

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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MAR 28 2018

Appeal from Florence County
The Honorable D. Craig Brown, Circuit Court Judge S.C. SUPREME COURT

Appellate Case No. 2017-000102

Kendris R. Brown,

Petitioner,

v.

State of South Carolina,

Respondent.

MOTION TO SUPPLEMENT APPENDIX

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for Respondent moves for this Court to allow Respondent to supplement the Appendix in this case. In support of this motion, Respondent would present the following facts:

1. Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Petitioner was indicted at the September 2012 term of the Florence County Grand Jury for murder, burglary – first degree, armed robbery, possession of a weapon during the commission of a violent crime, and conspiracy (2012-GS-21-1250). App. 102-05. He was

represented by Henry “Skip” Duffee, Jr., Esquire. App. 1. On April 5, 2013, Petitioner pleaded guilty before the Honorable Michael G. Nettles to murder and burglary – first degree. App. 1, 3. The remaining charges were dismissed in return for Petitioner’s plea. App. 3. Judge Nettles sentenced Petitioner to concurrent terms of life imprisonment without parole. App. 26-27. Petitioner did not appeal his plea or sentences. App. 36.

2. In his original Application for Post-Conviction Relief (PCR), filed January 10, 2014, Petitioner alleged his sentence of life without parole was unconstitutional because he was a minor at the time the crime was committed. App. 29, 33. Respondent filed a Return and Motion to Dismiss, along with a Conditional Order of Dismissal (COD), arguing, *inter alia*, Petitioner’s Miller claim was not proper for PCR. App. 36-44. Petitioner then filed an Amended Application for Post-Conviction Relief on November 10, 2015, alleging plea counsel was ineffective in failing to advise him of possible sentences, evidence, and procedures of trial which led to Petitioner making an unintelligent and unknowing decision to enter a plea of guilt. App. 90-91.

3. PCR counsel also attempted to file a motion for resentencing on November 9, 2015, but the motion was never clocked by the Florence County Clerk of Court. However, it was served on the Solicitor’s Office.

4. On July 6, 2016, pursuant to this Court’s decision in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014), the Twelfth Circuit Public Defender’s Officer also filed a motion for a resentencing on Petitioner’s behalf, which was still pending at the time of the PCR hearing.

5. This Court issued an order on July 11, 2016, granting the Honorable DeAndrea G. Benjamin exclusive jurisdiction over Petitioner's motion.

6. Judge Benjamin then issued an order of appointment, filed August 22, 2016, appointing the Twelfth Circuit Public Defender's Office to represent Petitioner in his resentencing action.

7. The Petition for Writ of Certiorari and Appendix in this case were filed on November 6, 2017. The Appendix, however, does not contain either of Petitioner's motions for resentencing, the order appointing Judge Benjamin to hear Petitioner's resentencing motion, or the order appointing the Twelfth Circuit Public Defender's Office to represent Petitioner in his resentencing action.

8. Without these documents, the appellate record is incomplete, and Respondent cannot fully answer the Petition. Therefore, Respondent submits Petitioner's motions for resentencing, the order appointing Judge Benjamin to hear Petitioner's resentencing motion, and the order appointing the Twelfth Circuit Public Defender's Office to represent Petitioner in his resentencing action should have been included in the Appendix to the Petition for Writ of Certiorari.

9. Inasmuch as Petitioner's motions for resentencing, the order appointing Judge Benjamin to hear Petitioner's resentencing motion, and the order appointing the Twelfth Circuit Public Defender's Office to represent Petitioner in his resentencing action are relevant and pertinent material under Rule 243(f), SCACR that should be included in the Appendix, counsel moves this Court to allow Respondent to include the same in a

Supplemental Appendix, provisionally filed along with this Motion.

WHEREFORE, as the Appendix is incomplete, counsel for Respondent requests this Court: (1) grant the motion to allow Respondent to supplement the Appendix, and (2) accept Respondent's Supplemental Appendix for filing today.

Respectfully submitted,

ALAN WILSON
Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General
S.C. Bar #79054

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By: 

ATTORNEYS FOR RESPONDENT

March 23, 2018

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

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Appeal from Florence County
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2017-000102

KENDRIS R. BROWN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion to Supplement Appendix, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Post Office Box 11589
Columbia, South Carolina 29211

This 23rd day of March, 2018.



Caroline Collins
Administrative Coordinator



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MAR 28 2018
S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

March 23, 2018

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Kendris R. Brown v. State of South Carolina
Appellate Case No. 2017-000102
Lower Court Case No. 2014-CP-21-0075

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Motion to Supplement Appendix. By copy of this letter we are serving opposing counsel today.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General
SC Bar No. 79054

LAM/cc
Enclosures

cc: Wanda H. Carter, Esquire (2 copies)