

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

RECEIVED

JUN 15 2017

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

RICKY LEE BLACKWELL,

PETITIONER.

APPELLATE CASE NO. 2014-000610

MOTION TO UNSEAL THE BRIEFS AND THE RECORD ON APPEAL

Counsel for Ricky Lee Blackwell petitions this Court to unseal the briefs and the record on appeal in this death penalty case. In support of this motion, Blackwell shows the following:

1. On January 8, 2015, petitioner filed his initial brief and designation of matter, raising seven issues. The first two issues dealt with the trial court's denial of appellant's Sixth Amendment right of confrontation and refusal to allow petitioner to proffer evidence.

2. On January 28, 2015, the State filed a Motion to Seal or in the Alternative Strike the Initial Brief of Appellant and his designation of matter. The State argued that petitioner's first two issues concerned matters which the trial judge held were protected by a privilege for mental health

communications.

3. On May 30, 2015, this Court issued an Order requiring petitioner to file two versions of his briefs—one sealed with all issues presented, and one redacted with information relating to the allegedly privileged records removed. The Court also ordered a similar procedure for the record on appeal. Appellant complied with this Order and filed a redacted initial brief with over twenty blank pages replacing important portions petitioner's Sixth Amendment argument. The reply briefs, final briefs, and record on appeal were also heavily redacted in compliance with this Order.

4. On April 13, 2016, this Court heard oral argument. When the Court heard argument on petitioner's Sixth Amendment issues, it cleared the courtroom and turned off the live internet feed.

5. On May 31, 2017, this Court issued its decision, State v. Ricky Lee Blackwell, Op. No. 27722, Shearouse's Adv. Sh.22 at pp. 16-61 (filed May 31, 2017), which affirmed petitioner's convictions and death sentence. All five Justices of this Court concluded the trial court erred in how it dealt with Blackwell's Sixth Amendment rights and the alleged privilege. Four Justices of this Court, however, found the error harmless.

6. The public's access to court records is protected by the First Amendment. U.S. Const. amend. I. See also Ex Parte Greenville News, 482 S.C. 1, 482 S.E.2d 556 (1997). In Greenville News, this Court held that a presumption of openness applied to the records in William Bell's death penalty case. Id. That same presumption of openness applies with equal force to Ricky Blackwell's death penalty case. Both Blackwell and the public have a substantial interest in public scrutiny of the briefing and the opinion in this case. That interest is heightened because this

Court recognized that the trial court erred in how it handled the evidence at issue. Blackwell and the public are entitled to freely discuss and analyze an important error in a death penalty case involving Blackwell's right to Confrontation under the Sixth and Fourteenth Amendments to the United States Constitution. Legal scholars and journalists will be unable to fully assess this Court's harmless error conclusion without access to the redacted briefs and record. Furthermore, keeping the briefing and record sealed infringes upon Blackwell and his attorneys' First Amendment rights and their ability to discuss the case in public and with interested persons, including attorneys who may ultimately represent Blackwell in post-conviction proceedings.

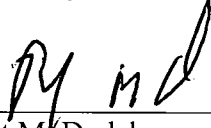
7. Additionally, petitioner will now seek review at the United States Supreme Court and intends to raise and argue the Sixth Amendment issue in his petition for certiorari. Petitioner needs to be able to reference and quote the sealed briefs and the sealed record in his petition for certiorari. The United States Supreme Court will need access to the sealed materials to review appellant's petition. Due process requires the unsealing of the briefs and records so that Blackwell can exercise his right to federal review.

8. Death penalty cases, especially this case where the Court recognized Blackwell's Sixth Amendment issue was novel, often draw interest from parties wishing to file *amicus curiae* briefs with the United States Supreme Court. Indeed, an *amicus* brief was already filed in the proceedings before this Court. Those parties will need access to the sealed materials to assess and file any *amicus* briefs.

9. In the event this Court elects not to fully unseal the briefs and record on appeal, petitioner urges the Court to unseal these materials for the limited purpose of seeking and obtaining review at the United States Supreme Court.

WHEREFORE, appellant Ricky Lee Blackwell asks this Court to issue an Order unsealing the briefs and record on appeal in this case.

Respectfully submitted,

By: 

Robert M. Dudek
Chief Appellate Defender

David Alexander
Appellate Defender

ATTORNEYS FOR PETITIONER

June 15, 2017

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THE STATE,

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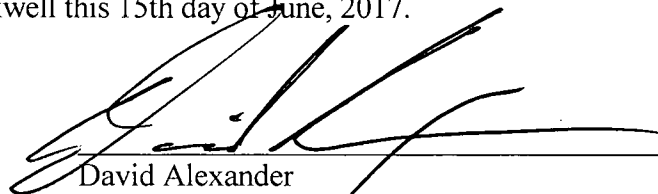
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion to Unseal the Briefs and the Record on Appeal in the above referenced case has been served upon opposing counsel, Melody J. Brown, Esquire, as well as Patricia Standaert Ravenhorst, Esquire, Meliah Bowers Jefferson, Esquire, and Ricky Lee Blackwell this 15th day of June, 2017.



David Alexander
Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 15th day of June, 2017.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: May 2, 2027.