

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SEP 20 2019
S.C. SUPREME COURT

Certiorari to Orangeburg County
The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2018-000553

George W. Hughes,

Petitioner,

v.

State of South Carolina,

Respondent.

**MOTION TO STRIKE PETITIONER'S QUESTIONS FOR CERTIORARI QUESTIONS
6-22 PURSUANT TO SCACR Rule 243 (e) (3) FOR FAILING TO MAKE A DIRECT
AND CONCISE ARGUMENT ON ANY OF THE QUESTIONS**

Respondent, the State, moves this Court, 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.

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.

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.

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 incorporate 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 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,

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

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 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.

WHEREFORE, having made the Motion to Strike, for the reasons set forth above, Respondent requests the Motion be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General
S.C Bar 5758

BENJAMIN HUNTER LIMBAUGH
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September 17, 2019

STATE OF SOUTH CAROLINA
In the Supreme Court

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

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GEORGE HUGHES,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Motion to Strike Petitioner's Questions for Certiorari Questions 6-22 Pursuant to SCSCR Rule 243 (e) (3) for Failing to Make a Direct and Concise Argument on Any of the Questions** 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 H. Limbaugh, AAG
Attorney for Respondent



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SEP 20 2019

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

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 **Motion to Strike Petitioner's Questions for Certiorari Questions 6-22 Pursuant to SCSCR Rule 243 (e) (3) for Failing to Make a Direct and Concise Argument on Any of the Questions** 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