

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

RECEIVED

AUG 05 2019

Robert E. Hood, Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No. 2018-000553

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GEORGE W. HUGHES,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**PETITION FOR APPEAL BOND**

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ATTORNEY FOR PETITIONER.

NOW COMES the Petitioner in the above captioned PCR Appeal, acting by and through his undersigned appellate counsel. The original Petition for Writ of Certiorari in this appeal was filed on August 21, 2018, along with a Petition to Exceed Page Limits and a Motion to File Amended Petition. Both of those motions were denied by this Court on February 20, 2019. The Revised Petition for Writ of Certiorari, complying with page limits, was filed on April 1, 2019, and is still pending before this Honorable Court. Petitioner seeks this Honorable Court's Order granting him an appeal bond pursuant to **Rule 243 (k), SCACR, and *State v. Whitener, 225 S.C. 244, 81 S.E.2d 784(1954)***. In support of this prayer, he would show this Court the following.

Petitioner is seventy-three (73) years old. He is a marine veteran who had no prior criminal record prior to his prosecution on the murder charge for which he was convicted. He is presently confined in the South Carolina Department of Corrections, Lieber Correctional Institution, pursuant to orders of commitment of the Orangeburg County Clerk of Court. In January, 2015, the Orangeburg County Grand Jury indicted Petitioner for murder (2015-GS-38-0077). Gerald Jaren Davis, Esquire, of the Orangeburg County Bar, represented him in the Court of General Sessions. On July 30, 2015, Petitioner proceeded to trial by jury before the Honorable Edgar W. Dickson, presiding circuit court judge. On July 30, 2015, the jury found Applicant guilty of murder. Judge Dickson sentenced Applicant to the minimum possible sentence for murder in South Carolina, thirty (30) years, day for day imprisonment, on that same date. Petitioner did not have a direct appeal. The circumstances under which his right to a direct appeal was waived are one of the many issues before this Honorable Court in the PCR appeal now pending. Petitioner's appeal from the denial of his Post-Conviction Relief Application in the Court of Common Pleas is, as noted above, currently pending before this Court.

The homicide involved in this case took place when Petitioner was attempting to collect a debt from a former tenant. The facts in this case are set forth in great detail in his certiorari petition. To summarize, the former tenant was working on an old dilapidated trailer that he planned to live in once it was restored. He did not live there at the time. According to Petitioner's testimony at trial, when Petitioner attempted to collect the money owed to him, the deceased came at him with a knife and Petitioner shot him. When he refused to drop the knife, and continued to advance with the weapon, Petitioner fired additional shots and the deceased retreated to the interior of the trailer. He died at the scene and was found with a large, open, folding knife in his hand. Petitioner called law enforcement after the shooting from his cell phone, as he had told the 9-1-1 dispatcher, he put his pistol in the front passenger floor board of his car, and moved his car closer to the main road since he feared it would be difficult for emergency responders to spot the location which was down a long driveway on wooded property. Petitioner has consistently claimed that he acted in self defense and, in his PCR action, he alleged that his trial counsel was ineffective in his representation of him at trial. The grounds upon which he bases his claims that defense counsel was deficient in his performance are set forth in great detail in the Memorandum in Support of PCR submitted by him in the circuit court and in the Certiorari Petition filed by Petitioner. Counsel for Respondent has not yet filed the State's Return to the Certiorari Petition filed on Petitioner's behalf in this matter.

Petitioner had a heart transplant on September 26, 2002. The average heart transplant recipient lives 9.16 years. Thus, he is, sadly, already well past the average life expectancy for a heart transplant recipient. While the mental quality of life for heart transplant patients is similar to that of the general population, the physical quality of life for heart transplant survivors is worse than the general population and is impacted by other factors and complication. *Ten Years*

*of "Extended" Life: Quality of Life among Heart Transplant Survivors, Transplantation, Politi, P., et al., July 27, 2004 - Vol. 78-Issue 2-p.257-263. See also, Younger Patients More Likely to Live a Decade or Longer After Heart Transplant, Johns Hopkins Medicine, George, T. et al., February 27, 2012.*

As of April 10, 2019, Petitioner and his wife, Frances, have been married for thirty-two (32) years. While they were not blessed with children, they are devoted to each other. SCDC records will confirm that, barring illness or other extraordinary circumstances, such as his hospitalizations at MUSC, she had gone to his institution to be with him every time she was allowed to visit. Prior to his incarceration, all of Petitioner's medical care was paid for by Medicare and the Veteran's Administration. Between the costly drug therapy necessitated by Petitioner's status as a heart transplant recipient, as well as by his age, his medical costs place a large financial burden on the resources of SCDC. He has experienced ongoing difficulty since his incarceration in getting the level of care he requires. Petitioner's medical records since his incarceration are voluminous. Counsel for Petitioner has provided a copy of those records as an attachment to this petition. With leave of Court, Petitioner's Counsel has submitted only one copy of these voluminous medical records with this Petition for Bond, with the understanding that she will promptly provide additional copies of these records should the Court ultimately determine they are needed. Counsel for Respondent has, of course, been provided a hard copy of these records as well.

Counsel for Petitioner, although not a physician, can attest that she has observed a marked deterioration in Petitioner's health since she was hired in October, 2015. He has been hospitalized multiple times at MUSC since his admission to SCDC. He is noticeably weaker and, increasingly, more feeble since Counsel first met this client. His skin color and unsteady gate

evidence his decline. Counsel submits that his physical condition is such that he is not only medically at risk, but he is not in any condition to defend himself against any of the obvious dangers inherent in life in a maximum security prison. Petitioner has extensive ties to the community and is well regarded there as is evidenced by the character witnesses who testified on his behalf at his PCR hearing. App. p. 772, l. 1 – p. 780, l. 8.

For all the reasons outlined herein, Counsel for Petitioner urges this Court to take the rare action of granting him an appeal bond pending the outcome of his pending PCR Appeal. Counsel has been practicing law in the area of criminal appeals for forty (40) and had handled a tremendous number of direct appeals before the South Carolina Court of Appeals and this Honorable Court. In addition, she has handled countless PCR matters both in the circuit court and on appeal before this Honorable Court. Counsel has very rarely sought an appeal bond in cases involving a sentence in excess of ten (10) years and can not recall ever asking for an appeal bond for any client incarcerated for murder. Counsel asks the Court to note that her decision to do so in this matter is a direct reflection of how much she believes this client is at risk if he remains in custody during the pendency of his PCR appeal and her belief in the merits of the pending appeal.

The twenty-two (22) Questions Presented addressed in Petitioner's Certiorari Petition cover a total of forty-two (42) out of the sixty-nine (69) allegations raised and argued in the lower court. In presenting his PCR appeal, Petitioner culled allegations not born out by the testimony adduced at the PCR hearing. By Order entered by this Honorable Court on February 20, 2019, PCR Counsel's Motion to Exceed the page limit set by Rule 243(e)(3), SCACR, was denied. Counsel has done her best to comply with that ruling. PCR Counsel most respectfully asserts that she had diligently attempted in this case to address every appropriate allegation in

support of Petitioner's claim that his right to effective assistance of counsel was violated below. It was simply impossible to present forty-three (43) allegations supporting that Sixth Amendment claim within the confines of the page limitation set by Rule 243(e)(3), SCACR. PCR Counsel would note that the Questions presented, the Statement of the Case, the Standard of Review and a brief, general discussion of the page limitations imposed in this case, have consumed approximately ten (10) of the allotted twenty-five (25) pages, leaving Counsel with fifteen (15) pages to attempt as an advocate to present this case. She therefore referenced the extensive summary of the trial and PCR testimony from her memorandum filed in the lower court and asked that the Court allow her to incorporate that material in the certiorari petition by reference.

In the certiorari petition filed on behalf of Petitioner, argued to the best of her ability Questions 1-5 within the restrictions of the page limit imposed. With Regard to Questions 6-22, Petitioner asked that he be allowed to incorporate by reference the arguments advanced on his behalf in the memorandum filed in support of his case in the PCR Court. The Question Presented portion of the certiorari petition filed in this matter lists the location in the Appendix where each of the arguments made on these issues can be found. Allegations are grouped by subject matter both for brevity and clarity. Petitioner adopted and incorporated by reference the Factual Background contained in the Memorandum filed by him in the Court of Common Pleas, as well as the summaries of the relevant trial testimony and PCR testimony presented in that Memorandum which are presented therein with appropriate references to transcript citations. **See, Factual Background, App. p. 927 – 931, Trial Testimony summary App. p. 931 – 981 and Summary of PCR Testimony App. p. 981 – 1018.** The Exhibits referenced throughout the arguments presented in the certiorari petition, as well as in the summaries and Factual Background incorporated by reference therein, are found in the Appendix at **App. p. 870 – 913.**

A full list of allegations submitted by Petitioner is found in Petitioner's **Memorandum at App. p. 917 – 926.**

Counsel submits that this is a meritorious PCR appeal which, based upon her forty (40) years experience, she hopes and prays has a substantial chance of winning. She also, much to her regret, believes that her client is at grave risk of not living long enough to see the outcome of this appeal. For that reason, Counsel asks that this Court please exercise its authority to set an appeal bond in this case pending the outcome of this appeal. Counsel is advised that the Veteran's Administration will resume responsibility for Petitioner's medical care if he is no longer incarcerated in the custody of the State while his appeal is pending. Petitioner asks that this Honorable Court grant him an appeal bond in whatever amount the Court deems reasonable and necessary on the facts of this case. He asks that this Honorable Court consider the fact that he and his wife are retired and in declining health in determining the amount of bond to require. He most respectfully asks that the Court consider allowing Petitioner, and his family members, to post a surety bond to satisfy any bond amount which may be required in order that they not be forced to sell their homes in order to raise a cash bond to bring him home. Petitioner asserts that the cost of electronic monitoring would be a great financial burden to his family, however, if due to the nature of his charge, this Court finds such monitoring to be a necessary requirement for his release from custody pending a decision in his appeal, he and his family ask that he be permitted the privilege of release with electronic monitoring rather than be denied bond.

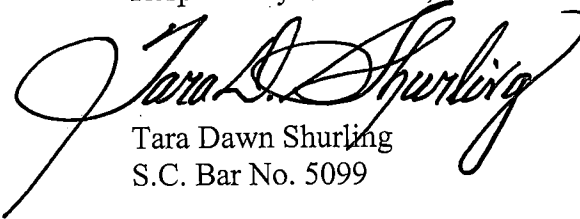
In addition to his request for an appeal bond, Petitioner would also respectfully ask that this Honorable Court consider retaining jurisdiction over this PCR appeal. Petitioner is mindful that if this matter were transferred to the South Carolina Court of Appeals<sup>1</sup>, it is possible that, following a full written opinion in this matter, an appeal to the Supreme Court might be brought

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<sup>1</sup> Rule 243 (l), SCACR.

by whichever side lost the appeal in the Court of Appeals. Given his declining health and age, Petitioner asks that he be granted the privilege of obtaining a decision from the highest court in the State following an initial review of his PCR appeal by this Honorable Court.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

This 5<sup>th</sup> of August, 2019

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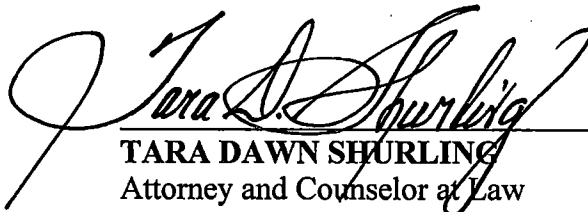
STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Appeal Bond and the accompanying exhibit in the above-entitled case have been served upon opposing counsel this the 5<sup>th</sup> day of August, 2019 by hand delivering one (1) copy of each properly addressed to:

Benjamin Limbaugh  
Assistant Attorney General  
Office of the Attorney General  
1000 Assembly Street  
Columbia, SC 29201

  
TARA DAWN SHURLING  
Attorney and Counselor at Law  
S.C. Bar No. 5099

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 5<sup>th</sup> day  
of August, 2019.

 (L.S.)

My Commission Expires: 10-31-24