

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas  
Brian M. Gibbons, Presiding Judge

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S.C. SUPREME COURT

Appellate Case No. 2018-000779  
Lower Case No. 2013-CP-29-00951

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VERNARD JEROME MATHIS, #297034,

Petitioner,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

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Reply to Respondent's Motion to Strike  
Petitioner's Amended Petition for Writ of Certiorari

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Petitioner, acting by and through his undersigned counsel, Replies to Respondent's Motion to Strike as follows:

I.

**PROCEDURAL HISTORY**

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Petitioner was indicted for Murder (200-GS-29-1418), Armed Robbery (2001-GS-29-0250), First Degree Burglary (2003-GS-29-0524), and two counts of Kidnapping (2003-GS-29-0525 & 0526). John D. Clark, Esquire, represented Petitioner in the Court of General Sessions on these charges. Following trial by jury, Petitioner was convicted on all counts. On June 6, 2003, he was sentenced by the

Honorable Paul E. Short, Jr. then circuit court judge, to life imprisonment without the possibility of parole pursuant to S.C. Code §17-25-45.

A direct appeal was filed on Petitioner's behalf. Appellate Counsel submitted a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). Petitioner submitted a *pro se* brief in response to the no-merit submission by his court-appointed appellate counsel. The appeal was subsequently dismissed. *State v. Mathis*, Op. No. 2005-UP-375 (S.C. Ct. App. Filed June 13, 2005). Petitioner filed a Petition for Rehearing. The Court of Appeals issued orders denying the Petition for Rehearing and denying Petitioner's Petition for Rehearing *en banc* on September 20, 2005. Petitioner next petitioned the South Carolina Supreme Court of South Carolina for a Writ of Certiorari. His petition was denied by order dated November 2, 2006. The Remittitur was returned to the lower court on November 6, 2006.

Petitioner initially filed an Application for Post-Conviction Relief hereafter (PCR) on March 8, 2007 (2007-CP-29-0300). An evidentiary hearing was convened on that application on August 25, 2008, before the Honorable Kenneth G. Goode at which Petitioner was present and represented by Tricia Blanchette, Esquire. By order dated October 14, 2008, Judge Goode denied and dismissed the application with prejudice. A PCR appeal was filed in that matter, and a Petition for Writ of Certiorari was filed in the South Carolina Supreme Court. The Petition was denied on December 2, 2010, and the Remittitur was sent on January 7, 2011.

Petitioner filed his most recent application for Post-Conviction Relief on July 9, 2013, and docketed at 2013-CP-29-051. In that PCR Application he alleged that:

1. The Petitioner's right to a fair trial, as guaranteed by the Fifth, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, was violated in the trial court where a juror in his case, the foreman of his jury, failed to disclose a long history of employment in law enforcement including two positions which had put him in the

position of working with the then Solicitor in Lancaster, John R. Justice, as well as his staff.

a. Ronnie E. Roberts served as a juror at the Petitioner's trial. This juror, juror no. 111, was ultimately selected as the foreman of the Petitioner's jury. When the jury pool was asked if anyone in the group had any special relationship with Solicitor John R. Justice, or his staff, this juror failed to respond. The Petitioner has recently been able to confirm that this individual worked in law enforcement from approximately 1982 through December 31, 2000. His career included the following employment:

- i. Kershaw Police Department from June 26, 2000 through December 31, 2000.
- ii. York Police Department from July 14, 1998 until April 7, 2000.
- iii. Lake City Police Department from July 15, 1996 until July 13, 1998.
- iv. The South Carolina Criminal Justice Academy from April 3, 1989 until July 23, 1996.
- v. University of South Carolina Police Department starting in 1989.
- vi. Lancaster Police Department starting in 1982.

In at least two of these positions he would have worked on cases prosecuted by the Sixth Circuit Solicitor's Office where Solicitor John R. Justice was the chief prosecutor for that circuit continuously from his election in 1978 until his illness and death in 2006.

b. Cases brought by both the Lancaster Police Department and the Kershaw Police Department during this juror's employment by those law enforcement agencies were prosecuted by the Sixth Circuit Solicitor's Office.

c. The Petitioner has it upon information and belief that members of the Sixth Circuit Solicitor's Office involved directly in the Petitioner's trial were aware of this juror's relationship with their office and failed to disclose this information either to the Court *or* Counsel for the Petitioner.

d. The juror information form completed by this juror disclosed no facts which would have put the Petitioner, or his Counsel, on notice of this juror's law enforcement background or his longstanding relationship with the Sixth Circuit Solicitor's Office.

2. Members of the Sixth Circuit Solicitor's Staff were aware that the foreman of the Petitioner's jury was the retired Chief of Police for the Kershaw Police Department and failed to disclose this information to the Court or the Petitioner.

During the evidentiary held in this matter testimony came to light which supported the following additional claim.

3. The State improperly failed to report direct communication between the Solicitor's Office and Juror Roberts after he was summoned for jury duty, but before Petitioner's trial.

Petitioner subsequently filed a Motion for Leave to Conduct Discovery on October 7, 2013.

Respondent filed its Return to Motion for Leave to Conduct Discovery on October 18, 2013, in which Respondent consented to Petitioner's motion with the following stipulations:

1. Deposition questions for witnesses are limited to those related to juror's law enforcement background and disclosure at *voir dire* and Assistant Solicitor's knowledge of such.
2. Respondent has the option to utilize live testimony from either witness if considered necessary for a hearing.
3. The costs of the depositions and copies of transcripts are paid for by Petitioner.

Respondent subsequently filed its Return and Motion to Dismiss on January 30, 2014. On April 22, 2014, Petitioner deposed Ronnie Ellison Roberts (Juror) and Thomas William Holland, Esquire (Assistant Solicitor) at the Lancaster County Courthouse. Petitioner was present during these depositions and represented by undersigned counsel. Respondent was represented by Mary S. Williams, Esquire and J. Croom Hunter, Esquire. After these depositions, Respondent filed an Amended Return and Motion to Dismiss on July 1, 2014. Respondent's Motion for Dismissal was denied and an evidentiary hearing was granted by Order signed by Judge Brian M. Gibbons and filed with the Clerk of Court's Office on October 29, 2014.

An evidentiary hearing was convened in this matter on November 22, 2016, before the Honorable Brian M. Gibbons at the Lancaster County Courthouse. The Petitioner was present at this hearing and was represented by undersigned counsel, Tara Dawn Shurling. The Respondent was represented by Patrick Schneckpeper, Assistant Attorney General. At the conclusion of this evidentiary hearing the Court granted leave to submit memoranda on the respective positions of both parties in lieu of full closing arguments.

The Petitioner's Application for Post-Conviction Relief was dismissed by Order dated February 22, 2018. Petitioner filed a Motion to Alter or Amend, pursuant to Rule 59(e), SCRCR, on March 12, 2018. Said motion was denied by Order filed on March 26, 2018. Petitioner's Notice of Appeal from both orders was filed with this Honorable Court on April 23, 2018. Petitioner now sets forth herein the reasons why his appeal should be allowed to move forward, his position concerning the timeliness of his PCR Application and the reasons why, he most respectfully submits that the lower court erred in finding that his application was not timely filed. On May 9, 2018, Petitioner submitted his Memorandum in Support of Timeliness of PCR Application, by mail. That Memorandum was filed on May 11, 2018. By correspondence dated December 28, 2018, this Honorable Court notified the parties that this appeal would proceed in accordance with the South Carolina Appellate Court Rules. On April 30, 2019, Petitioner submitted his Petition for Writ of Certiorari and Appendix for filing. Inasmuch as that petition was thirty-eight pages long, Counsel also filed a Motion to Exceed the page limitation set by Rule 227(e)(3), SCACR, with this petition.<sup>1</sup> Respondent did not object to this request. In its Motion to Strike, Respondent notes that the State was not asked to respond to Petitioner's request to exceed the page limit. Motion to Strike, p.4,

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<sup>1</sup> As pointed out by Respondent, Counsel inadvertently referenced old Rule 227, SCACR, in her motion as opposed to Rule 243, SCACR. Counsel apologizes for any confusion this may have caused; however, she would note that she had been a practicing appellate lawyer for just over thirty (30) years when this rule was renumbered. As the oft used saying goes, old habits die hard.

fn.2. This position ignores the fact that Rule 240 (a) and (e), SCACR, clearly provides that, “any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file an original and six (6) copies of his return with the clerk and serve on all parties a copy of the return.” Rule 240 (e) further provides that, “[f]ailure of a party to timely file a return may be deemed consent by that party to the relief sought in the motion or petition.” Therefore, Respondent had notice of the State’s right to file a Return under the rules of this Honorable Court and their failure to do so constituted consent to the relief sought in the Motion to Exceed the page limit set by Rule 243(e)(3). Nevertheless, on May 23, 2019, Chief Justice Beatty denied Petitioner’s Motion to exceed the page limit and ordered Petitioner to submit an Amended Certiorari Petition in compliance with the page limit set by Rule 243 (e)(3). Petitioner’s Amended Certiorari Petition was submitted on June 27, 2019.

### III.

#### **Respondent’s Motion to Strike**

In its Motion to Strike, Respondent effectively argues that Petitioner presented no arguments setting forth his position on the timeliness of the current PCR action in his Amended Certiorari Petition. That is simply not accurate. In the thirty-eight page Certiorari Petition submitted to this Honorable Court, along with Petitioner’s request to exceed the twenty-five page limit set by Rule 243 (e) (3), SCACR, he set forth in detail the portions of the records before the Court which supported Petitioner’s position on the timeliness of his most recent PCR application and additionally presented just under two (2) pages of argument summarizing Petitioner’s position on the timeliness of this application. Petition for Writ of Certiorari, pp. 27 – 29. In the Amended Certiorari Petition subsequently filed on behalf of Petitioner, Petitioner once again presented the Court with a detailed summary of the evidence and testimony relevant to the timeliness issue and presented

approximately one and a half (1.5) pages of argument summarizing Petitioner's position on this issue. Amended Petition for Writ of Certiorari, pp. 20 – 22. In addition, Petitioner noted in both versions of his certiorari petition that this issue was more thoroughly discussed in the Memorandum presented to the Court pursuant to Rule 243(c), SCACR, and asked to be permitted to incorporate those arguments by reference. Petitioner most respectfully submits that even after limiting Petitioner's argument on timeliness to such an abbreviated presentation in his Amended Certiorari Petition, he still only had two and a half (2.5) pages left to argue serious questions of both juror misconduct and prosecutorial misconduct after the Questions Presented, the Statement of the case and summaries of the relevant testimony were presented. He submits, however, that while the bare bones of his position on the timeliness of this PCR effort were presented in the Amended Certiorari Petition, the page limitations imposed did not allow Counsel to present all the arguments in support of timeliness which desperately need to be reviewed by this Court.

The issue of timeliness presented in this case could potentially have far reaching consequences for collateral review through the Uniform Post-Conviction Relief Act, S.C. Code Ann. §17-27-10, et seq. In all candor with this Honorable Court, the issues involved in this case require more in depth treatment at this stage of the appellate process than can fairly be presented for the Court's review in twenty-five (25) pages. While Petitioner may have the opportunity to further brief these issues in the future, if he is blessed to have Certiorari granted, that eventuality will do him no good if the arguments concerning the questions presented in this case are reduced to such an abbreviated format that he fails to convince this Honorable Court of the appropriateness of granting certiorari.

Respondent has submitted, and Petitioner does not necessarily disagree, that it would be unfair for Respondent to be limited to twenty-five (25) pages in responding to the arguments

advanced by Petitioner in both his Memorandum filed with this Court on the issue of timeliness and his Amended Certiorari Petition. Petitioner would note, however, that Respondent had the option of requesting that the State be granted leave to exceed the page limitation set by Rule 243 (g), SCACR, in light of Petitioner's request to incorporate the arguments and evidence relied upon in Petitioner's Memorandum previously filed with this Court. Rule 240 (e), SCACR. The State did not, as Respondent suggests, have to be asked for a Return in order to have the opportunity to file one.

### CONCLUSION

Petitioner notes that Applicant has asked to incorporate the Memorandum filed with this Honorable Court on the issue of timeliness, as opposed to the arguments advanced in his original Petition for Writ of Certiorari as submitted with his Motion to Exceed the Page Limit set by Rule 243 (e). This because, in order to try and be as brief as possible, Counsel for Petitioner made the same request to incorporate the Memorandum in that original Petition as he did in the subsequent Amended Petition. Furthermore, since the Motion to Exceed was denied, the original Certiorari Petition was not filed and therefore, is not technically before the Court for Petitioner to incorporate by reference. At this time, Petitioner would ask that Respondent's Motion to Strike be denied and that the Court grant Petitioner's request to incorporate by reference the Memorandum already filed by Petitioner with this Court on the issue of timeliness. He would additionally agree, however, that Respondent should be granted the opportunity to file a Return containing arguments and references to the evidence and testimony before the Court of up to twenty-five (25) pages on the issue of timeliness, the length of Counsel's Memorandum on this subject<sup>2</sup>, and no more than twenty (20) pages on the other questions presented in this appeal, inasmuch as at least five (5) pages of the

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<sup>2</sup> Respondent asserts in his Motion to Strike that Petitioner's Memorandum filed with this Honorable Court on the subject of the timeliness was twenty-seven (27) pages long. This Court's own records will confirm that this memorandum was, from cover through conclusion, twenty-five (25) pages long. Respondent has evidently counted both the Certificate of Service and the transmittal letter to the Clerk of the Supreme Court in his page count.

Amended Certiorari Petition in this matter addressed facts in evidence and arguments relevant to the timeliness issue.

Counsel for Petitioner does not wish to appear to be disrespecting the previous ruling of this Honorable Court to enlarge the page limit for this Certiorari Petition. She would alternatively argue, however, that the more practical approach would be to allow Petitioner to file a Second Amended Certiorari Petition in which he is allowed to exceed the page limit set by Rule 243(e), SCACR. He beseeches this Court to consider that Respondent's Motion to Strike alone is seven (7) pages long and it did not even attempt to address the merits of the timeliness issue before the Court. Given the complexity of the issues involved in this case, the length of the records before the Court, as well as the potentially far reaching implications of this Court's ruling on this appeal on future Post-Conviction Relief cases, Petitioner would most respectfully ask that the Court reconsider Petitioner's prayer to exceed the page limitation set by Rule 243 (e) and allow Petitioner to submit a Second Amended Certiorari Petition not to exceed fifty (50) pages.<sup>3</sup> He would accordingly ask that Respondent be given the latitude to file a Return of equal length as envisioned by Rule 243 (g), SCACR.

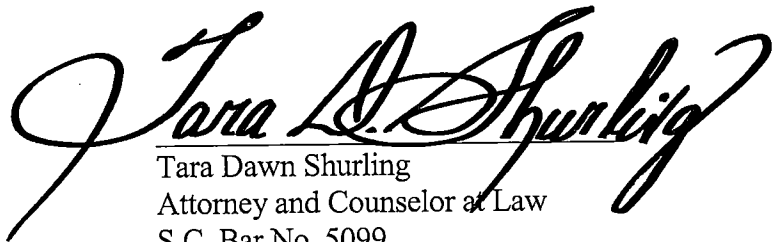
Petitioner acknowledges, without inappropriate reference to other cases by name, that in the past two years she has had an unusual number of cases in which she felt it necessary and appropriate to ask to exceed the page limitation set by Rule 243 (e) (3), SCACR, for PCR certiorari petitions. This is not a trend, but rather a coincidence. Counsel believes she has filed fewer than ten (10) requests to exceed the page limit in such appeals in the forty (40) years she has handled PCR

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<sup>3</sup> Petitioner acknowledges that the Certiorari Petition originally submitted by him, along with his Motion to Exceed the page limits, was only thirty-eight (38) pages long, however, it too asked to incorporate by reference the Memorandum previously filed on the subject of timeliness. Petitioner submits in good faith, as an officer of the court, that an adequate treatment of this issue, without reference to the prior memorandum, requires twenty-five (25) pages to do justice to the questions involved therein and to provide this Honorable Court with the references to the testimony and other evidence necessary to give Petitioner one full bite at the apple on this crucial issue.

appeals before this Honorable Court. Counsel, of all people, understands the demands on the Court's time and has no desire to needlessly burden the Court, or herself, by filing unnecessarily long certiorari petitions. On the other hand, however, Counsel takes her responsibility of due diligence very seriously and only seeks to give her client the benefit of having this Honorable Court review every aspect of the arguments she preserved on his behalf in the circuit court.

Respectfully submitted,



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**ATTORNEY FOR PETITIONER**

This 12 day of November, 2019.

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

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Appellate Case No. 2018-000779  
Lower Court Case No. 2013-CP-29-00951

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**VERNARD JEROME MATHIS, #297034,**

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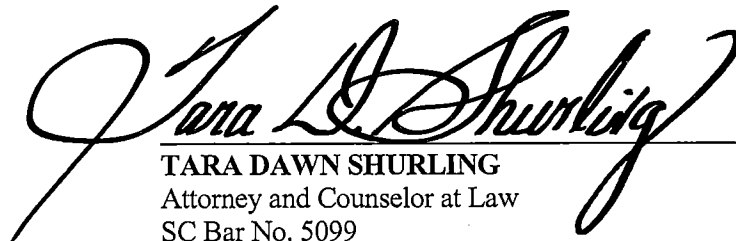
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**CERTIFICATE OF SERVICE**

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The undersigned attorney hereby certifies that a copy of Petitioner's Reply to Motion to Strike, has been served upon opposing counsel, Samuel L. Key, Assistant Attorney General, this the 12<sup>th</sup> day of November, 2019, by U.S. mail to the address listed below.

**Samuel L. Key**  
**Assistant Attorney General**  
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**TARA DAWN SHURLING**  
Attorney and Counselor at Law  
SC Bar No. 5099

**ATTORNEY FOR PETITIONER**

November 12, 2019