

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County
Court of Common Pleas
The Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2018-000480

KARRIEM PROVET,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

MOTION TO COMPEL FILING OF CORRECTED APPENDIX

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

I.

Petitioner is presently confined with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Petitioner was indicted by the November 2002 term of the Greenville County Grand Jury for resisting arrest (2002-GS-23-4288) and by the May 2005 term for trafficking cocaine (2005-GS-23-3478). William B. Long, Esquire represented Petitioner.

On August 7, 2007, Petitioner proceeded to trial before the Honorable Carmen T. Mullen and a jury. The jury convicted Petitioner of resisting arrest and trafficking cocaine. Judge Mullen sentenced Petitioner to concurrent terms of one year for resisting arrest and twenty-five years for

trafficking cocaine.

A notice of appeal was filed at the South Carolina Court of Appeals. Tricia A. Blanchette, Esquire perfected the appeal. The Court of Appeals affirmed Petitioner's convictions and sentences on January 31, 2011. State v. Provet, 391 S.C. 494, 706 S.E.2d 513 (Ct. App. 2011). After, Petitioner filed a petition for writ of certiorari at the South Carolina Supreme Court, the Court granted the petition and the parties submitted briefs. The Supreme Court affirmed the Court of Appeals on August 14, 2013. State v. Provet, 405 S. C. 101, 747 S.E.2d 453 (2013). The Remittitur was sent on August 30, 2013.

Petitioner filed a PCR application August 22, 2014. The Respondent made its return on January 28, 2015. An evidentiary hearing was held on June 26, 2017. Petitioner was present and represented by William G. Yarborough III, Esquire. DeShawn H. Mitchell, Esquire of the South Carolina Office of the Attorney General represented Respondent. The Honorable Daniel D. Hall denied and dismissed the PCR application by written order filed March 2, 2018.

Petitioner filed a timely notice of appeal. Pursuant to an order from this court dated June 25, 2018, Petitioner's appeal was dismissed for failing to file the petition and appendix as required by Rule 243(d), SCACR. Petitioner filed a motion to reinstatement his appeal on July 10, 2018. In an order dated August 9, 2018, this court granted Petitioner's motion and required Petitioner to file the petition for writ of certiorari and appendix in this matter within fifteen days from the date of the order.

Thereafter, Petitioner's Petition for Writ of Certiorari and appendix was received by this court on September 17, 2018.

II.

Pursuant to Rule 243(d), SCACR, a Petitioner is required to "serve a copy of the Appendix

and petition for writ of certiorari on opposing counsel.” Additionally, pursuant to Rule 243(f), SCACR, “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).”

III.

In the present case, Petitioner failed to serve Respondent with a copy of the Appendix pursuant to Rule 243(f), SCACR. Moreover, Petitioner failed to include an index setting forth the principal matters contained in the Appendix. Respondent moves for this Court to compel Petitioner to file a corrected Appendix that includes an index pursuant to Rule 243(f), SCACR.

WHEREFORE, Respondent prays this Court will compel Petitioner to file and serve a proper Appendix in compliance with appellate court rules; hold this return to petition for writ of certiorari in abeyance pending a ruling on the Respondent’s motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

BY: 
ATTORNEYS FOR RESPONDENT

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September 24, 2018

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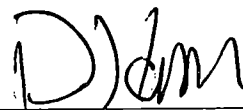
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **Motion to Compel Filing of Corrected Appendix** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

William G. Yarborough, III, Esquire
522 North Church Street
Greenville SC 29601

This 21st day of September, 2018.



DeShawn H. Mitchell
Assistant Attorney General
SC Bar #101813
Attorney for Respondent

SWORN to before me this 21st day of September, 2018.



Notary Public for South Carolina.
My Commission Expires May 14, 2024