

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY

The Honorable J. Derham Cole, PCR Judge

Appellate Case No. 2018-001854

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DEC 27 2019

S.C. SUPREME COURT

ROBERT A. BAKER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION TO SUPPLEMENT APPENDIX

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for Respondent moves for this Court to allow Respondent to supplement the Appendix in this case. In support of this motion, Respondent would present the following facts:

1. Robert Baker (Petitioner) is incarcerated with the South Carolina Department of Corrections pursuant to the orders of commitment of the Lexington County Clerk of Court. Petitioner. On July 15, 2010, Petitioner appeared before the Honorable R. Knox McMahan and pleaded guilty as indicted to four counts of second-degree CSC with a minor (2009-GS-32-1597, -1600; 2010-GS-32-2101, -2103) and two counts of

committing a lewd act upon a child (2010-GS-32-2105, -2108).

2. Pursuant to the negotiated plea agreement, Judge McMahon sentenced Petitioner to an aggregate term of thirty years' imprisonment and ordered Petitioner to register as a sex offender. (App. 14, 31–32). As a result of the plea, Petitioner's unrelated probationary sentence from a 2006 conviction was revoked. (App. 4, 24–30). Judge McMahon revoked in full, reinstated Petitioner's ten-year suspended sentence, and ran it consecutive to the new thirty-year sentence. (App. 32, 43).
3. In his Application for Post-Conviction Relief, Petitioner alleged Counsel was ineffective for failing to object to Petitioner being tried without counsel at his first trial and *in absentia* at both trials.
4. The Petition for Writ of Certiorari and Appendix in this case were filed on December 18, 2017. The Appendix, however, does not contain the following documents:
 - a. Record on Appeal;
 - b. *Anders* brief;
 - c. Unpublished opinion from the Court of Appeals (2012-UP-159);
 - d. Petitioner's first amended PCR application;
 - e. May 2015 Form 4 appointing counsel;
 - f. June 2016 Form 4 setting a hearing on Respondent's motion to dismiss;
 - g. Petitioner's July 2016 motion to relieve counsel;
 - h. August 2016 Form 4 denying Petitioner's motion to relieve counsel and denying the State's motion to dismiss;
 - i. Petitioner's October 2016 motion to relieve counsel;
 - j. November 2016 order reliving counsel;
 - k. Petitioner's third amended PCR application;
 - l. Petitioner's fourth amended PCR application;
 - m. Petitioner's November 2017 motion for a continuance; and
 - n. Form from the Clerk of Court appointing Art Aiken to represent Petitioner.
5. This Court requires a Petition for Writ of Certiorari include the entire lower court

record. Rule 227(e)(1), SCACR. Without these documents, the appellate record is incomplete, and Respondent cannot fully answer the Petition. Inasmuch as the above documents are relevant and pertinent material under Rule 243(f), SCACR that should be included in the Appendix, counsel moves this Court to allow Respondent to include the same in a Supplemental Appendix, provisionally filed along with this motion.

6. The undersigned has contacted counsel for Petitioner by e-mail, who indicated he does not object to the motion.

WHEREFORE, as the Appendix is incomplete, counsel for Respondent requests this Court: (1) grant the motion to allow Respondent to supplement the Appendix, and (2) accept Respondent's Supplemental Appendix for filing today.

Respectfully submitted,

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S.C. SUPREME COURT

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December 23, 2019

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO BERKELEY COUNTY
Court of Common Pleas
The Honorable J. Derham Cole, PCR Judge

Appellate Case No. 2018-001854

Robert A. Baker,

Petitioner,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Motion to Supplement Appendix** has been served upon the applicant by placing one copy in the United States Mail, addressed to:

**Victor R. Seeger, Esquire
S.C. Commission on Indigent Defense
PO Box 11589
Columbia, SC 29201**

This 23rd day of December, 2019.


Sara E. Cuntin
Assistant Attorney General for Respondent

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