

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO LANCASTER COUNTY  
Brian M. Gibbons, PCR Judge

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Appellate Case No. 2018-000779

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RECEIVED

OCT 21 2019

S.C. SUPREME COURT

VERNARD JEROME MATHIS,  
PETITIONER,

v.

STATE OF SOUTH CAROLINA,  
RESPONDENT.

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**MOTION TO STRIKE AND REQUIRE FILING OF  
SECOND AMENDED PETITION FOR A WRIT OF  
CERTIORARI**

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

**Procedural History**

In December 2000, Vernard Mathis (Petitioner) was indicted for murder. (App. 1248). Petitioner was subsequently indicted in February 2001 for armed robbery. (App. 1252). Finally, in June 2003, Petitioner was indicted for one count of first-degree burglary, and two counts of kidnapping. (App. 1256; 1259; 1263). John D. Clark, Esquire (Counsel), represented Petitioner. Solicitor John R. Justice, and Assistant Solicitors Douglas A. Barfield and Thomas W. Holland prosecuted the case.

Petitioner proceeded to a jury trial before the Honorable Paul E. Short, Jr. on June 2–6, 2003. The jury convicted Petitioner as indicted. The trial court sentenced Petitioner to life

without parole (LWOP) pursuant to section 17-25-45 of the South Carolina Code. Petitioner appealed.

Appellate Defender Robert M. Dudek perfected Petitioner's appeal by filing an *Anders*<sup>1</sup> brief to the Court of Appeals. Thereafter, Petitioner filed a *pro se* brief to the Court of Appeals. The Court of Appeals dismissed the appeal and granted appellate counsel's request to be relieved. *State v. Mathis*, Op. No. 2005-UP-375 (S.C. Ct. App. filed June 13, 2015). Petitioner then filed a *pro se* petition for rehearing and petition for rehearing *en banc* on June 28, 2005, and the Court of Appeals denied both petitions. *State v. Mathis*, S.C. Ct. App. Orders dated Sept. 20, 2005 (Shearouse Adv. Sh. No. 37 at 6). Thereafter, Petitioner petitioned for a writ of certiorari on October 17, 2005; however, the Supreme Court denied certiorari. *State v. Mathis*, S.C. Sup. Ct. Order dated Nov. 2, 2006. The case was remitted back to the circuit court on November 6, 2006.

#### *First PCR action*

Petitioner commenced his first PCR action on March 8, 2007. On August 25, 2008, an evidentiary hearing convened before the Honorable Kenneth G. Goode. Petitioner was present and represented by Tricia Blanchette, Esquire. The State was represented by Assistant Attorney General Michelle J. Parsons. At the hearing, Petitioner testified on his own behalf and also presented testimony from his codefendant, Elton Wiggins. Counsel testified for the State. Petitioner alleged ineffective assistance of Counsel in his initial PCR action. On October 14, 2008, after a full review of the record and testimony presented, Judge Goode denied relief. Petitioner appealed.

Petitioner petitioned for a writ of certiorari of the denial of his initial PCR action on July 23, 2009. The State submitted its return to the petition for a writ of certiorari on November 23,

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<sup>1</sup> *Anders v. California*, 386 U.S. 738 (1967).

2009. The Supreme Court denied certiorari. *Mathis v. State*, Sup. Ct. Order dated Dec. 2, 2010. The case was remitted back to the circuit court on January 7, 2011.

#### *Habeas action*

Petitioner petitioned for a writ of habeas corpus with the District Court of South Carolina on September 6, 2011. On July 12, 2012, the Honorable Shiva V. Hodges, United States Magistrate Judge, filed her report and recommendation, which recommended summary dismissal of Petitioner's habeas petition on the merits of two of his allegations, and recommended summary dismissal of the two other allegations as procedurally barred. Petitioner timely objected to summary dismissal; however, the Honorable Richard M. Gergel, United States District Judge, issued an order which largely adopted the report and recommendation and granted the State's motion for summary judgment on August 23, 2012.

#### *Current PCR action*

Petitioner commenced his second and current PCR action on July 9, 2013. Petitioner, through current PCR counsel, Tara Dawn Shurling, moved for discovery on October 7, 2013, and the State consented to Petitioner's discovery request with stipulations. Thereafter, the State made its return and motion to dismiss on January 30, 2014. On April 22, 2014, Ronnie Roberts, the jury foreperson, and Thomas Holland, one of the prosecutors, were deposed. Thereafter, the State filed an amended return and motion to dismiss on July 1, 2014. The State's motion to summarily dismiss the PCR action was denied on October 29, 2014.

An evidentiary hearing into the matter convened before the Honorable Brian M. Gibbons (PCR court) on November 22, 2016. Petitioner was present and represented by PCR counsel. The State was represented by Assistant Attorney General Patrick Schmeckpeper. Counsel; Shareka Jones; and two of the solicitors who prosecuted the case, Douglas Barfield and Thomas Holland, testified at the evidentiary hearing. Petitioner did not testify at this hearing. On

February 22, 2018, after reviewing the entire record and testimony presented, the PCR court denied relief and dismissed the action with prejudice finding it untimely. On March 12, 2018, Petitioner made a Rule 59(e), SCRCR, motion to alter or amend. The PCR court denied the Rule 59(e) motion on March 26, 2018. Petitioner appealed.

On April 26, 2018, pursuant to Rule 243(c), SCACR, this Court requested Petitioner to provide a written explanation as to why the PCR court's determination this PCR action was not timely based on the statute of limitations contained in section 17-27-45 of the South Carolina Code was improper. Thereafter, on May 11, 2018, Petitioner filed a "Memorandum in Support of Timeliness of Application for Post-Conviction Relief" (Memo).<sup>2</sup> Petitioner's Memo is twenty-seven pages. On December 28, 2018, this Court notified Petitioner and Respondent the appeal would proceed in accordance with the South Carolina Appellate Court Rules.

On April 30, 2019, Petitioner made a motion to exceed the page limit required by Rule 227(e)(3), SCACR,<sup>3</sup> and filed his Petition for a Writ of Certiorari (PWC) and the Appendix. Petitioner's PWC was thirty-eight pages. The State did not object to Petitioner's request to exceed the page limit. However, on May 23, 2019, Chief Justice Beatty denied Petitioner's motion to exceed the page limit and ordered Petitioner to submit an amended petition that complied with the page limit contained in Rule 243(e)(3), SCACR. Thereafter, Petitioner submitted an Amended Petition for a Writ of Certiorari (APWC) on June 27, 2019. Petitioner's APWC is twenty-five pages, but seeks to incorporate his entire twenty-seven page Memo by reference instead of addressing it within the Court mandated twenty-five page limit.

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<sup>2</sup> The Court did not request the State to respond to Petitioner's Memo.

<sup>3</sup> Since April 29, 2009, Rule 227, SCACR, has been renumbered to Rule 243, SCACR.

### Motion to Strike and Require Second Amended Petition

Despite technically meeting the twenty-five page limit, Petitioner's APWC does not comply with the spirit of the South Carolina Appellate Court Rules and does not substantively comply with the Chief Justice's order limiting the APWC to twenty-five pages. The PCR court found the PCR action was untimely; therefore, Petitioner was required to provide an explanation pursuant to Rule 243(c), SCACR. Rule 243(c) provides:

If the lower court has determined that the post-conviction relief action is barred as . . . being untimely under the statute of limitations, the petitioner *must* . . . provide an explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an *arguable* basis for asserting that the determination by the lower court was improper. If the petitioner fails to make a sufficient showing, the notice of appeal may be dismissed.

(emphasis added). It is clear from Rule 243(c) this Court's determination to allow this appeal to proceed is a procedural ruling, not a ruling on the merits, because the explanation's purpose is only to show there is an *arguable* basis the PCR court erred in finding the action was untimely. The State, as respondent, was not required or asked to respond to Petitioner's Memo, as the Memo's purpose was only to provide an explanation as to why the appeal should not be summarily dismissed. Therefore, the State's first response to Petitioner's assertion the PCR court erred in finding the PCR action is untimely will be in its return.

However, Petitioner fails provide sufficient argument on the merits of issue I in his APWC, as he merely attempts to incorporate by reference his Memo in place of argument. Rule 243(e)(3) requires a petition for a writ of certiorari to contain, "A direct and concise argument in support of the petition. The argument on each question shall include citation of authority and specific reference to pertinent portions of the lower court record. The total length of a petition

shall not exceed twenty-five pages.” Rule 243(g) similarly requires, “The total length of a return shall not exceed twenty-five (25) pages.” “[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

Petitioner’s argument I in his APWC does not comply with Rule 243(e)(3) because by incorporating his twenty-seven page Memo by reference, Petitioner is submitting a *fifty-two* page petition. As respondent, the State is limited to twenty-five pages to respond to the fifty-two page APWC, which has already been ordered by the Chief Justice to be limited to twenty-five pages. Petitioner’s APWC might seemingly comply with the Chief Justice’s order; however, a closer look at the APWC shows it does not.

In his APWC, Petitioner “respectfully submits that he has thoroughly presented his position concerning the timeliness of his current PCR action in the [Memo] presented . . . [as] explanation for why the lower court erred in ruling that this PCR action was time barred by the PCR statute of [l]imitations . . . .” (APWC pp. 20-21). Petitioner further states, “In light of the page limitation for certiorari petitions found in Rule 243(e)(3), Petitioner asks that he be permitted to incorporate the facts and arguments presented therein on this issue.” (APWC p. 21). Petitioner then summarizes his argument on issue I, referencing his Memo, but cites to no authority supporting his argument. (APWC pp. 20-22). Therefore, Petitioner has failed to comply with Rule 243(e)(3).

**WHEREFORE**, the State prays that this Court will strike the amended petition and require the filing of a second amended petition complying with the requirements of Rule

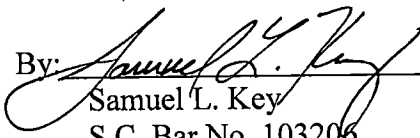
243(e)(3), SCACR, as ordered by the Chief Justice on May 23, 2019, hold this appeal in abeyance pending a ruling on this motion, and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

SAMUEL L. KEY  
Assistant Attorney General

October 21, 2019

By:   
Samuel L. Key  
S.C. Bar No. 103206

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
In The Supreme Court

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CERTIORARI TO LANCASTER COUNTY  
Court of Common Pleas

The Honorable Brian M. Gibbons, Circuit Court Judge

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Appellate Case No. 2018-000779

Vernard Jerome Mathis,

Petitioner,

v.

State of South Carolina,

Respondent.

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of the **Motion to Strike and Require Filing of Second Amended Petition for a Writ of Certiorari**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Tara Dawn Shurling, Esquire**  
**3614 Landmark Drive**  
**Suite A**  
**Columbia, SC 29204**

This 21<sup>st</sup> day of October, 2019



**KASEY KNOX**  
Legal Assistant for Respondent



ALAN WILSON  
ATTORNEY GENERAL

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OCT 21 2019

S.C. SUPREME COURT

October 21, 2019

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

**Re: Vernard Jerome Mathis v. State of South Carolina**  
**Appellate Case No. 2018-000779**  
**Lower Court Case No. 2013-CP-29-051**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Motion to Strike and Require Filing of Second Amended Petition for a Writ of Certiorari. By copy of this letter we are serving opposing counsel today.

Sincerely,

Samuel L. Key  
Assistant Attorney General  
SC Bar No. 103206

SLK/kk  
Enclosures

cc: Tara Dawn Shurling, Esquire (2 copies)