

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

C/A No. 2014-CP-23-04632
Capital PCR

RECEIVED

JUN 13 2017

S.C. SUPREME COURT

Brad K. Sigmon, #6008,

Petitioner

vs.

State of South Carolina,

Respondent

Appellate Case No. 2017-001119

**MOTION TO STAY THE SCHEDULING OF A PETITION
AND RETURN UNTIL CONSIDERATION AND RULING
ON PETITIONER'S RULE 243(C), SCACR EXPLANATION**

On February 10, 2017, the PCR judge in the above captioned action found Petitioner's second PCR action was improperly successive and untimely.¹ On May 11, 2017, consistent with the Appellate Court Rules, Petitioner filed his required explanation pursuant to Rule 243(c), SCACR. Respondent moves to stay the scheduling of a petition and return until a ruling is made on Petitioner's explanation. In support of this position, Respondent would respectfully show the Court:

1. By letter dated June 8, 2017, Petitioner advised the Court he had ordered and was waiting on receipt of a transcript. Receipt of a transcript is tied to scheduling the filing of a

¹ This second capital PCR action was filed in 2014. The PCR judge did not determine viability until after this Court's decision in *Robertson v. State*, 418 S.C. 505, 795 S.E.2d 29 (2016). The ruling on appeal applies only to application of the procedural bars to the second action.

petition. See 243(d), SCRCP. However, this Court has not yet issued a ruling on whether the notice should be summarily dismissed. Dismissal of the notice after consideration of the Rule 243(c) explanation would render the scheduling of a petition and subsequent return unnecessary.

2. Rule 243(c), SCACR requires an explanation with the notice of appeal when the PCR action at issue was dismissed as successive and/or untimely. The “explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper.” *Id.* This Court may dismiss the appeal “[i]f the petitioner fails to make a sufficient showing” the PCR judge erred in summarily dismissing the action. If the notice is dismissed on the explanation, scheduling for further filings becomes unnecessary.

3. This Court has summarily dismissed notices where the explanation fails to make the required showing. *See, e.g., Kelly v. State*, 404 S.C. 365, 366, 745 S.E.2d 377, 378 (2013); *Richardson v. Stewart*, 386 S.C. 282, 282, 688 S.E.2d 124, 124 n. 1 (2010) (noted as part of litigation history); *Smith v. State*, 412 S.C. 472, 475, 772 S.E.2d 286, 288 (Ct. App. 2015) (noted in procedural history). The Court recently dismissed the notice in another capital PCR action appeal after consideration of the Rule 243(c) explanation and without the filing of a petition. *See Bryant v. State*, Appellate Case No. 2016-002228 (Feb. 9, 2017 Order). The Court found the motion for extension of time to file a petition was moot given the dismissal of the notice. *Id.*

4. Thus, to comply with the intent and function of Rule 243(c), and to eliminate additional delay and unnecessary filings, Respondent moves for consideration of the explanation prior to scheduling further action.

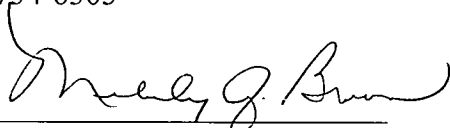
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By: 
MELODY J. BROWN
SC Bar No. 14244
ATTORNEYS FOR RESPONDENT

June 13, 2017.
Columbia, South Carolina.

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CERTIFICATE OF SERVICE

I, Melody J. Brown, Senior Assistant Deputy Attorney General, certify that I have served the foregoing:

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on Petitioner by depositing one copy of same in the United States mail, postage prepaid, addressed to his counsel as follows:

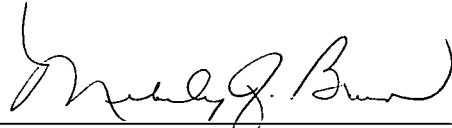
Robert M. Dudek, Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

[Continued on Next Page]

Jeffrey P. Bloom, Esquire
Post Office Box 5885
Columbia, SC 29250

M. Celia Robinson, Esquire
300 White Falls Drive
Columbia, SC 29212

This 13th day of June, 2017.



MELODY J. BROWN

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

COUNSEL FOR RESPONDENT