

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Greenville County  
Court of Common Pleas  
The Honorable Daniel D. Hall, Circuit Court Judge

\_\_\_\_\_  
Appellate Case No. 2016-000995  
\_\_\_\_\_

**RECEIVED**

**MAY 15 2017**

**S.C. SUPREME COURT**

BOBBY JOE BARTON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

\_\_\_\_\_  
**MOTION TO COMPEL FILING OF CORRECTED APPENDIX AND TO  
SUPPLEMENT APPENDIX**  
\_\_\_\_\_

Respondent, through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. Petitioner was indicted at the February 2010 term of the Greenville County Grand Jury for armed robbery (2009-GS-23-10018, count 1) and possession of a weapon during the commission of a violent crime (2009-GS-23-10018, count 2). He was represented by Susannah C. Ross, Esquire.

After the State called the case to trial, Petitioner was found guilty only of armed robbery. On August 10, 2010, the Honorable Edward W. Miller sentenced the Petitioner to 25 years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. LaNelle C. Durant, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Petitioner's convictions and sentences. State v. Barton. Op. No. 2013-UP-058 (S.C. Ct. App. filed Jan. 30, 2013). The South Carolina Supreme Court denied the Petitioner's subsequent petition for writ of certiorari on July 11, 2014. The remittitur was sent on July 25, 2014.

Petitioner filed a PCR application September 12, 2014. The Respondent made its return on February 12, 2015. An evidentiary hearing was held on February 18, 2016. Petitioner was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent. The Honorable Daniel D. Hall denied and dismissed the PCR application by order filed March 30, 2016.

Petitioner filed a Rule 59(e) Motion for Reconsideration on April 18, 2016. The Motion for Reconsideration was denied by the Honorable Daniel D. Hall in April 28, 2016. Petitioner filed a notice of appeal. His attorney submitted a notice of appeal to the South Carolina Supreme Court on May 5, 2016. In an Order dated September 1, 2016, Petitioner was granted the ability to proceed *pro se*.

Petitioner filed a Notice of Appeal challenging the accuracy of the transcript of the evidentiary hearing held on February 18, 2016. In an Order filed November 9, 2016, this Court remanded the matter to the Honorable Daniel D. Hall to hold a hearing to determine the accuracy of the transcript prepared. A hearing was held on December 15, 2016. Petitioner was present and

represented himself. Patrick Schmeckpeper, Esquire of the South Carolina Office of the Attorney General represented the Respondent. The Honorable Daniel D. Hall determined that the transcript of the original evidentiary hearing was accurate by Order filed January 10, 2017. Petitioner submitted a petition for writ of certiorari and appendix on January 18, 2017.

## II.

Pursuant to Rule 243(d), SCACR, a Petitioner is required to “serve a copy of the Appendix and petition for writ of certiorari on opposing counsel.” Additionally, pursuant to Rule 243(f), SCACR, “The Appendix shall contain: (1) The entire lower court record. (2) A copy of the final order entered after the post-conviction proceeding. (3) An index setting forth the principal matters contained in the Appendix. This index shall be in the same form required for a Record on Appeal under Rule 210(e).”

## III.

In the present case, Petitioner failed to serve the Respondent with a copy of the Appendix pursuant to Rule 243(f), SCACR. Moreover, Petitioner failed to include an index setting forth the principal matters contained in the Appendix and numbering the pages of the Appendix. Respondent moves for this Court to compel Petitioner to file a corrected Appendix that includes an index with pages that are properly numbered pursuant to Rule 243(f), SCACR. Additionally, Respondent moves this Court to supplement the Appendix to include the Order of this Court dated November 9, 2016 to determine the accuracy of transcript, the transcript of the hearing to determine the accuracy of the transcript held on December 15, 2016 and the final Order from the Honorable Daniel D. Hall dated January 12, 2017.

**WHEREFORE**, the Respondent prays this Court will compel Petitioner to file and serve a proper Appendix in compliance with appellate court rules; hold this return to petition for writ of certiorari in abeyance pending a ruling on the Respondent's motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

DESHAWN H. MITCHELL  
Assistant Attorney General

BY:   
\_\_\_\_\_  
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
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Columbia, SC 29211  
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May 15, 2017

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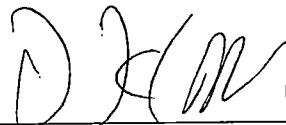
Respondent.

\_\_\_\_\_  
**CERTIFICATE OF SERVICE**  
\_\_\_\_\_

I, DeShawn H. Mitchell, certify that I have today served the within **Motion to Compel Filing of Corrected Appendix and to Supplement Appendix** upon Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

**Bobby Joe Barton, 163629  
Perry Correctional Institution  
430 Oaklawn Road  
Pelzer SC 29669**

I further certify that all parties required by Rule to be served have been served.  
This 15<sup>th</sup> day of May, 2017.



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S.C. Bar # 101813  
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ATTORNEY FOR RESPONDENT