

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM Horry COUNTY
Court of Common Pleas

FEB 26 2018

S.C. SUPREME COURT

Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2017-001689

PRENTISS WAYNE LOVE,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**REPLY TO RETURN TO ENLARGE PAGE LIMITATION
FOR PETITION FOR WRIT OF CERTIORARI**

TARA DAWN SHURLING
Attorney and Counselor at Law
SC Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, S. C. 29204
(803)738-8622 Phone
(803)738-1600 Fax
Email: tdslaw@shurlinglaw.com

ATTORNEY FOR PETITIONER.

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Petitioner would offer the following in Reply to certain points made by Respondent in the State's Return. With regard to all other issues, Petitioner relies on the arguments and authorities presented in his Petition for Writ of Certiorari previously filed with this Honorable Court.

ARGUMENT

Petitioner would ask the Court to note the following in Reply to Respondent's opposition to his Motion to Enlarge. Petitioner expressly denies Respondent's assertion that the length of the petition filed in his case reflects "the aim of arguing in favor of cumulative error." Return p. 1, para. 2. To the contrary, Petitioner asserts that many, if not most, of the errors and omissions addressed would independently support the grant of relief in his case. Respondent argues, as if dispositive of the request before this Honorable Court, that "not all the issues raised in the petition are of equal import on appeal, to say the least." Petitioner does not dispute that, as is virtually always the case, some of his allegations are stronger than others. There is, however, no requirement that PCR Counsel limit her advocacy to presenting arguments on issues of equal strength. Respondent relies upon two federal cases for the principal that arguing, "[a] plethora of post-conviction relief and appellate allegations do not accumulate to Petitioner's benefit ...". Respondent submits that arguing a large number of allegations violates the principal that Counsel must concentrate her attention on the best issues. Return, pp. 1-2. With no disrespect intended, it is not Respondent's role to dictate Counsel's strategy, or style of advocacy, on behalf of her client. Counsel asserts that none of the allegations presented in this petition are frivolous. While the relative strength of the issues argued may indeed vary, Counsel submits that they all have merit and should be considered. Counsel also submits that it is often difficult, particularly in PCR appeals, to determine which issues may catch the interest of the reviewing Court.

Respondent correctly notes that this petition addresses twenty-nine (29) questions presented. In several instances a single question presented covered Trial Counsel's failure to object to numerous examples of the same evidentiary violation. For example, Question XXI concerning Trial Counsel's failure to object to a State witness being referenced as a "forensic interviewer", was argued along with three related allegations

and covered Trial Counsel's failure to object to a total of thirty-seven (37) separate instances where the word *forensic* was used in connection with the interview of the victim in this case, as well as additional references to the process as "forensic medical" and "forensic evidence". In that section of the petition, undersigned PCR Counsel additionally addressed Trial Counsel's fail to object when the State characterized the person that conducted the interview as "the therapist or doctor" despite the fact that there was no evidence supporting either title. PCR Counsel covered all these errors in six (6) pages of this Certiorari Petition. Question presented XXVIII covers eleven (11) portions of the State's closing argument which should have been objected to and were not. Counsel summarized all eleven (11) omissions for the Court in less than five (5) full pages.

Respondent appears to suggest that any desire Counsel may have expressed to have the Court consider a cumulative prejudice analysis in this case was somehow sneaky or underhanded. Nothing could be further from the truth. The issue of cumulative prejudice remains an open issue in South Carolina. *Lorenzen v. State*, 376 S.C. 521, 535 n. 3, 657 S.E.2d 771, 779 n. 3 (2008). Just recently in *Stephen Smalls v. State*, _ S.C. _ S.E.2d _, 2018 W.L. 736339 (S.Ct. decided February 7, 2018), this Honorable Court found sufficient prejudice to justify relief. In so ruling, this Court held,

After balancing trial counsel's errors—failing to cross-examine Green on the dismissal of his carjacking charge and failing to object to evidence Green committed a burglary to obtain the shot gun—against our perception of the strength of the State's case, we find the *errors* significantly undermine confidence in the outcome of the trial, and leave a reasonable probability that, but for counsel's *errors*, the result of the trial would have been different.

Id., (Emphasis added, internal citations omitted). Thus, although the opinion in the *Smalls* case notes the need to analyze the claims of counsel's deficiency separately, the ultimate holding addresses the impact of these errors collectively.

Post-Conviction Relief cases have changed significantly in the nearly four decades of Counsel's career. Through this Court's guidance, the concept of collateral review has come of age, particularly in the last ten years. The Bar has been educated on this entire field of the law and the requirements for developing a proper record in the event a PCR appeal becomes necessary. The necessity to narrow the focus of Sixth

Amendment claims and craft narrow allegations has been repeatedly highlighted by this Honorable Court in its decisions during that time period. This Court's decision in *Farid A. Mangal v. State*, 421 S.C. 85, ___ S.E.2d ___ (S.Ct. 2017), raised the bar still higher on the question of issue preservation. In this case, PCR Counsel has endeavored to give the Court a thorough procedural history, a simple statement of the Standard of Review and a summary of the testimonial evidence necessary to review the questions presented. The Questions presented, the Procedural History and the Standard of Review are covered in the first nineteen and a half pages of this Petition. The twenty-nine questions presented are argued over sixty-two pages of the Petition which averages out to 2.14 pages per question presented despite the fact, as previously noted, that several of these questions covered multiple, topically related, errors and omissions.

As Counsel has already asked the Court to note in her original motion, she has presented countless PCR appeals before this Honorable Court, and has very rarely asked to exceed the twenty-five page limit in her petitions. She asserts, however, that the right to seek review by this Court is rendered virtually useless, if a Petitioner is not allowed to present enough of the evidence adduced below, and the arguments supporting the allegations, to stand a chance at getting certiorari granted. It matters not that Petitioner might have Certiorari granted, and receive the opportunity to fully brief issues selected for review by the Court, if his chances of winning such a review are thwarted by a Certiorari process which, without flexibility, imposes a one size fits all policy which keeps him from presenting enough information about the case to earn the Court's interest in further review.

A few specific points need to be addressed. Respondent's focus on the fact that Counsel inadvertently formatted 3 out of 82 pages with a half-inch margin on the right side is petty, and not worthy of this Court's time. The fact that the margins are correct on the other 79 pages clearly indicates that Counsel complied with the Court's rules concerning margins with the exception of this minor clerical error which likely occurred in the editing process. If it had been the intent of Counsel to circumvent the rule concerning the overall length of this Petition, by utilizing improper margins, she certainly would not have altered the margins from the standard required by the rules on only three pages, and would not have done so on only one side of the page. Respondent's suggestion that Counsel's use of bullet points to summarize testimony reflects

an effort to “circumvent page limitations or to downplay the scope of excessive and needless argument” is erroneous. Return, p. 2. Where Counsel utilized bullet points to highlight and organize certain important segments of the testimony, the material within the bullet points was slightly indented and single spaced. This formatting did nothing to circumvent the page limitation, and it certainly did nothing to “downplay the scope of excessive and needless argument” as submitted by Respondent.

In closing, Counsel urges the Court to note that, as mentioned in Petitioner’s motion, seven (7) of Petitioner’s allegations were either not pursued in his hearing or not argued on appeal. Thus, Petitioner, with the advice of Counsel, did cull his allegations in deciding which issues to present before this Honorable Court.

CONCLUSION

On the facts of this particular case, Petitioner asserts that the length of his Certiorari Petition, although admittedly unusual, was necessary and appropriate. He prays for leave of Court to have his Petition considered as filed.


TARA DAWN SHURLING
Attorney and Counselor at Law
SC Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 Fax
E-mail: tdslaw@shurlinglaw.com

ATTORNEY FOR PETITIONER

This 22nd day of February, 2018.

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
FEB 26 2018
S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2017-001689

PRENTISS WAYNE LOVE,

PETITIONER,

v.

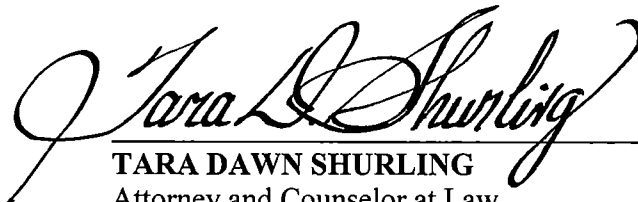
STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Reply to the Return to Enlarge Page Limitation for Petition for Writ of Certiorari in the above-entitled case has been served upon opposing counsel this the 22nd day of February, 2018, by mailing one (1) copy in a stamped envelope properly addressed to:

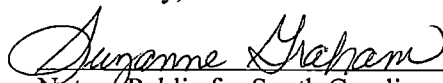
Johnny E. James, Jr.
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211



TARA DAWN SHURLING
Attorney and Counselor at Law
SC Bar No. 5099

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 22nd day
of February, 2018.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/28/24

LAW OFFICE OF



RECEIVED

TARA DAWN SHURLING, PA FEB 26 2018

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

S.C. SUPREME COURT

(803) 738-8622

(Fax) (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

February 22, 2018

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: Prentiss Wayne Love v. State of South Carolina
Appellate Case No. 2017-001689.

Dear Mr. Shearouse:

Enclosed for filing please find the original and six copies of my Reply to Return to Enlarge Page Limitation for Petition for Writ of Certiorari and Certificate of Service in the above captioned case. I enclose one extra copy of the Reply and would appreciate having it clocked and returned in the enclosed self-addressed envelope. Thank you for your assistance in this matter. I remain,

Sincerely yours,

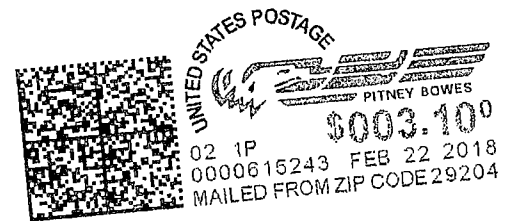
A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is written in a cursive, flowing style with a large initial 'T' and 'S'.

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: Johnny J. James, Jr., Assistant Attorney General (w/enclosure)
Prentiss Wayne Love, #315271 (w/enclosure)
Lorraine L. Buckwell (w/enclosure)



Law Office of

TARA DAWN SHURLING, PA

3614 LANDMARK DRIVE, SUITE A
COLUMBIA, SOUTH CAROLINA 29204



The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211