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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

May 4, 2018

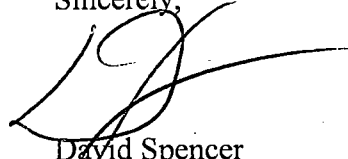
The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Robin Gray Reese v. State of South Carolina
Appellate Case No. 2017-001110
Lower Court Case No. 2014-CP-40-5657

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Reply to Return to Respondent's Motion for Remand and Conclusions of Law Pursuant to S.C. Code Section 17-27-80. By copy of this letter we are serving opposing counsel today.

Sincerely,



David Spencer
Senior Assistant Attorney General
SC Bar No. 68571

DS/can
Enclosures

cc: Laura R. Baer, Esquire (2 copies)
Taylor D. Gilliam, Esquire

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari from Richland County
Jocelyn J. Newman, Circuit Court Judge
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S.C. SUPREME COURT

Robin Gray Reese,

Petitioner,

vs.

State of South Carolina,

Respondent.

Appellate Case No. 2017-001110

—————
**REPLY TO RETURN TO
RESPONDENT'S MOTION FOR
REMAND FOR SPECIFIC FINDINGS OF
FACT AND CONCLUSIONS OF LAW
PURSUANT TO S.C. CODE
SECTION 17-27-80**
—————

This matter is an applicant's appeal from the denial of a post-conviction relief application. A hearing was held before the Honorable Jocelyn J. Newman on August 30, 2016. At the conclusion of the hearing, Judge Newman requested proposed orders from both parties. Judge Newman denied relief by order dated November 14, 2016. The order was the proposed order submitted by Respondent. Petitioner filed a Rule 59(e), SCRPC motion requesting more detailed findings of fact and law pursuant to S.C. Code Section 17-27-80. Judge Newman denied the 59(e) motion by Form 4 order dated April 21, 2017.

Reese appealed the denial of the application and filed a petition for writ of certiorari. Reese raised the following issue as Reese's first issue in the petition: "The PCR court erred where it failed to make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented as required by S.C. Code Ann. § 17-27-80." Pet. p. 4. Reese requested as alternate relief that the matter be remanded to the PCR court for issuance of an order "with sufficient findings and conclusions as to each issue presented" Pet. p. 24.

In Reese's petition for writ of certiorari, Reese relied on Pruitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992); McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991); Simmons v. State, 416 S.C. 584, 788 S.E.2d 220 (2016); and Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007) to argue the order was insufficient. Now, Reese attempts to distinguish each of these cases to argue against remand for a more complete order, changing course from Reese's petition which pleads a remand for such a purpose as additional relief.

This case has been reassigned to undersigned counsel who has reviewed the record and the PCR order. Upon review of the record by new appellate counsel, Respondent, understanding this Court's prior admonishments in Pruitt and similar cases concedes the Rule 59(e) motion was improperly denied because the order did not sufficiently address the issues raised in the petition for writ of certiorari. Therefore Respondent believes remand is necessary for the PCR court to include specific findings of fact and conclusions of law on each issue presented, based on accurate references to the record and applicable law.

Respondent believes the appropriate remedy for the failure to grant a 59(e) motion asking the circuit court to address issues not specifically addressed in an order is to return the parties to the status quo at the time of the making of the motion. Upon the PCR court's review of the entire

record, including the transcript of the PCR hearing, the PCR court should enter an order addressing each of the grounds appropriately raised at the PCR hearing. Respondent does not object if Petitioner seeks to submit the petition for writ of certiorari for the PCR court's review.

Responding to Petitioner's digressive complaints about ex parte orders, undersigned counsel does not submit ex parte proposed orders but instead always provides opposing parties a copy of the proposed order concomitantly with the submission of a proposed order to a court. Further, "even when the trial judge adopts proposed findings verbatim, the findings are those of the court" Anderson v. City of Bessemer City, 470 U.S. 564, 572 (1985).

Respondent notes Reese's suggestion of a new evidentiary hearing and Respondent submits that upon further review of the record, including review of the petition for writ of certiorari, the PCR court, in its discretion, may wish to hold a supplemental hearing to take additional evidence or argument on the matters raised in the PCR hearing.

WHEREFORE, Respondent prays that this Court remand this matter to the PCR court so the PCR court may enter an amended order pursuant to Section 17-27-80.

[SIGNATURE BLOCK APPEARS ON THE FOLLOWING PAGE]

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar # 68571

BY:



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ATTORNEYS FOR RESPONDENT

May 4, 2018

STATE OF SOUTH CAROLINA

In The Supreme Court

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas

RECEIVED

The Honorable Jocelyn J. Newman, Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No. 2017-001110

ROBIN GRAY REESE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Reply to Return to Respondent's Motion for Remand and Conclusions of Law Pursuant to S.C. Code Section 17-27-80, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Taylor Davis Gilliam, Esquire
S.C. Commission on Indigent Defense
Post Office Box 11589
Columbia, SC 29201

Laura Ruth Baer, Esquire
S.C. Commission on Indigent Defense
Post Office Box 11589
Columbia, SC 29211-1589

This 4th day of May, 2018


Carmen A. Nord
LEGAL ASSISTANT