


TARA DAWN SHURLING
Attorney and Counselor at Law
S.C. Bar No. 5099

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 14th day
of March, 2017.


Notary Public for South Carolina (E.S.)
My Commission Expires: 2/28/21

LAW OFFICE OF



TARA DAWN SHURLING, PA
Attorney and Counselor at Law
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Columbia, South Carolina 29204

E-Mail: tdslaw@shurlinglaw.com

RECEIVED

MAR 14 2017

S.C. SUPREME COURT
(803) 738-3622
(Fax) (803) 738-1600

March 14, 2017

BY HAND DELIVERY

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:

After the initial corrections were made to the Certiorari Petition I filed in this case, Megan Jameson, Counsel for Respondent, contacted me and expressed her opinion that a portion of my Certiorari Petition captioned Summary of Evidence Adduced at Trial still did not contain adequate citations to the trial record. That portion of my Certiorari Petition was, as my Petition stated, taken largely from the Brief of Appellant filed on direct appeal. To satisfy Ms. Jameson's concerns, I went back and added some additional transcript citations, and in two instances reworded two sentences where the statements made by appellate counsel were not completely consistent with the trial testimony. All the corrected pages were subsequently served on Ms. Jameson. After she indicated that she had no objection to the changes made in that portion of my Petition, corrected pages 11 thru 17 were substituted in the Certiorari Petition on file at the Court. My staff spoke with Ms. Jameson this morning and confirmed that she still has no objection to my corrected pages 11 thru 17, however she asked that I file a Motion and, assuming I am granted leave of Court to do so, file an Amended Petition for Writ of Certiorari containing these corrected pages. I apologize for the confusion in this matter. I had spoken with Ms. Jameson last week, and thought she was in agreement with the pages being switched out as opposed to an Amended Petition being filed.

The enclosed Motion for Leave to File an Amended Petition is self-explanatory. I am also attaching my proposed Amended Petition for Writ of Certiorari. Thank you very much for your kind assistance in this matter.

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

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