

THE STATE OF SOUTH CAROLINA
SUPREME COURT

Certiorari to Pickens County
Court of Common Pleas
The Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2016-001753

Eli Torrence, #00356338..... Petitioner,

v.

State of South Carolina.....Respondent.

REPLY TO RETURN FOR PETITION FOR WRIT OF CERTIORARI

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ARGUMENT IN REPLY

While the issues and arguments have been thoroughly addressed in the opening petition, Appellant does offer the following rebuttal to the argument raised by Respondents as to the waiver of the escape charge. Appellant's issue as to the unlawful escape charge was raised and ruled on by the PCR judge, and therefore, it is preserved for appellate review.

Appellant's argument on appeal as to the escape charge is that the appellant did not waive presentment to the grand jury on the record for that charge. Respondent now claims that issue was not preserved for appellate review because Appellant failed to file a rule 59(e) motion asking to make a specific finding of fact and conclusion of law. Appellant did not request a specific finding by filing a rule 59(e) motion as the PCR judge's finding of fact and conclusion of law were clearly laid out as to this issue during the PCR hearing as well as in the Order of Dismissal.

As to the facts and conclusion on this issue, the PCR judge clearly states in his order of dismissal that his finding of fact is that Appellant did waive presentment as to the escape charge. (App. 4). There, the judge says "The Applicant also waived presentment to the Grand Jury on the charges of escape..." (App. 4). This is stated in the Order of Dismissal under the subheading "Procedural History." It is again addressed when referring to the arguments of the Appellant. The order says Appellant waived all allegations except for the issue on the burglary charges and that "he was serving an unlawful sentence for escape." (App. 6).

Furthermore, the PCR judge made this clear on the record during the PCR hearing. At the hearing, the judge states that his conclusion of law goes back to what he believes is Judge Goode's case, which he says "even if the record had a a, transcription had a statement in it and the written document was different then you go by the written document that the judge signed."

(App. 101, lines 2-8). This same declaration is in his written order. (App. 9). He goes on to say at the hearing that “defendant waived presentment to the grand jury and initials appear E.T. on his, uh, his signature is also on that, uh, sentencing sheet, Eli Torrence, uh, as the defendant.” (App. 101, lines 12-15). From that, he denied Appellant’s PCR on that issue. (App. 101, line 7). With these statements from the transcript and the written order, the judge’s conclusions on the facts and law was specific on this allegation.

Since the judge’s finding of fact and conclusion of law as to the escape charge was specific, Appellant did not find it necessary to file a rule 59(e) motion. The judge’s findings and conclusions were clearly laid out in the Order of Dismissal and in the transcript from the PCR Hearing. As such, the issue as to the presentment to the grand jury on the escape charge is preserved for appellate review.

CONCLUSION

Appellant did not waive presentment to the grand jury on the escape charge. He asked the judge on the record what charges he was waiving presentment on, and the judge did not mention the escape charge. While the PCR judge said the written waiver on the sentencing sheet controls as to the sentence and waiver, case law as cited in Appellant’s original brief says otherwise. Since this issue was preserved on appeal, Appellant respectfully asks that the conviction be vacated and a new trial granted.

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CERTIFICATE OF SERVICE

I certify that I have served the Reply to Return for Petition for Writ of Certiorari to the following recipient by depositing a copy of it in the United States Mail, postage prepaid, on June 19, 2017, addressed to:

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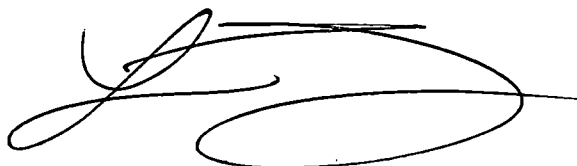
June 19, 2017

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RE: Eli J. Torrence #00356338 v. State of South Carolina
Appellate Case No.: 2016-001753

Enclosed is the original and six (6) copies of the Reply to Return for Petition
for Writ of Certiorari.

Thank you for your assistance.



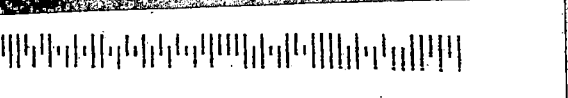
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