



The Supreme Court of South Carolina

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October 06, 2016

Mr. Bobby Joe Barton, #163629
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

Re: Bobby Joe Barton v. State
Appellate Case No. 2016-000995

Dear Mr. Barton:

This responds to your letter dated October 3, 2016. Since this is a post-conviction relief case, briefs will only be filed if this Court grants a writ of certiorari in this matter. I have enclosed a copy of Rule 243 of the South Carolina Appellate Court Rules (SCACR) which contains the procedures that will be followed in this case.

At the present time, you have an extension until November 28, 2016, to serve and file the petition for a writ of certiorari and the appendix. You must provide these documents to the Division of Appellate Defense on or before that date if you desire Appellate Defense to make the required copies of these documents.

I call your attention to the requirements of Rule 243(e) and (f), SCACR, regarding the required content of the petition for a writ certiorari and appendix. If you do not comply with these requirements, your documents may be rejected for filing. Finally, please remember that the appendix may not contain any materials that were presented to the post-conviction relief judge. *Jamison v. State*, 410 S.C. 456,

765 S.E.2d 123 (2014).

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

Enclosure (Rule 243, SCACR)

cc: . Karen Christine Ratigan, Esquire
SC Appellate Defense

CERTIORARI TO REVIEW POST-CONVICTION RELIEF ACTIONS

a) **Review by Writ of Certiorari.** A final decision entered under the Post-Conviction Relief Act shall be reviewed by the Supreme Court upon petition of either party for a writ of certiorari, according to the procedure set forth in this Rule.

b) **Notice of Appeal and Ordering Transcript.** In the same manner and under the same time limitations as provided for appeals from the Court of Common Pleas in Rules 203 and 207, the petitioner shall serve and file a notice of appeal and shall obtain from the court reporter a transcript of the proceedings in the lower court.

c) **Explanation Required.** If the lower court has determined that the post-conviction relief action is barred as unavailing or being untimely under the statute of limitations, the petitioner must, at the time the notice of appeal is filed, provide an explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If the petitioner fails to make a sufficient showing, the notice of appeal may be dismissed.

d) **Service and Filing of Petition and Appendix.** Within thirty (30) days of receipt of the transcript, petitioner shall serve a copy of the Appendix and petition for writ of certiorari on opposing counsel and shall file with the Clerk of the Supreme Court an original plus six (6) copies of the petition, two (2) copies of the Appendix, and proof of service showing the Appendix and petition have been served. As provided by Rule 267(d), one copy of the Appendix filed with the Supreme Court shall be filed unbound.

e) **Content of Petition.** The petition shall contain:

(1) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail.

(2) A concise statement of the case, containing the facts material to the consideration of the questions presented.

(3) A direct and concise argument in support of the petition. The argument on each question shall include citation of authority and specific reference to pertinent portions of the lower court record. The total length of a petition shall not exceed twenty-five pages.

f) **Content of Appendix.** The Appendix shall contain:

(1) The entire lower court record.

(2) A copy of the final order entered after the post-conviction proceeding.

(3) An index setting forth the principal matters contained in the Appendix. This index shall be in the same form required for a Record on Appeal under Rule 210(e).

g) **Return of Respondent.** Within thirty (30) days after service of the petition and Appendix, respondent shall serve a copy of his return on opposing counsel, and shall file with the Clerk of the Supreme Court an original and six (6) copies of his return and proof of service showing that the return has been served. The return may rephrase the questions, offer additional sustaining grounds, and present a concise counter-statement. The total length of a return shall not exceed twenty-five (25) pages.

h) **Reply.** The petitioner shall have ten (10) days from the date of service of the return to file with the Clerk of the Supreme Court an original and six (6) copies of a reply and proof of service showing that the reply has been served. The total length of the reply shall not exceed fifteen (15) pages.

i) **Special Procedures Where a White v. State Review Is Sought.** Where the petition seeks review under White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), the following procedure shall be followed: <http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=243.0&subRuleID=&ruleType=APP>

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with all other post-conviction relief issues petitioner seeks to have reviewed. At the same time the petition is served, petitioner shall serve and file a brief addressing the direct appeal issues. This brief shall, to the extent possible, comply with the requirements of Rule 208(b). Respondent's return to the petition shall address the post-conviction relief issues, including whether the direct appeal was knowingly and intelligently waived. At the same time the return is due, respondent shall also serve and file a brief addressing the direct appeal issues. Within ten (10) days after service of respondent's brief, petitioner may file a reply brief on the direct appeal issues.

(2) When the post-conviction relief judge has found that the applicant is not entitled to a White v. State review, the petition shall raise the question of waiver of the right to a direct appeal along with all other post-conviction relief issues petitioner seeks to have reviewed. The petition shall also contain a "Statement of Issues on Appeal" listing the issues to be raised if a White v. State review is granted; this statement of issues shall comply with the requirements of Rule 208(b)(1)(B). Briefing of the direct appeal issues will not be allowed unless certiorari is granted on the issue.

j) **Procedure Upon Grant of Certiorari.** Upon the concurrence of any two justices, the petition may be granted on any question presented. The petition will be considered by the Supreme Court without oral argument. If the petition is granted, the Clerk shall notify each party or his attorney, specifying the question or questions to be considered, and the parties shall prepare briefs addressing the question(s). Petitioner shall have thirty (30) days from the date the petition is granted to serve a copy of his brief on all parties to the appeal, and file with the Clerk of the Supreme Court fifteen (15) copies of his brief, along with proof of service. At the time he files his brief, petitioner shall also file thirteen (13) additional copies of the Appendix. Within thirty (30) days after service of petitioner's brief, respondent shall serve a copy of his brief on all parties to the appeal, and file with the Clerk of the Supreme Court fifteen (15) copies of his brief, along with proof of service. Petitioner may file a reply brief. If a reply brief is prepared, petitioner shall, within ten (10) days after service of respondent's brief, serve a copy of his reply brief on all parties to the appeal and file with the Clerk of the Supreme Court fifteen (15) copies of his reply brief, along with proof of service. The briefs shall, to the extent possible, comply with the requirements of Rule 208(b). Oral argument shall not be permitted unless ordered by the Supreme Court.

k) **Bail Pending Appellate Review.** A post-conviction relief applicant may be admitted to bail after the service of the notice of appeal by either the applicant or the State. Where the sentence originally imposed did not exceed imprisonment for ten (10) years, the petition for bail shall be made to the lower court. In all other cases, the petition for bail shall be made to the Supreme Court. The petition and any return or reply shall comply with the requirements of Rule 240. The authority to grant bail will be exercised with caution and only in exceptional cases in deciding whether to exercise the discretionary authority to admit an applicant to bail, the following factors will be considered: the probability the applicant will prevail on appellate review and the nature of the relief he or she will receive; the seriousness of the criminal offense committed; the danger the applicant may pose to the community if he or she is released; the likelihood that the applicant may flee if released; and the character and circumstances of the applicant. If bail is granted, the court may require the posting of a bond and impose other conditions. A party aggrieved by the decision of the lower court regarding bail may petition the Supreme Court for review of that decision.

l) **Transfer of Cases to the Court of Appeals.** The Supreme Court may transfer a case filed under this rule to the Court of Appeals. If transferred, the Court of Appeals shall proceed with the case in the same manner as the Supreme Court would have done under this rule with the exception that a petition for a writ of certiorari may be granted by one judge of a three-judge panel. Review of any final decision of the Court of Appeals shall be by a petition for a writ of certiorari under Rule 242, SCACR.

last amended by Oder dated January 29, 2009, effective April 29, 2009, by order of the same date.