

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
ROBERT E. HOOD, CIRCUIT COURT JUDGE

RECEIVED
APR 24 2018
SC Court of Appeals

Case No. 2016-CP-40-6916

Appellate Case No. 2017-002577

Charles Eugene Carpenter.....Appellant,

vs.

South Carolina Department of Corrections and
The State of South Carolina..... Respondents.

**RESPONSE TO THE STATE OF SOUTH CAROLINA’S MOTION TO DISMISS AND
TO HOLD TIME LIMITS IN ABEYANCE**

Respondent State of South Carolina (hereinafter “State”) has moved to dismiss this appeal. Appellant Charles Eugene Carpenter (hereafter “Appellant” or “Carpenter”) respectfully submits that the motion should be denied for the reasons set forth below.

I. Respondent State has unfairly delayed seeking the relief requested.

Pursuant to Rule 203(d)(1)(B)(vi), SCACR and at the request of this Court, Carpenter filed “a written explanation as to why” the determination by the circuit court that the matter could have been raised under the Post-Conviction Relief Act (PCR) was improper. Notice from the Clerk of Court as to a failure to do so was mailed to Appellant via letter dated December 28, 2017, requiring such deficiency be corrected within ten days. Counsel for both Respondents were copied on that

notice. Appellant complied with that directive and Rule 203 by filing a written memorandum on January 9, 2018, serving a copy upon counsel for respondents at the same time.

With that memorandum, Appellant provided an initial substantive, good-faith argument for the appropriateness of the underlying matter having been in circuit court and thus now appropriate for appeal, instead of originally being presented in a PCR action. The Court of Appeals did not take any action following receipt of the memorandum, which it would have done pursuant to Rule 203(d)(1)(B)(vi) if this Court had determined that “if the appellant fails to make a sufficient showing.” In the absence of any affirmative action by this Court following receipt of the memorandum, the issue was concluded, at least insofar as any preliminary determination by this Court was concerned.

Likewise, the State did not take any action at this Court to seek dismissal or delayed consideration of this appeal following the filing by Carpenter of the memorandum pursuant to Rule 203. The current motion to dismiss from the State, based on the same factual and legal circumstances prompting the Rule 203 memorandum requirement and even quoting therefrom, was not filed until April 10, 2018, some three full months afterward. Furthermore, the Notice of Appeal was filed by Appellant on December 20, 2017, adding approximately three additional weeks between notice that Appellant was seeking review by the Court of Appeals in this action and the State’s first effort to seek a dismissal or delay of this appeal at this court.

As this Court is aware, this appeal was filed as a companion to a petition in the original jurisdiction of the Supreme Court, filed at the same time. On January 11, 2018, the State responded to Carpenter’s petition in the original jurisdiction of the State Supreme Court, and Carpenter’s request that the Supreme Court certify this pending appeal, by unilaterally declaring “that ‘appeal’ now before the Court of Appeals is a nullity and there is technically nothing for the Supreme Court

to certify or consolidate.” State of South Carolina’s Return to Petition for Certification and Consolidation, p. 2. Despite referencing “appeal” in quotation marks and the unilateral declaration of this appeal’s “nullity,” the State took no action to have that claimed status confirmed or declared by this Court, nor to seek a stay pending Supreme Court decision/action, which remain pending at this time.

As such, Appellant did not sit idly by, but rather recognized the continuing legitimacy of these proceedings while preparing an initial Appellant’s brief of the issues in this case. As the deadline for that filing approached in February, Carpenter sought and obtained an extension of time. The State offered no response to that request for an extension, neither objecting to any extension or raising any purported “nullity” of the proceedings. That initial brief and corresponding designations were filed on March 13, 2018.

It is respectfully submitted that the delays by the State before bringing any objections to these proceedings directly to the attention of this Court cataloged above, to the unfair and burdensome prejudice of Appellant, are simply another effort by the State to delay these proceedings. That is especially true when Appellant has detailed substantive issues for consideration and another respondent has already filed a return to Appellant’s brief.¹

II. Appellant has provided sufficient, detailed argument to justify consideration of this matter on appeal.

Despite evidencing a presumption that most circuit court denials of a claim for habeas corpus because they could have properly been the subject of a PCR action, the existence of Rule 203(d)(1)(B)(vi); SCACR proves there must be exceptions that allow for consideration and later

¹ Respondent SC Department of Corrections filed its Respondent’s initial brief on April 11, 2018.

appeal thereof directly to the Court of Appeals. Otherwise, mere circuit court reference to PCR in the final order would nullify and force dismissal any and all such appeals.

To the contrary, Rule 203 invites Appellant explanation and justification, which this Appellant provided in the form of a memorandum. Because neither the State nor this Court stepped in to seek or force a delay or dismissal of this appeal thereafter, Appellant directly addressed in Issues 1 and 3 of the initial brief the propriety of this matter having been (partially) considered in the circuit court instead of as part of a PCR action. The argument addressing those issues further in approximately seven pages of his initial brief. It is respectfully submitted that the State should be compelled to respond, address, and discuss the same in a Respondent's brief, following standard procedures for issues to be decided on appeal.

In other words, having proceeded this far through the normal process for full development and consideration of pertinent legal issues by this Court, with a good-faith basis articulated for the ability of his Court to consider and rule upon the same, plus the absence any action by the Supreme Court thus far to certify the matter for their own direct consideration, the ends of justice and judicial economy dictate that this matter should be allowed to continue through full briefing and consideration by the Court of Appeals (unless certified by the Supreme Court in accordance with the pending Motion to Certify).

III. This matter should not be delayed because of petitions before the Supreme Court, given the absence of any indication as to the manner or timing of any decision on those issues.

Obviously Appellant, by virtue of requesting certification of this matter and separately filing a petition in the original jurisdiction of the Supreme Court, is asking the Supreme Court to exercise its plenary authority to consider the underlying facts, circumstances, and legal

proceedings in whatever manner it desires. However, the Supreme Court has thus far not indicated any decision as to whether, the likelihood of whether, or the manner in which, it may exercise such authority. As such, the pendency of those separate requests for action by the Supreme Court should not prompt, nor does it justify, any delay in these proceedings. To the contrary, the still-pending nature of those requests may be an indication that the completion of briefing by the parties in this appeal may be desired by the Supreme Court before ruling on those pending requests.

CONCLUSION

For the reasons set forth hereinabove, Appellant Carpenter respectfully requests that the State's Motion to Dismiss and to Hold Time Limits in Abeyance be denied.

Respectfully submitted,



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ATTORNEYS FOR APPELLANT

April 23, 2018

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PROOF OF SERVICE

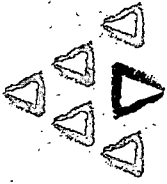
I, Beth Cogan, an employee with Ballard & Watson, do hereby certify that on April 23, 2018, I served a copy of the **Response to the State of South Carolina's Motion to Dismiss and to Hold Time Limits in Abeyance**, in the above-captioned case on the following individuals by electronic mail and by United States Mail, with sufficient first-class postage affixed, addressed as follows:

**Clay Mitchell, Esquire
Post Office Box 11549
Columbia, South Carolina 29211**

**Damon Wlodarczyk, Esquire
Riley Pope & Laney, LLC
Post Office Box 11412
Columbia, South Carolina 29211**


Beth Cogan, Paralegal

April 23, 2018



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

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April 23, 2018

Via U.S. Mail

The Honorable Jenny Abbot Kitchings
Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

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Re: *Charles Eugene Carpenter v. SC Department of Corrections, et. al.*
Appellate Case No.: 2017 – 002577

Dear Ms. Kitchings:

Enclosed for filing please find Appellant Carpenter's Response to the State of South Carolina's Motion to Dismiss and to Hold Time Limits in Abeyance, in the above-referenced matter. Please clock and return a stamped copy in the self-addressed, stamped envelope enclosed. A copy has been sent to counsel for Respondents.

Thank you for your time in this matter, and if you have any questions, please do not hesitate to contact our office.

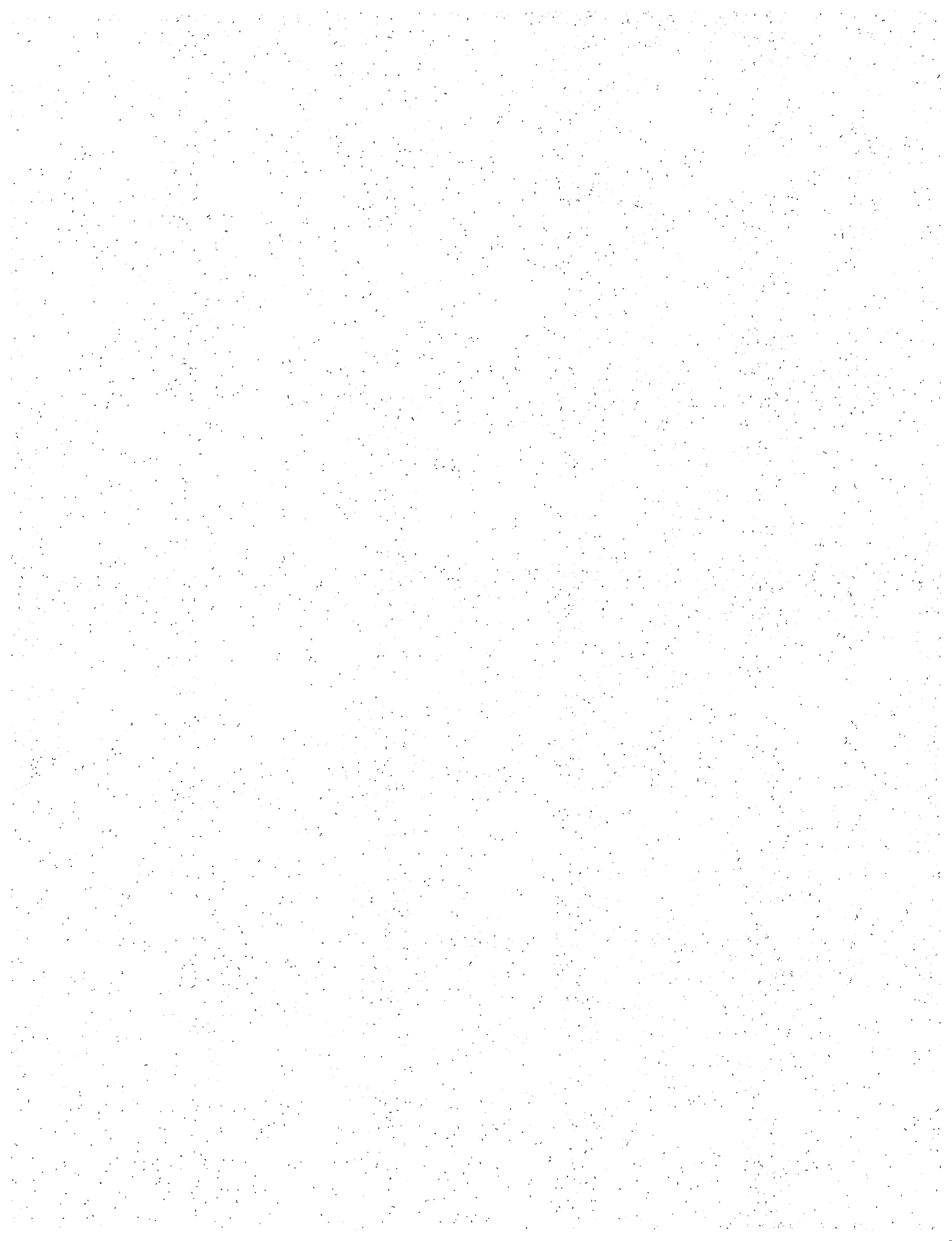
With warm personal regards, I am,

Sincerely yours,

Harvey M. Watson III

Harvey M. Watson III
harvey@desaballard.com

cc: Via U.S. Mail
Damon Wlodarczyk, Esquire
Clay Mitchell, Esquire



BALLARD & WATSON, ATTORNEYS AT LAW
226 STATE STREET
WEST COLUMBIA, SC 29169

To:

The Honorable Jenny Abbot Kitchings
Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

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