STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO ORANGEBURG COUNTY
Court of Common Pleas
Robert Hood, Circuit Court Judge

Appellate Case No. 2018-000553

GEORGE HUGHES, Petitioner,

vs.

STATE OF SOUTH CAROLINA, Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

BENJAMIN LIMBAUGH
S.C. Bar No. 103334
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

RESPONDENT'S ISSUE PRESENTED

I. Whether trial counsel was ineffective for informing the jury in his opening statement that the deceased, "brought a knife to a gun fight" and there "will be evidence, I suspect that the deceased pulled a knife" where counsel enumerated a strategic reason for the statements?

II. Whether trial counsel was ineffective for questioning Ketcherside concerning the knife found in Petitioner's vehicle where the testimony elicited was beneficial to Petitioner and Petitioner has failed to show any resulting prejudice?

III. Whether trial counsel was ineffective for failing to utilize forensic evidence and failing to adequately cross-examine the prosecution's forensic evidence witnesses where Counsel properly cross-examined all witnesses concerning any forensic evidence?

IV. Whether trial counsel was ineffective for properly discussing with Petitioner their trial strategy of solely pursuing self-defense and not pursuing the potential lesser-included offense of voluntary manslaughter?

V. Whether trial counsel was ineffective for providing the jury an adequate overview of the defense's theory of the case and evidence to consider regarding Petitioner's claim of self-defense?

IV,.-XXII. When Petitioner fails to make any "direct and concise argument" on any of Questions Presented 6-22, no "citation of authority" and no "specific reference to the pertinent portion of the lower court record" on any of these questions, and a request to file an excessive amended petition was denied, these issues should be deemed procedurally barred as not in compliance with Rule 243 and this Court's February 20, 2019 Order.

STATEMENT OF THE CASE

Applicant was indicted at the January 2015 of the Court of General Sessions for Orangeburg County for murder (2015-GS-38-0077). Applicant was represented by Counsel. On July 30, 2015, Applicant proceeded to trial before the Honorable Edgar W. Dickson. The jury found Applicant guilty of murder. Judge Dickson sentenced Applicant to thirty years imprisonment. Applicant did not appeal his conviction or sentence.

Applicant filed an application for post-conviction relief (PCR) on October 26, 2015. The day of the evidentiary hearing, May 25, 2017, Applicant filed an amended application. The State was provided with a preliminary copy of the amendments before the hearing. At the conclusion of the evidentiary hearing, this Court gave Applicant and Respondent leave to draft proposed orders and memoranda in support of their positions. The lower court's Order of Dismissal was filed on January 18, 2018, but was not received by Petitioner until February 26, 2018. Petitioner timely filed a Notice of Appeal on March 30, 2018.

STATEMENT OF FACTS

Applicant was the landlord of the victim, Michael Kemmerlin. Tr. 437. Applicant went to the victim's house to collect money from the victim for an unpaid electric bill. Applicant was armed with a handgun at the time. Tr. 438. Applicant had a concealed weapons permit for the handgun he was carrying. Tr. 470. Applicant shot the victim five times, resulting in the victim's death. Tr. 330. The shot to the victim's face was from a distance of mere inches. Tr. 333. Applicant called law enforcement and reported the shooting. Tr. 382. There were four shell casings inside the victim's house and one against the under-skirting of the house. Tr. 255. When law enforcement arrived, there was a knife in the hand of the victim. Tr. 337. Dr. Janice Ross testified it would by atypical for a weapon to remain in the hand after the victim was shot and went unconscious. Tr. 338. Officer William Ketcherside took pictures of a knife (car knife) found in Applicant's vehicle, but did not take it into evidence. Tr. 222. Ketcherside testified he took a picture of the knife because he wanted to determine if it was the same brand as the knife (victim knife) in the victim's hand. Tr. 221. The deputy admitted he did not see any evidentiary value in taking the car knife into evidence. Tr. 222. The brand name of the car knife was Frost Cutlery. Tr. 224. The victim knife was a different type of knife and not of the same brand as the car knife. Tr. 222-224; Applicant Ex. 12.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is **any** evidence in the record to support them. Smalls, 422 S.C. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

QUESTION 1

In Trial Counsel's opening statement to the jury he informed them that the deceased, "brought a knife to a gun, a gunfight" and that there "will be evidence, I suspect that the deceased pulled a knife." Counsel enumerated his strategy for these comments was to support their self-defense theory.

Counsel's enumerated strategy was to establish that the victim had a knife during the incident and that Petitioner was acting in self-defense. Evidence established at trial, through Petitioner's statements and photographs introduced, that the victim did indeed have a knife on his person. Trial Counsel was aware that Petitioner had a concealed weapon permit and was carrying a weapon with him when he collected money from his tenants. ROA p. 815, ln. 20. Trial counsel stated that he "suspected" that evidence would be introduced to show that the deceased pulled a knife on Petitioner. ROA p. 67, ln. 7. Petitioner argues that the use of the word "suspected" is in itself ineffective representation by counsel in a trial where self-defense was being asserted and there was evidence showing the victim had a knife. PWC p. 9. Counsel testified that he chose to use the colloquialism in his opening statement in an effort to connect with a jury that would understand the sentiment and to help explain why Petitioner had a gun. ROA p. 648, ln. 10-11. The jury was going to be made aware that Petitioner had a gun on his person the day of the incident. Counsel saying that the victim brought a knife to a gunfight does nothing more than help to illustrate that Petitioner was acting in self-defense, but happened to be aptly prepared to properly defend himself. The saying does not automatically imply that Petitioner went to the victim's residence in search of a fight, it simply implies that Petitioner was prepared to properly defend himself against the knife pulled on him by the victim. The prosecutor eluded to the saying used by counsel in their closing in an effort to say that Petitioner

did not have clean hands in this case. Argument by the solicitor in closing is not evidence and counsel was able to argue throughout the case that Petitioner was acting in self-defense in this incident. Petitioner argues that counsel using the word "suspect" is per se deficient as counsel knew that evidence would be entered that proved the victim pulled a knife on Petitioner. Petitioner places too great a weight on one word used by counsel in his opening statement. Counsel intended on introducing evidence and testimony to show that the victim pulled a knife on Petitioner, however, counsel is never certain that he will be able to prove anything to a jury. Counsel stating that he "suspects" evidence will be presented that the victim pulled a knife on Petitioner is simply a way to introduce the jury to what he expects will happen during the trial.

Counsel's opening and closing arguments were well within the bounds of professional norms as required by Strickland. Also, Petitioner has failed to show any resulting prejudice from counsel's alleged errors. Counsel's statements did nothing more than lay a foundation for their defense strategy and provide the jury with an idea as to what the defense intended to prove. Therefore, the post-conviction relief court properly found that counsel was not ineffective and that Petitioner was not prejudiced by any alleged deficiencies.

QUESTION 2

Petitioner alleges that trial counsel was ineffective for failing to object to or further clarify testimony from an investigating officer concerning the knife found in the victim's hand and the knife found in Petitioner's vehicle. Counsel was not ineffective where he elicited beneficial testimony from the officer concerning the knives and where photographs of the two knives clearly show that they are different brands.

Petitioner contends that counsel was ineffective for eliciting testimony from the officer that he collected the knife from Petitioner's vehicle because he "wanted to verify that it was the

same brand and type of knife that was found at the scene" and failed to either confirm that the knife collected was the same brand or that it was not. PWC p. 9. Petitioner contends multiple times that counsel failed to clarify to the jury whether or not the officer was able to conclude whether or not the two knives were the same brand and type. PWC p. 9. Petitioner argues that any ambiguity in this testimony would have been interpreted in favor of the State by the jury, the State attempted to argue that the knife was planted in the victim's hand by Petitioner, and that the jury concluding that the two knives were the same "brand and type" would cause irreparable damage to Petitioner's case. PWC p. 9

On cross-examination, counsel was able to elicit testimony from the officer that he did not collect and take the knife into evidence because it ultimately "had no bearing on the case." Counsel testified that he did not object to the testimony about the knife because it aligned with his strategy that Petitioner's knife was in his car. ROA p. 221, ln. 12. Counsel's theory was that few men carried knives anymore making it less likely for a person to own multiple knives, therefore showing that Petitioner did not plant the knife on the victim because his knife was still in his vehicle. ROA p. 654, ln. 8. Respondent admitted during the PCR hearing that if the State had been able to show that the two knives had been the same brand and type that it would have been a big part of their case against Petitioner. This is true, however, trial counsel was able to bring out on multiple occasions that the knife found in Petitioner's car had no bearing on the case and that it had no significance. The fact the officer testified that he wanted to verify if the knives were the same brand and type is not an assertion that was able to do so. Even if the jury misinterpreted the officer's testimony as to verifying the brand and type of the knives, it would have become abundantly clear from the photographs in evidence and the officer's clarification that the knife found in Petitioner's car was not the same as the one found on the victim.

Petitioner has failed to show how the officer's testimony concerning the two knives, when taken as a whole, was anything other than helpful to Petitioner. Ultimately, counsel was able to get the officer to testify that the knife found in Petitioner's car had no bearing on the case and was not relevant. There was no need for counsel to elicit further testimony on cross-examination that could have been detrimental to Petitioner when the testimony already presented showed clearly that the knives were not the same brand and type. Therefore, Petitioner has failed to show how counsel was ineffective for eliciting beneficial testimony in accordance with their trial strategy or any (non-speculative) prejudice resulting from the alleged deficiencies.

QUESTION 3

Petitioner alleges that trial counsel was ineffective for failing to adequately investigate or utilize forensic evidence and failing to adequately cross-examine the prosecution's witnesses concerning the forensic evidence. Counsel was able to properly examine the prosecution's witnesses concerning the forensic evidence in this case and where further examination may have been beneficial, Petitioner has failed to show counsel was deficient or that he was prejudiced by the alleged deficiency.

Petitioner argues counsel was ineffective for failing to subpoena a witness from SLED in order to introduce the toxicology report and for failing to question Dr. Ross concerning the report being adopted into her autopsy report. PWC p. 15. Petitioner simply states that there was THC and Amphetamine indicated to have been detected in the report, without elaborating as to how elaborating on this at trial would have been beneficial to Petitioner. PWC p. 15. Counsel testified that he did not feel that the findings of the toxicology report were relevant and did not want to pursue attacking the victim's character in this manner. ROA p. 675, ln. 7-21. Counsel made a

valid strategic decision to not address the toxicology report in this case, whether it be through SLED or through Dr. Ross.

Petitioner argues counsel was ineffective for failing to more thoroughly cross-examine Dr. Ross concerning her assertion that one of the wounds displayed stippling from a shot fired within inches of the victim and her claim that "it's not typical to see a weapon remaining in the hand that way." PWC p. 15. Counsel made a perfectly reasonable decision not to further examine Dr. Ross concerning the distance from which the weapon was when her testimony was beneficial to Petitioner's theory of the case. Dr. Ross testified that the shot was fired within inches of the victim, which would go to support Petitioner's theory of self-defense. ROA p. 333, ln. 6. The closer Petitioner was to the victim, the greater the threat would have been if he was threatening him with a knife. Dr. Ross testified at the PCR hearing that she could not conclusively say that the shot was fired within inches, but could have been feet away from the victim. ROA p. 632, ln 15. If counsel were to have elicited this testimony at trial it would have done nothing but weaken the testimony Dr. Ross already provided that was more beneficial. Similarly, counsel strategically chose not further examine Dr. Ross concerning the weapon remaining in the victim's hand. Dr. Ross' testimony at trial was relatively ambiguous on this point, stating that it was not typical for a weapon to remain in a hand that way. ROA p. 338, ln 3. The testimony at trial, although not great for the defense, still leaves open the possibility that a weapon could potentially have remained in the victim's hand. Dr. Ross testified at the PCR hearing that she was ninety-nine percent sure the weapon would not remain in the victim's hand that way and that the picture was consistent with cases she has had where the weapon was staged. ROA p. 635, ln 9. Clearly, counsel made a wise decision to transition away from this line of questioning and did not continue to examine Dr. Ross on this matter at trial.

Petitioner argues counsel was ineffective for failing to cross-examine Ketcherside concerning his claim about the blood trail in this case, not challenging his qualifications to give opinion testimony concerning the knife handle, and not challenging his opinion on the blood pattern. PWC p. 17. Petitioner fails to argue how counsel was deficient or how he was prejudiced by these alleged deficiencies. Counsel properly objected to Ketcherside testifying as to his opinions about what the blood on the knife meant and this objection was sustained by the trial court. Counsel testified that he did not object to or cross-examine Ketcherside's testimony concerning the blood pattern because his testimony was consistent with Petitioner's version of events. ROA p. 754, ln. 9-15. Ketcherside testified the blood trail showed movement back toward the kitchen, which aligned with Petitioner's story that the victim continually backed up into the house after being shot. Counsel properly objected to improper testimony and allowed testimony in that was beneficial to Petitioner.

Petitioner alleges that counsel was ineffective for failing to cross-examine SLED Agent Green concerning ballistics testing that could have been done to determine the average distance Petitioner's gun would eject a spent cartridge casing. PWC p. 18. Agent Green testified at the PCR hearing that SLED does not give opinions on the distance shell casings will eject because the distance is not sufficiently predictable. ROA p. 824, ln. 18-20. Petitioner has failed to argue how counsel was deficient for failing to elicit this testimony or how he was prejudiced by the alleged deficiency.

Petitioner has failed to show any deficiency on the part of counsel in relation to the handling of any aspect of the forensic evidence in this case. Counsel properly cross-examined the forensic witnesses, objected to improper testimony, and allowed testimony be presented that was

beneficial to their defensive strategy. Petitioner has failed to show how any one of these alleged errors was sufficiently prejudicial as to merit relief be granted.

QUESTION 4

Petitioner alleges counsel was ineffective for failing to discuss with him the strategy of proceeding only on self-defense as it relates to the murder charge and not arguing to the jury that he should be convicted of voluntary manslaughter if they find that he did not act in self-defense. PWC p. 18. Petitioner acknowledged at the PCR hearing that he rejected entering a plea to anything in connection with this killing because he was innocent and did not want to plead to something he did not do. ROA p. 847, ln. 13-14. Petitioner testified that he did reject the plea, but if he had known he could argue self-defense and voluntary manslaughter he would have wanted to do so. ROA p. 847, ln. 18. Counsel testified at the PCR hearing that he objected to the voluntary manslaughter be given by the court. ROA p. 663, ln. 21. Counsel also argued against the jury coming back with voluntary manslaughter as their verdict in his closing argument. Counsel testified that he advised Petitioner as to elements and potential sentences of both offenses and that he advised him that voluntary manslaughter would not be served day-for-day. ROA p. 664. Counsel testified that he discussed the option of voluntary manslaughter with Petitioner and that Petitioner wanted to solely pursue a verdict of not guilty based on self-defense. Counsel testified that he considered alternative defenses, but that he chose to pursue Petitioner's strongest defense and not to muddy the waters for the jury with the additional consideration of a lesser-included offense. Petitioner's refusal to consider pleading to voluntary manslaughter because he "was innocent and did not want to plead to something he didn't do" also is a strong indication that Petitioner agreed with counsel's strategy to solely pursue self-defense against the murder charge.

Petitioner has failed to show how counsel was ineffective for discussing the trial strategy with Petitioner and how he was prejudiced by the alleged deficiency. Counsel was not deficient where counsel pursued the not-guilty verdict Petitioner desired or where counsel put forth Petitioner's strongest defense.

QUESTION 5

Petitioner alleges counsel was ineffective for omitting factors in his closing argument supporting Petitioner's claim of self-defense that could have been reviewed again for the jury. Counsel's closing argument was well with the reasonable professional standards and counsel has leeway as to what points he believes are pivotal to argue to the jury.

Petitioner contends counsel failed to expressly refute the State's claim that under the law the use of a deadly weapon is malice and shooting someone five times is malice. Petitioner contends counsel should have argued the prosecutor misstated the law and that the statement did not make logical sense. PWC p. 21. This argument is not a valid interpretation of the law. The State is allowed to argue in closing that the jury can infer malice from the use of a deadly weapon, just as the defense is allowed to argue the absence of malice per self-defense. Generally, counsel testified that he typically only objects during the State's closing argument when an egregious error occurs. Counsel did not have grounds to object to this argument by the State and therefore did not do so. Petitioner contends counsel neglected to point out to the jury where the victim bled after being shot did not establish where he was shot. PWC p. 21. Petitioner argues counsel should have pointed out to the jury that the shots could have come from a further distance away and still gone with the defense's theory of the case. PWC p. 21. However, counsel arguing that the shots could have been fired from a further distance away does not assist the defense or align with their defense theory. Throughout the case the theory was that Petitioner

was at the front of the home, shot the victim at close range in self-defense, and the victim drifted back into the home after being shot. Arguing to the jury that the shots could have come from further away would not have assisted Petitioner's self-defense argument.

Petitioner contends counsel should have highlighted the physical state of the front door of the trailer in an effort to demonstrate why Petitioner would have been afraid to back out of the trailer. PWC p. 21. Petitioner makes no argument as to why counsel would be deficient for failing to argue this to the jury or how Petitioner was prejudiced by the alleged deficiency. Petitioner simply argues counsel should have highlighted these factors to the jury. Again, counsel highlighted the important aspects of the defense to the jury in his closing argument.

Petitioner goes on to argue numerous other points that he believes counsel should have raised in his closing argument. PWC p. 22-24. As previously stated, counsel enumerated that he highlighted the points to the jury that were most helpful to their theory of self-defense. Petitioner is also attempting to ask this Court to grant relief by using a cumulative error analysis.

Petitioner argues, essentially, the cumulative effect of all trial counsel's errors prejudiced him to the extent he is entitled to a new trial. This argument is without merit, as not only did trial counsel not commit any errors, but this Court has never recognized the cumulative-error doctrine as a basis for post-conviction relief. See, e.g., Simpson v. State, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006) (recognizing that "[w]hether several errors, which are independently found not to be prejudicial, may cumulatively warrant relief is an unsettled question in South Carolina" and holding that "[b]ecause the PCR court found that only one of Simpson's allegations had merit, there was no need to conduct a cumulative-error analysis"); Green v. State, 351 S.C. 184, 197, 569 S.E.2d 318, 324-25 (2002) ("Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina.").

Many other jurisdictions, including the Fourth Circuit Court of Appeals, have held a cumulative-error analysis of the prejudice prong of Strickland is inappropriate, and the correct analysis focuses upon each individual allegation of ineffective assistance. Fisher v. Angelone, 163 F.3d 835, 852-53 (4th Cir. 1998); Wainwright v. Lockhart, 80 F.3d 1226 (8th Cir. 1996); Jones v. Sotts, 59 F.3d 143, 147 (10th Cir. 1995). As the Fourth Circuit Court of Appeals explained in Fisher v. Angelone:

> Fisher argues that the cumulative effect of his trial counsel's individual actions deprived him of a fair trial. We disagree. Having just determined that none of counsel's actions could be considered constitutional error. . . it would be odd, to say the least, to conclude that those same actions, when considered collectively, deprived Fisher of a fair trial. Not surprisingly, it has long been the practice of the Fourth Circuit individually to assess claims under Strickland v. Washington. . . . To the extent this Court has not specifically stated that ineffective assistance of counsel claims, like claims of trial court error, must be reviewed individually, rather than collectively, we do so now. In so holding, we are in agreement with the majority of our sister circuits that have considered the issue.

Id. (citations omitted). See also Mueller v. Angelone, 181 F.3d 557, 586 n.22 (4th Cir. 1999) ("Petitioner also urges us to consider the cumulative effect of his ineffective assistance of counsel claims rather than whether each claim, considered alone, establishes a constitutional violation. This argument is squarely foreclosed by our recent decision in Fisher, 163 F.3d [...at] 852-53 [...]"). The Fourth Circuit further explained, "legitimate cumulative-error analysis evaluates only the effect of matters actually determined to be constitutional error, not the cumulative effect of all of counsel's actions deemed deficient." Fischer, 163 F.3d at 852 n. 9.

In this case, none of the actions Petitioner alleges were error were found to be so by the PCR court, nor did the PCR court find Petitioner was prejudiced by any of the alleged errors. As a result, a cumulative-error analysis would be inappropriate on these facts under any

interpretation of the doctrine. This Court should therefore deny the Petition, and the PCR Court's findings should be affirmed.

QUESTIONS VI-XXII.

Respondent moved this date by separate filing, pursuant to SCACR Rule 243(e) (3), to dismiss Questions 6-22 in the Revised Petition for Writ of Certiorari for failing to make any "direct and concise argument" on any of these questions and failing to comply within the petition by not having "the argument on each question shall include citation of authority and specific reference to pertinent portion of the lower court record" with respect to Questions Presented 6-22.1 Instead, the Petitioner within the Revised Petition at page 6-7, complained about this Court's earlier requirement that he comply with the page limitations set forth within the rule and February 20, 2019 Order.

A.

With regard to Questions 6-22 in his Revised Petition rather than setting forth any argument therein, 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" and further adopted by reference the factual background and earlier summary of the evidence. See Revised Petition, p. 6-7. Further, in his prayer for relief, he extraordinarily asked that further briefing be dispensed with and that the remedy was of a new trial is "particularly appropriate where Petitioner's health is such that he may not survive and extended appellate process" Revised Petition, p. 25. He alternately and inconsistently then maintains that he should be given the opportunity to fully brief the issues summarized in his cited Memorandum in support of his original application for post-conviction relief.

1 Respondent assert that that this motion does not involve the arguments with respect to Questions Presented One through Five which complied with Rule 243. See Revised Petition, p. 7-24. d

B.

A simple review of the Revised Petition reveals the obvious - the Petitioner never made any argument on Questions Presented 6-22 in his Revised Petition. Within the Petition, in the argument section, as to each or any of Questions 6-22, there was no " "direct and concise argument." There was no "citation of authority." There was no "specific reference to the pertinent portions of the record." To the contrary, there was nothing for the Respondent to address of this Court to Rule upon. Instead, the Petitioner merely seeks to shoehorn arguments from outside of the Revised Petition without any argument within the Petition itself. This is in contravention of the plain purpose of Rule 243.

This action is also in plain contravention of the February 20, 2019 Order of the Supreme Court which denied the Petitioner's request to exceed the 25 page limit (the original petition was 73 pages and denied a motion to amend the argument in then question 12. Instead, Petitioner merely maintained the same argument he made in Questions Presented One through Five from the rejected petition in the Revised Petition and then merely sought the Court to incorporated by reference its earlier 169 page memorandum in the lower court which he contended addressed the issues. This was not in the plain spirit or intent of the Supreme Court's intent when the Court denied the earlier motion and sought compliance of Rule 243. If we accept the Petitioner's assertion, he has turned a rejected 73 page petition for writ of certiorari in a 169 page petition by the incorporation of the post-hearing memorandum. What is even more disconcerting is that none of those "incorporated" materials would address the actual Order of Judge Hood that is the matter on appeal before the Court.[2] This is despite the fact that the Petitioner recognized in her Revised Petition the

2 Respondent further notes that no Rule 59 was made by the Petitioner on Judge Hood's order. Petitioner noted in his Revised Petition that at some point, he "culled out allegations not borne out by the testimony adduced at the PCR hearing." Revised Petition, p. 6. However, the absence of a Rule 59 motion related to any matter set

standard of review is whether there is any evidence of probative value to support the Post-conviction Relief court's findings. Revised Petition, p. 5.

"An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." Bryson v. Bryson, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008). "[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue. State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011); State v. Addison, 338 S.C. 277, 285, 525 S.E.2d 901, 906 (Ct.App.1999) ("Conclusory arguments constitute an abandonment of the issue on appeal."), aff'd as modified, 343 S.C. 290, 540 S.E.2d 449 (2000). See Bennett v. Inv'rs Title Ins. Co., 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006) (providing that the appellants abandoned an issue on appeal where the appellants failed to cite any authority for their proposition and made only conclusory arguments in support thereof).

Absent any actual direct and concise arguments on Questions Presented 6-22 by the Petitioner consistent with Rule 243, Respondent submit that the portion of the Revised Petition and Questions Presented 6-22 should be struck as procedurally barred from consideration. There is nothing for either the Respondent in his Return or this Court to address.

If the Court is of the opinion that the issues are preserved by the mere inclusion of the Question Presented in the Revised Petition without any argument on Petitioner's part, Respondent respectfully request the Court to require the Petitioner to file a new petition on

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forth in Question Presented 6-22 is disconcerting because he wholly failed to make reference to "pertinent portions of the lower court record."

those matters in compliance with Rule 243 with a direct and concise argument on each issue with a citation of authority and specific reference to pertinent portions of the record. Had this been the Court's intent in February 20, 2019, it should have granted Petitioner's request. However, it did not. These matters should be procedurally dismissed.

CONCLUSION

For the foregoing reasons, this Court should deny this Petition for a Writ of Certiorari. Should this Court grant the petition, the State seeks permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

BENJAMIN HUNTER LIMBAUGH
S.C. Bar No. 103334
Assistant Attorney General
By: Benjamin Limbaugh
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

September 17, 2019

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO ORANGEBURG COUNTY
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Robert Hood, Circuit Court Judge

Appellate Case No. 2018-000553

GEORGE HUGHES, PETITIONER,

v.

STATE OF SOUTH CAROLINA, RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Writ of Certiorari** has been served upon the applicant by placing one copy in the United States Mail, addressed to:

Tara Dawn Shurling, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite A
Columbia, SC 29204

This 17th day of September, 2019.

Benjamin Limbaugh

Benjamin H. Limbaugh, AAG
Attorney for Respondent

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
SEP 20 2019
S.C. SUPREME COURT

September 17, 2019

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

RE: George Hughes v. State of South Carolina
Appellate Case No.: 2018-000553

Dear Mr. Shearouse:

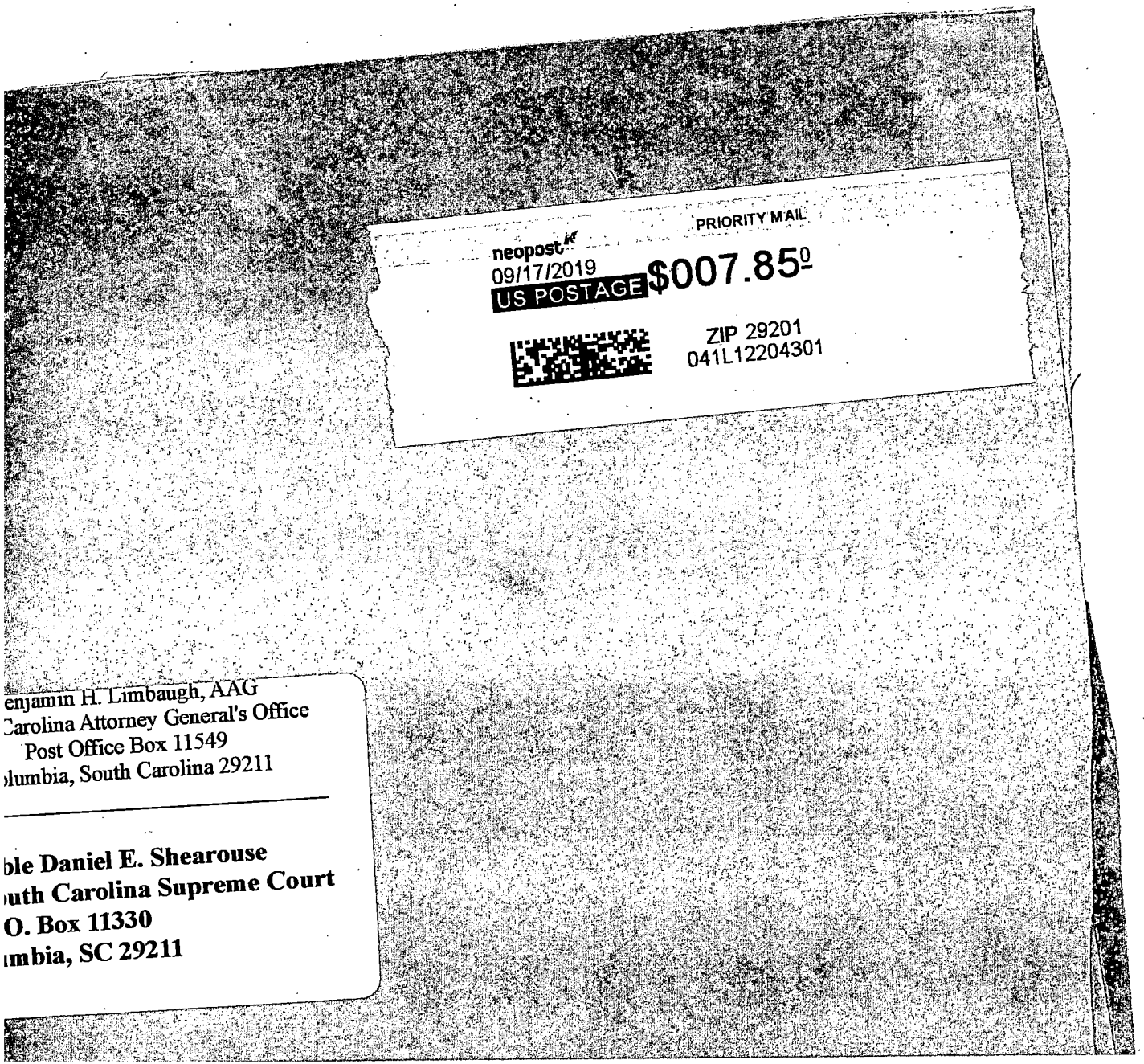
Enclosed please find the original and six copies of the **Return to Petition for Writ of Certiorari** in the above matter for filing. Please let me know if anything additional is needed.

Sincerely,

Benjamin H. Limbaugh
Assistant Attorney General
S.C. Bar # 103334

BHL/jj
Enclosures

cc: Tara Dawn Shurling, Esquire
Victim Advocacy Division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enjamin H. Limbaugh, AAG
Carolina Attorney General's Office
Post Office Box 11549
olumbia, South Carolina 29211
ble Daniel E. Shearouse
outh Carolina Supreme Court
O. Box 11330
umbia, SC 29211