

No. _____

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OCT 27 2017

IN THE
SUPREME COURT OF THE UNITED STATES

S.C. SUPREME COURT

RICKY LEE BLACKWELL
Petitioner

v.

THE STATE OF SOUTH CAROLINA
Respondent

MOTION FOR LEAVE TO FILE PETITION FOR CERTIORARI AND APPENDIX UNDER SEAL

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

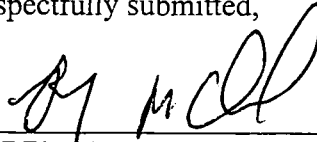
Petitioner Ricky Lee Blackwell moves this Court for leave to file a petition for certiorari and an appendix under seal. Petitioner also asks for leave to file a redacted petition for certiorari and a redacted appendix to be placed in the Court's public records. In support of this motion, Petitioner would show the following:

- 1) Petitioner's certiorari petition raises a Sixth Amendment challenge to the rulings below which denied him the ability to impeach and cross-examine a state's witness with mental health records.
- 2) Petitioner obtained the mental health records at issue pursuant to a court order.
- 3) At petitioner's trial, the court refused to allow use of the mental health records and refused to allow petitioner to proffer them, finding the records were protected by a privilege.
- 4) Petitioner raised this issue in his brief to the South Carolina Supreme Court.

- 5) In response to petitioner's brief, on January 28, 2015, the State of South Carolina filed a motion requesting, *inter alia*, that petitioner's initial brief be sealed and to prohibit the inclusion of the mental health records in the record on appeal.
- 6) On May 20, 2015, the South Carolina Supreme Court ordered petitioner to submit the mental health records under seal and to file both a sealed brief and an unsealed brief redacting any reference to the mental health records. (Exhibit A). The mental health records were filed under seal at the South Carolina Supreme Court and made a part of the appellate record.
- 7) After the South Carolina Supreme Court issued its opinion affirming petitioner's conviction and death sentence, petitioner moved to lift the seal. Petitioner's motion was denied in a 3-2 decision on September 1, 2017. (Exhibit B).
- 8) Petitioner cannot raise the issue of the denial of his Sixth Amendment rights in a petition for certiorari to this Court without reference to the sealed material. Petitioner believes a review of the sealed material is necessary for this Court's decision on whether to grant the petition for certiorari.

WHEREFORE, Petitioner prays that this Court permit him to file a sealed petition for certiorari and sealed appendix together with an unsealed, redacted petition for certiorari and appendix.

Respectfully submitted,



ROBERT M. DUDEK
Chief Appellate Defender

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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October 27, 2017

ATTORNEYS FOR PETITIONER

EXHIBIT A

The Supreme Court of South Carolina

The State, Respondent,

v.

Ricky Lee Blackwell, Appellant.

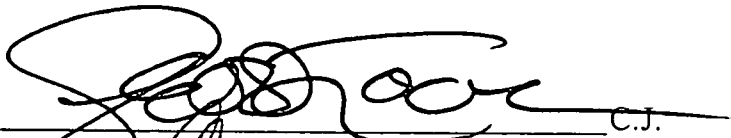
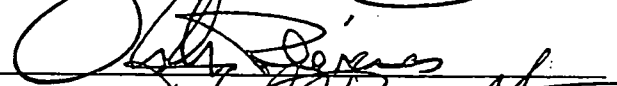

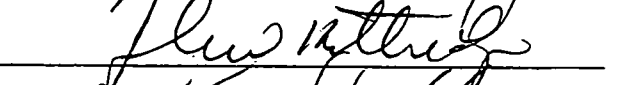
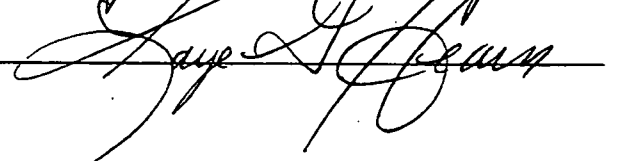
Appellate Case No. 2014-000610

ORDER

The State moves the Court to seal appellant's initial brief, or in the alternative, strike the brief and designation of matter to be included in the record on appeal. The State also moves the Court to prohibit inclusion of privileged medical records of a witness not accepted in the record below in the briefs and the record on appeal. Appellant does not object to the State's motion to seal the initial briefs, but objects to the remainder of the relief the State requests. The State has also filed a motion for access to an order issued under seal in this matter. Appellant does not consent to the motion.

We deny the State's request to strike. However, we grant the State's motion to seal appellant's initial briefs as well as the State's initial brief. Both parties shall also file a redacted copy of their initial briefs that omits the references to the records at issue and which will not be sealed.

We also deny the State's request to strike the records from the designation of matter to be included in the record on appeal and to prohibit appellant from including them in the record on appeal. However, appellant shall file the order and records at issue, along with an unredacted copy of the transcript, in a separate record on appeal under seal. A redacted copy of the transcript, in which references to the records at issue have been removed, should be included in the unsealed record on appeal. Finally, we deny the State's request for a copy of or access to the sealed order for purposes of responding to appellant's return to the State's motion.


C.J.

J.

J.

J.

J.

Columbia, South Carolina

May 20, 2015

cc:

- Robert Michael Dudek, Esquire
- Barry Joe Barnette, Esquire
- Alan McCrory Wilson, Esquire
- Melody Jane Brown, Esquire
- David Alexander, Esquire
- The Honorable Roger L. Couch

EXHIBIT B

The Supreme Court of South Carolina

The State, Respondent,

v.

Ricky Lee Blackwell, Petitioner.

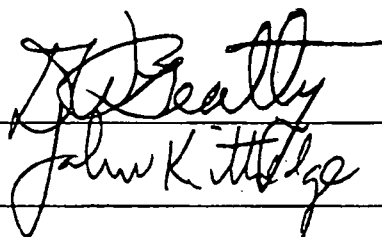
Appellate Case No. 2014-000610

ORDER

This Court recently affirmed petitioner's death sentence in *State v. Blackwell*, Op. No. 27722 (S.C. Sup. Ct. filed May 31, 2017). Petitioner's petition for rehearing was denied and the remittitur was sent on June 16, 2017. A notice of execution has not been issued. Petitioner now requests a stay of execution to allow him to file a petition for a writ of certiorari in the United States Supreme Court. The State does not oppose the petition for a stay of execution.

Because petitioner intends to raise to the United States Supreme Court at least one federal question that is preserved for review, we grant the petition for a stay of execution pursuant to *In re Stays of Execution in Capital Cases*, 321 S.C. 544, 471 S.E.2d 140 (1996), and the stay shall remain in effect to the extent provided by this Court therein.

Petitioner also moves this Court to unseal the briefs and record on appeal in this case. The State opposes the motion. The motion is denied. S.C. Code Ann. § 44-22-100(A)(2) (Supp. 2016); *Ex parte Greenville News*, 326 S.C. 1, 482 S.E.2d 556 (1997).

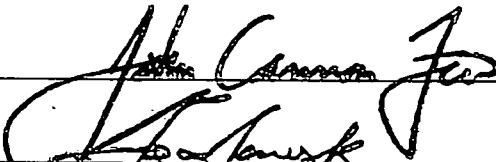



C.J.

J.


_____ J.

We grant the petition for a stay of execution, but would also grant the motion to unseal the briefs and record on appeal.


_____ J.

_____ J.

Columbia, South Carolina

September 1, 2017

cc:

Robert Michael Dudek, Esquire
Barry Joe Barnette, Esquire
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
David Alexander, Esquire
John W. McIntosh, Esquire
Donald J. Zelenka, Esquire
Lindsey Danielle Jacobs, Esquire
Patricia Standaert Ravenhorst, Esquire
Meliah Bowers Jefferson, Esquire
The Honorable M. Hope Blackley