

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Post Conviction Relief

NOV 13 2018

S.C. SUPREME COURT

J. Derham Cole, Circuit Court Judge

Case No.: 2018-000328

Ricardo Hernandez #348548,..... Petitioner,

vs.

State of South Carolina,Respondent.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

TOMMY A. THOMAS
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Other Counsel of Record:

Jordan A. Cox, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent

INDEX

TABLE OF CASES 1
ARGUMENT2
CONCLUSION4

TABLE OF CASES

Odom v. State, 337 S.C. 261, 523 S.E. 2d 755

Robertson v. State, 418 S.C. at 513, 795 S.E. 2d 33

ARGUMENT

The State is not challenging the granting of the belated review on Appeal and did not file a Return to the Petition for Writ of Certiorari. The State did file a Return to the Petition for Writ of Certiorari pursuant to Austin v. State.

In reply the Petitioner would argue as follows:

The Respondent asserts that the Petitioner does not raise an issue from the denial of the first Application for Post Conviction Relief. The Respondent simplifies the Petitioner's argument and states that the Petitioner only asserts the PCR Court erred by denying relief for ineffective assistance of PCR counsel in the subsequent PCR filing. The Respondent states that in seeking Certiorari the Petitioner only raises the single issue of whether the second PCR Court properly denied relief for ineffective for ineffective assistance of PCR Counsel.

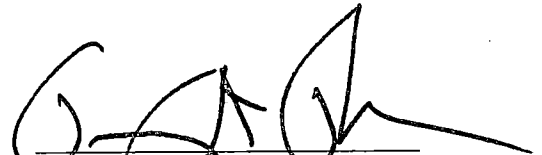
The Respondent seems to blur the distinctions between the original Post Conviction Relief Application which consisted of an eight (8) page transcript and the second Post Conviction Relief that was filed raising ineffective assistance of counsel as well as requesting a belated appeal. The Petition for Writ of Certiorari specifically addresses the original Post Conviction Relief Action in which relief was denied. The Petitioner asserts that he is entitled to a second Post Conviction Relief evidentiary hearing. Because the previous hearing from which this Direct Appeal was taken provided no adequate representation of the issues before the Court. The manner in which the Post Conviction was presented by counsel, Mr. Owens, was in total disregard of the rights of the Petitioner. He was never given or offered a full and fair opportunity to present his claim.

The Court has stated in Odom v. State, 337 S.C. 261, 523 S.E. 2d 755 and repeated in Robertson v. State, 418 S.C. at 513, 795 S.E. 2d 33, that all Applicants are entitled to a full and fair opportunity to present claims in one Post Conviction Relief Application.

Therefore, in Reply, the Petitioner would assert that he has properly raised issues from the denial from his original Post Conviction Relief and that pursuant to Odom and Robertson that he is entitled to a full and fair evidentiary hearing.

CONCLUSION

That the Petitioner for Writ of Certiorari pursuant to Austin v. State be granted and a new evidentiary hearing be granted.



TOMMY A. THOMAS
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

November 9, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Post-Conviction Relief

NOV 13 2018

S.C. SUPREME COURT

J. Derham Cole, Circuit Court Judge

Case No.: 2018-000328

Ricardo Hernandez #348548,..... Petitioner,

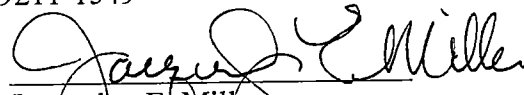
vs.

State of South Carolina,Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant hereby certify that I placed in the United States Mail, a copy of a Reply to Return to Petition for Writ of Certiorari, with postage prepaid and the return address clearly shown on said envelope to Jordan A. Cox, Esq. of the Attorney General's Office, at:

Jordan A. Cox, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549



Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
November 9, 2018

Tommy A. Thomas

ATTORNEY AND COUNSELOR AT LAW

RECEIVED

TELEPHONE:
(803) 732-5507
(803) 732-5508

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

NOV 13 2018

INMATE LINE
(803) 732-6542

FACSIMILE:
(803) 781-4226

S.C. SUPREME COURT

November 9, 2018

Tommy A. Thomas

The South Carolina Supreme Court

P.O. Box 11330

Columbia, SC 29211

TELEPHONE:
(803) 732-5507
(803) 732-5508

FACSIMILE:
(803) 781-4226

ATTORNEY AND COUNSELOR AT LAW

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO BOX 88
IRMO, SC 29063

INMATE LINE
(803) 732-6542

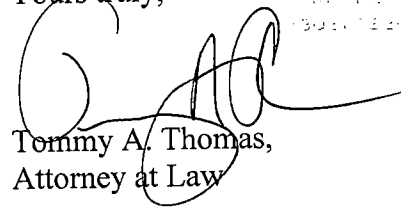
RE: Ricardo Hernandez #348548 v. State of South Carolina
Case No.: 2018-000328

Dear Sir or Madam:

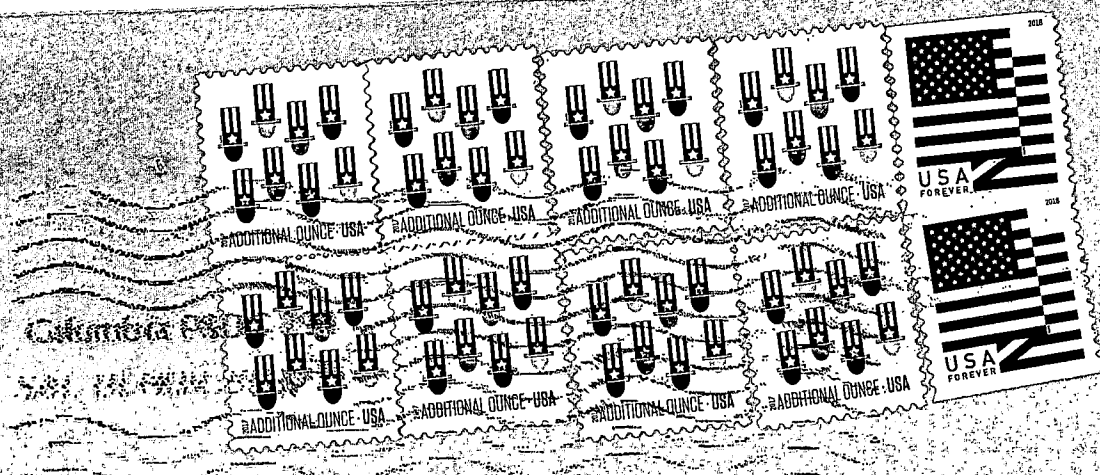
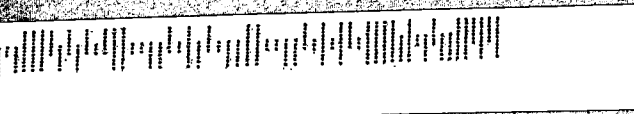
Enclosed please find for filing an Original and six (6) copies of the Reply to Return to Petition for Writ of Certiorari and Proof of Service.

Kindly return a clocked copy to me in the enclosed envelope. Thank you and should you have any questions, or need any additional information, please do not hesitate to contact me.

Yours truly,


Tommy A. Thomas,
Attorney at Law

TAT/jem
cc: Jordan Cox, Esq.



Tommy A. Thomas, P.C.
ATTORNEY AND COUNSELOR AT LAW
HARRINGTON BUILDING
POST OFFICE BOX 88
IRMO, SOUTH CAROLINA 29063

The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211