

STATE OF SOUTH CAROLINA
In the Supreme Court

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CERTIORARI TO CHARLESTON COUNTY
Deadra L. Jefferson, PCR Judge
George C. James, Jr., Trial Judge

AUG 29 2018

S.C. SUPREME COURT

Appellate Case No. 2017-002544

ERIC ANCRUM,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**MOTION TO STRIKE APPENDIX AND
REQUIRE THE FILING OF AN AMENDED APPENDIX**

Respondent (the State), through its undersigned counsel, would respectfully show unto the Court as follows:

I. Procedural History

During its June 2006 term, the Charleston County Grand Jury indicted Petitioner Eric Ancrum for trafficking in cocaine (more than 400 grams) (2006-GS-10-4066), possession with intent to distribute cocaine within proximity of a school (2006-GS-10-4069), manufacturing cocaine base (2006-GS-10-070), possession of a firearm during the commission of a violent crime (2006-GS-10-4071), and manufacturing cocaine base within proximity of a school (2006-GS-10-4188). Subsequently, during its October 2006 term, the Charleston County Grand Jury also indicted Petitioner for trafficking cocaine base (200-400 grams) (2006-GS-10-9674) and

possession with intent to distribute cocaine base within proximity of a school (2006-GS-10-9675).

John D. Delgado, Esquire and William N. Nettles, Esquire, represented Petitioner on these charges. Assistant Solicitors Nathan Williams and Gregory Voigt of the Ninth Circuit Solicitor's Office prosecuted the case.

On October 8, 2007, Petitioner proceeded to a jury trial in the Charleston County Court of General Sessions before the Honorable George C. James, Jr., then circuit-court judge. On October 11, 2007, the jury convicted Petitioner of all offenses as indicted except possession of a firearm. The trial court sentenced Petitioner to confinement for fifteen years for manufacturing cocaine base and life without the possibility of parole for each of the other five offenses pursuant to S.C. Code Ann. § 17-25-45 based on Petitioner's prior convictions.

Counsel filed a notice of appeal on behalf of Petitioner, but failed to serve the State. On October 24, 2007, the South Carolina Court of Appeals dismissed Petitioner's appeal for failing to properly serve the State. The remittitur was returned to the circuit court on November 9, 2007.

Thereafter, on March 25, 2008, Petitioner filed an application for post-conviction relief (2008-CP-10-1670), alleging he was being held in custody unlawfully based on an allegation that counsel was ineffective for failing to perfect an appeal on his behalf. The State served its return on December 23, 2008. An evidentiary hearing was convened on November 18, 2009, in the Charleston County Court of Common Pleas before the Honorable Kristi L. Harrington, circuit court judge. At the hearing, Petitioner proceeded forward on the following claims:

1. Ineffective assistance of counsel in that counsel
 - a. Did not meet with Petitioner enough times.

- b. Did not contact witnesses that could have verified Petitioner did not live in the apartment in question.
- c. Did not request a continuance when aware that they were not prepared for trial.
- d. Did not develop the mere presence defense properly.
- e. Failed to file a timely appeal.

Petitioner was represented at the evidentiary hearing by Joseph Stephen Schmutz, Esquire, and Anthony P. LaMantia, III, Esquire. Respondent was represented by Assistant Attorney General Matthew J. Friedman of the South Carolina Attorney General's Office. At the hearing, Petitioner testified on his own behalf and presented testimony from trial counsels Delgado and Nettles. At the hearing, Respondent agreed Petitioner was entitled to belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E. 2d 35 (1974), but challenged the remaining allegations for relief. By order filed December 14, 2009, the post-conviction relief court granted Petitioner belated review of direct appeal issues pursuant to White and denied relief as to all other allegations.

Petitioner, through post-conviction relief counsel, filed a notice of appeal with this Court challenging the court's denial of post-conviction relief. Counsel subsequently filed a petition for a writ of certiorari, arguing, "The PCR court erred in denying Petitioner's request for a new trial based upon his claims of ineffective assistance of counsel." However, counsel did not file a separate brief of petitioner pursuant to White as required under Rule 243(i)(1), SCACR and did not otherwise argue any direct appeal issues. The State served its return to the petition for a writ of certiorari on April 18, 2011. Petitioner then filed a reply to Respondent's return to the petition on June 6, 2011. This Court denied certiorari and the remittitur was returned to the circuit court on June 7, 2012.

Thereafter, on June 12, 2017, Petitioner, through retained counsel Tristan Shaffer, filed a second post-conviction relief application and accompanying affidavit from initial post-conviction relief counsel, arguing he was entitled to White review as granted by the initial post-conviction relief court and that initial post-conviction relief counsel had improperly neglected to file a brief of petitioner pursuant to White on his behalf. Respondent consented to the grant of belated review of direct appeal issues pursuant to White as granted by the original post-conviction relief court, and by order filed on November 8, 2017, the Honorable Deadra L. Jefferson, acting in her capacity as Chief Administrative Judge for Common Pleas for Charleston County, granted Petitioner belated appellate review pursuant to White.

II. Current Proceeding

Petitioner filed a notice of appeal and on April 30, 2018, Petitioner filed a petition for a writ of certiorari, a brief of petitioner pursuant to White, and an appendix with this Court.

III. Motion to Strike Petitioner's Appendix and Require Filing of an Amended Appendix

While drafting Respondent's return to the petition for a writ of certiorari and brief of respondent pursuant to White, undersigned counsel noticed the appendix failed to include the bulk of the filings from his initial post-conviction relief appeal, including the return to the petition for a writ of certiorari, the reply to the return to the petition for a writ of certiorari, the order denying certiorari, and the remittitur. Additionally, undersigned counsel noticed the trial transcript contained numerous improper commentary and markings from an unknown source. See e.g., App. 121, 129, 142, 159, 173, 176, 175, 192, 193, 194, 209, 224, 227, 228, 285, 335, 364, 415, 429, 465, 491, 596, 603, 604, 615, 635, 641, 644, 652, 752, 755, 779, 814, 815, 823, 835, 873.

Pursuant to Rule 243(f) of the South Carolina Appellate Court Rules, a party filing a petition for a writ of certiorari in a post-conviction relief appeal shall contemporaneously file an appendix that includes the entire lower court record. Additionally, the appendix should **only** include matters that were presented to the lower court. See Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2014) (citing to Rule 243(f), SCACR) (emphasis added).

In the present case, Petitioner failed to include the majority of the filings from his initial post-conviction relief appeal in his appendix. Additionally, Petitioner included matters not previously presented to the post-conviction relief court in the form of commentary from an unknown source that spans the entire trial transcript. Both of these are violations of Rule 243(f), SCACR, and warrant striking Petitioner's appendix as filed and require Petitioner to file an amended appendix that comports with the rules.

Because Petitioner's appendix fails to contain all the matter required to be included by our appellate court rules while also including numerous pages of documents with improper commentary that cannot properly be included in an appendix, his appendix does not comply with the requirements of our appellate court rules and must be stricken. See Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.”).

Accordingly, the State respectfully asks this Court to strike Petitioner's appendix containing improper matter and require the filing of an appendix that fully complies with the requirements of Rule 243(f) of the South Carolina Appellate Court Rules.


Undersigned counsel for Respondent has conferred with counsel for Petitioner, who indicated he would file an amended appendix to fully comport with the requirements of Rule 243(f), SCACR.

WHEREFORE, Respondent prays that the Court strike Petitioner's appendix containing improper matter; require the filing of an amended appendix fully complying with the requirements of Rule 243(f), SCACR; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
Megan Harrigan Jameson

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Post Office Box 11549
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August 29, 2018

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO CHARLESTON COUNTY

Deadra L. Jefferson, PCR Judge
George C. James, Jr., Trial Judge

Appellate Case No. 2017-002544

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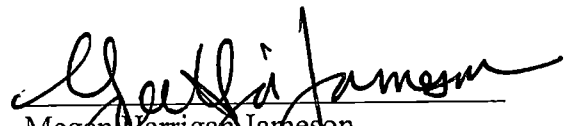
PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Motion to Strike Appendix and Require the Filing of an Amended Appendix on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tristan Shaffer, Esquire
PO Box 1027
Chapin, South Carolina 29036

I further certify that all parties required by Rule to be served have been served.

This 29th day of August, 2018.


Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108

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AUG 29 2018

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

August 29, 2018

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

RE: Eric Ancrum v. State – Appellate Case No. 2017-002544

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the within Motion to Strike the Appendix and Require the Filing of an Amended Appendix, along with proof of service, for filing in the above-referenced post-conviction relief appeal.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
S.C. Bar Number 100108

MHJ/
Enclosures

cc: Tristan Shaffer, Esquire
Victim Advocacy Division