

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Certiorari from Aiken County  
The Honorable Maité Murphy, Post-Conviction Relief Judge  
Appellate Case No. 2017-002055

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RECEIVED  
JAN 21 2020  
SC Court of Appeals

CORNELL DEVON TYLER, SCDC # 326023,

Petitioner,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITIONER'S PETITION FOR REHEARING AND FOR  
REHEARING *EN BANC***

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On December 10, 2019, this Court, acting pursuant to Rule 243 of the South Carolina Appellate Court Rules, issued an order denying certiorari review of the denial of Petitioner Cornell Devon Tyler's post-conviction relief action. See Cornell Devon Tyler v. State, Appellate Case No. 2017-002055 ("This matter is before the court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief. Based on the vote of the panel, the petition for a writ of certiorari is denied."). Thereafter, Petitioner filed a Petition for Rehearing and for Rehearing *En Banc*, challenging this Court's denial of certiorari review pursuant to Rule 243, SCACR. By letter dated January 10, 2020, this Court requested Respondent file a return to the petition. This return follows and for the following reasons, Respondent asserts this Court should deny the petition for rehearing and for rehearing *en banc*.

Initially, Respondent asserts the petition for rehearing and for rehearing *en banc* should be denied because Petitioner is asking this Court to reconsider its denial of discretionary

certiorari review, which clearly goes against the principles laid out in our appellate court rules and post-conviction relief statute. Pursuant to the Uniform Post-Conviction Procedure Act, “[a] final judgment entered under this chapter **may** be reviewed by a writ of certiorari as provided by the South Carolina Appellate Court Rules.” S.C. Code Ann. § 17-27-100 (emphasis added). Moreover, according to our appellate court rules, “[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. See also CERTIORARI, Black's Law Dictionary (11th ed. 2019) (“An **extraordinary** writ issued by an appellate court, **at its discretion**, directing a lower court to deliver the record in the case for review.”) (emphasis added). Pursuant to Rule 221, SCACR, “[n]o petition for rehearing shall be allowed from an order denying a petition for a writ of certiorari under Rule 242, SCACR.” While certiorari review of post-conviction relief actions is governed by Rule 243, SCACR, the same prohibitions against petitions for rehearing from the denial of discretionary certiorari review under Rule 242, SCACR, should apply. Our Supreme Court has consistently held the non-prevailing party in a post-conviction relief action where certiorari was denied by this Court pursuant to Rule 243, SCACR, could not then petition for certiorari pursuant to Rule 242, SCACR. See Ellison v. State, 382 S.C. 189, 676 S.E.2d 671 (2009) (finding the Supreme Court will not review an order of the Court of Appeals denying a petition for a writ of certiorari in a post-conviction relief case); Haggins v. State, 377 S.C. 135, 659 S.E.2d 170 (2008) (stating the Supreme Court will not entertain petitions for a writ of certiorari pursuant to Rule 242<sup>1</sup> where Court of Appeals issues “letter denial”); Missouri v. State, 378 S.C. 594, 663 S.E.2d 480 (2008) (extending Haggins to petitions for a writ of certiorari filed in the Supreme Court pursuant to Rule 242 following the Court of Appeals’ issuance of order denying petition for writ of certiorari pursuant to Johnson v. State, 294 S.C.

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<sup>1</sup> Formerly Rule 226, SCACR.

310, 364 S.E.2d 201 (1988)); and In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases, 321 S.C. 563, 471 S.E.2d 454 (1990) (stating this Court reviews decisions of Court of Appeals by way of writ of certiorari only where special reasons justify exercise of that power).

In the present case, Petitioner’s appellate counsel filed a thorough, twenty-four-page certiorari petition asserting the post-conviction relief court erred in denying relief as to three issues. Respondent filed a return to this petition addressing all three issues and asking this Court to deny certiorari. Thereafter, this Court, acting in its capacity under Rule 243, SCACR, issued an order denying discretionary certiorari review based on its sound judicial discretion after a thorough review of the entire record, the filed appellate pleadings, and case law. See Rule 242(b) (“A writ of certiorari is not a matter of right, but of sound judicial discretion . . . .”); see also Rule 243(f), SCARC (outlining the contents of an appendix in a post-conviction relief appeal, including the entire lower court record and a copy of the final order entered after the post-conviction proceeding). Petitioner has not presented special or important reasons why this Court erred in denying his request for discretionary review after its exhaustive review of the entire record and the arguments set forth by Petitioner. See Rule 242(b), SCACR (“A writ of certiorari . . . will be granted only where there are special and important reasons.”). Accordingly, this Court should deny and dismiss this petition for rehearing and for rehearing *en banc* based on the principles set forth in our appellate court rules.

Moreover, Respondent submits this petition should also be denied and dismissed based on the merits of Petitioner’s arguments. In his petition for rehearing, Petition primarily complains this Court did not thoroughly review his petition for a writ of certiorari and asserts this Court, sitting *en banc*, should grant rehearing so the Court can “conduct a **full** review of the

previously submitted Petition for Writ of Certiorari and Appendix.” (Pet. For Rehearing p. 7) (emphasis added); see also Pet. For Rehearing p. 5 (requesting “the panel and entire Court review the Petition for Writ of Certiorari and the entirety of the arguments contained therein.” (emphasis added)). Petitioner appears to be implying that the panel that conducted its review of this case, which included a review of the entirety of the lower court record and the arguments set forth in the petition for a writ of certiorari and responded to in the return to the petition, somehow was negligent in its duty and did not properly consider all arguments presented as required under Rule 243, SCACR. Respondent submits this Court, and specifically this panel, did not act improperly in denying certiorari, but rather, properly reviewed all materials and denied discretionary review as governed by South Carolina law.

Petitioner also complains about the quality of the order previously issued by the lower court and stresses that this Court— in particular, this entire Court sitting *en banc* rather than the panel that ruled on his discretionary certiorari petition—should reconsider the certiorari petition and grant the petition based on purported inadequacies in the lower court’s order of dismissal. In support of this argument, Petitioner cites to the Supreme Court’s opinion of Fishburne v. State, 427 S.C. 505, 832 S.E.2d 684 (2019), issued in July of 2019—approximately five months prior to this Court’s decisions to deny discretionary certiorari review. However, as the Fishburne case emphasized, concerns regarding the adequacy of lower court orders in post-conviction relief cases has been an on-going issue for our appellate courts (and is similarly a concern for the State that is actively being addressed), and moreover, does not have any fundamental bearing on Petitioner’s case or the denial of certiorari. Petitioner also cites to Martin v. State, 427 S.C. 450, 832 S.E.2d 277 (2019), also issued in July 2019, approximately five months prior to this Court’s decisions to deny discretionary certiorari review, and again has no bearing on this Court’s denial

or certiorari because it addresses a different issue than the issues presented in Petitioner's case.<sup>2</sup> Petitioner fails to cite to any authority that has been decided since certiorari has been decided that would compel this Court to reconsider its denial of certiorari. Simply put, Petitioner has presented no new arguments or authority as to why this Court, either sitting as the panel that deny discretionary certiorari review or sitting *en banc*, should reconsider its denial of certiorari.

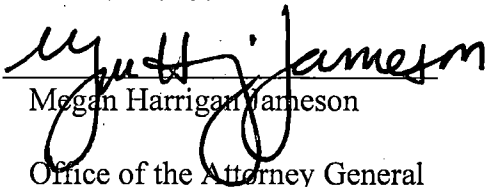
In light of all those reasons coupled with the arguments raised in Respondent's return to the petition for certiorari, the post-conviction relief court properly denied relief and there is no completing reason why this court should reconsider its decision to deny discretionary certiorari review. As a result, this Court should deny Petitioner's petition for rehearing.

Respectfully submitted,

ALAN WILSON  
Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General  
S.C Bar No. 100108

By:

  
Megan Harrigan Jameson

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January 21, 2020

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<sup>2</sup> While both Martin and Petitioner's case focus on alibi witnesses and defenses, the similarities end there. In Martin, the Supreme Court held Petitioner satisfied his burden of proof by presenting a note from trial counsel's file regarding an alibi defense that was not properly utilized. Here, Petitioner presented the purported alibi witnesses at the evidentiary hearing and the lower court found their testimony did not constitute an alibi and counsel had a strategic reason for not presenting such witnesses—a different issue than addressed in Martin. See App. 1235-36).

STATE OF SOUTH CAROLINA  
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Certiorari to Aiken County  
Court of Common Pleas  
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CORNELL DEVON TYLER,

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Respondent.


**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a true copy of the **Return to Petition for Rehearing** has been served upon Petitioner by mailing two copies in the United States mail, postage prepaid, addressed to:

**Tricia A. Blanchette, Esquire**  
**Law Office of Tricia A. Blanchette, LLC.**  
**Post Office Box 2147**  
**Leesville, South Carolina 29070**

This 21<sup>st</sup> day of January, 2020.

  
Megan Harrigan Jameson  
Senior Assistant Deputy Attorney General  
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JAN 21 2020  
SC Court of Appeals



ALAN WILSON  
ATTORNEY GENERAL

January 21, 2020

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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JAN 21 2020  
SC Court of Appeals

RE: Cornell Devon Tyler v. State of South Carolina  
Appellate Case No.: 2017-002055

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Respondent's Return to Petition for Rehearing in the above-referenced post-conviction relief matter for filing with the Court. By copy of this letter, I am serving opposing counsel with this Return today.

Sincerely,

Megan Harrigan Jameson  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 100108

MHJ/ks  
Enclosures

cc: Tricia A. Blanchette, Esquire