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MAY 14 2018

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

\_\_\_\_\_  
Appeal from York County  
The Honorable Frank F. Addy, Jr., Circuit Court Judge  
\_\_\_\_\_

Appellate Case No. 2016-001363

Hubert Brown,

Respondent,

v.

State of South Carolina,

Petitioner.

\_\_\_\_\_  
**MOTION TO SUPPLEMENT APPENDIX**  
\_\_\_\_\_

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

1. Hubert Brown (Brown) is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Brown was indicted at the September 2013 term of the York County Grand Jury for first-degree burglary (2012-GS-46-3185) and attempted murder (2012-GS-46-3187). David C. Cook, Esquire, represented him.

2. On July 9-11, 2013, Brown was tried before the Honorable John C. Hayes,

III, and a jury. Pursuant to S.C. Code Ann. § 17-25-45, the State served notice of its intention to seek life imprisonment without the possibility of parole upon conviction. At the conclusion of the trial, Petitioner was found guilty as charged, and Judge Hayes sentenced him to imprisonment for a term of life without the possibility of parole on each charge.

3. Brown filed a timely application for post-conviction relief on December 31, 2014. Petitioner filed a return on July 8, 2015. Through counsel, Brown filed an amendments to his application on January 25, 2016. An evidentiary hearing on the application was convened at the Moss Justice Center in York, South Carolina, on April 19, 2016. The Honorable Frank R. Addy, Jr., presided over the hearing. By an Order signed June 16, 2016, and filed June 20, 2016, the PCR court granted relief on multiple grounds, including trial counsel's failure to object to the admission of a Department of Mental Health report (DMH report) of Brown's evaluation for criminal responsibility because the doctor who performed the evaluation and authored the report was not called to testify at trial.

4. On January 20, 2018, Petitioner filed a motion to hold the time for filing its Petition for Writ of Certiorari in abeyance until this Court's decision in State v. King, Appellate Case No. 2015-001278. This Court granted Petitioner's motion on January 24, 2018. However, the Appendix was prematurely filed on January 20, 2018, along with Petitioner's motion. The Petition is now due to be filed on today's date, May 9, 2018. However, the Appendix does not contain a copy of the DMH report.

5. Without this document, the appellate record is incomplete, and Petitioner

cannot fully argue its Petition. Therefore, Petitioner submits the DMH report should have been included in the Appendix to the Petition for Writ of Certiorari.

6. Inasmuch as the DMH report is relevant and pertinent material under Rule 243(f), SCACR that should be included in the Appendix, counsel moves this Court to allow Petitioner to include the same in a Supplemental Appendix, provisionally filed along with this Motion.

7. Counsel for Petitioner has conferred via telephone with Respondent's counsel, Wanda Carter, Esquire, of the South Carolina Commission on Indigent Defense – Appellate Defense Division, and she has consented to the motion.

WHEREFORE, as the Appendix is incomplete, counsel for Petitioner requests this Court: (1) grant the motion to allow Petitioner to supplement the Appendix, and (2) accept Petitioner'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

May 9, 2018

STATE OF SOUTH CAROLINA  
In The Supreme Court

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S.C. SUPREME COURT

CERTIORARI TO YORK COUNTY  
Court of Common Pleas

The Honorable Frank F. Addy, Jr., Circuit Court Judge

Appellate Case No. 2016-001363

Hubert Brown, #161888,.....Respondent,

v.

State of South Carolina,.....Petitioner.

**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:

**Robert M. Dudek, Esquire**  
**SC Commission on Indigent Defense**  
**Post Office Box 11589**  
**Columbia, South Carolina 29211-1589**

This 9<sup>th</sup> day of May, 2018

  
\_\_\_\_\_  
CAROLINE COLLINS  
Administrative Coordinator



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MAY 14 2018

S.C. SUPREME COURT

ALAN WILSON  
ATTORNEY GENERAL

May 9, 2018

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

**Re: Hubert Brown v. State of South Carolina**  
**Appellate Case No. 2016-001363**  
**Lower Court Case No. 2014-CP-46-4219**

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: Robert M. Dudek, Esquire (2 copies)