

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 17 2020

CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas
The Honorable William A. McKinnon, PCR Judge

S.C. SUPREME COURT

Appellate Case No. 2019-000031

ANDRA B. JAMISON,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**MOTION TO REQUIRE COMPLIANCE WITH ORDER DIRECTING
FILING OF AMENDED APPENDIX AND MOTION TO SUPPLEMENT APPENDIX**

Respondent (the State), through its undersigned counsel, would respectfully show unto this Court as follows:

I. Procedural History

In August 2008, Andra Byron Jamison (Petitioner) was arrested following an investigation into a vehicle and bicycle collision resulting in a fatality. During its January 2009 term, the Lexington County Grand Jury indicted Petitioner for felony driving under the influence resulting in death (2009-GS-32-5283). On October 12, 2009, Petitioner proceeded to a jury trial before the Honorable R. Knox McMahon. Benjamin Stitely, Esquire, and R. Theo Williams, Esquire represented Petitioner. Assistant Solicitors Derrick Mobley and Stephen Burn of the Eleventh

Circuit Solicitor's Office prosecuted the case. The jury found Petitioner guilty as indicted. The trial court sentenced Petitioner to eighteen years' imprisonment and imposed a \$10,000 fine.

Petitioner filed a timely notice of appeal, which was perfected on his behalf by Chief Deputy Appellate Defender Wanda Carter. After the final briefs were filed, Petitioner retained Jeremy Thompson, Esquire, to represent him for the remainder of the appeal. The Court of Appeals subsequently issued an unpublished opinion affirming Petitioner's conviction and sentence. *State v. Jamison*, Op. No. 2012-UP-58 (S.C. Ct. App. filed Feb. 1, 2012). Petitioner and the State both filed petitions for writ of certiorari, which were denied.

Petitioner filed an application for post-conviction relief on July 10, 2014. An evidentiary hearing into the matter convened before the Honorable William A. McKinnon on April 20, 2018. Petitioner was present and represented by Glenn Walters, Esquire. Assistant Attorney General Al Simon represented the State. The PCR court issued an order denying relief and dismissing the action with prejudice. Petitioner, through PCR counsel, thereafter filed a motion to alter or amend pursuant to Rule 59(e), SCRPC, and the State filed a return. Petitioner then attempted to file a *pro se* motion to alter or amend pursuant to Rule 59(e), SCRPC, which was stricken from the record for violating Rule 11, SCRPC. The PCR court denied Petitioner's properly filed Rule 59(e) motion on December 13, 2018.

II. Current Proceeding

Petitioner filed a timely notice of appeal. Appellate Defender Adam S. Ruffin was initially appointed to represent Petitioner. Petitioner filed a motion to proceed *pro se* and requested Mr. Ruffin serve as "standby" counsel. After advising Petitioner of the dangers of self-representation pursuant to *Faretta v. California*, 422 U.S. 806 (1975), this Court granted Petitioner's motion to proceed *pro se* and denied Petitioner's request for Mr. Ruffin to serve as standby counsel, advising

that Appellate Defense shall remain associated with Petitioner's case only for the purpose of providing Petitioner with copies of the transcript and any other records necessary for preparing the Petition and Appendix, and to notify this Court of the date of mailing.

Petitioner served and filed the Petitioner for Writ of Certiorari and Appendix on October 9, 2019. The State then filed a motion out of time for extension to file the Return to Petition for Writ of Certiorari, which this Court granted on December 17, 2019.

III. Motion to Require Compliance with Order Directing Filing of Amended Appendix

On March 19, 2020, the State filed a motion strike the appendix and require Petitioner to serve and file an amended Appendix that complies with Rule 243(f), SCACR, and to hold the time limits for filing its Return to Petition for Writ of Certiorari in abeyance pending Petitioner's service of a proper appendix. Petitioner filed a motion to supplement the appendix with the report from the Midlands Multi-Disciplinary Accident Investigation Team Report and request to supplement the record with a table of authorities.

On May 26, 2020, this Court issued an Order granting Petitioner's motion to supplement the appendix with the report from the Midlands Multi-Disciplinary Accident Investigation Team Report and denying Petitioner's request to supplement the record with a table of authorities.

As to the State's motion, this Court granted the State's motion to strike a portion of the trial transcript included in the Record on Appeal in the case of *State v. Rodney C. Bryan*, which includes commentary from an unknown source (App. 1307–24) and a letter to Petitioner from Jeremy A. Thompson (App. 1265–66). This Court denied the State's motion to strike Petitioner's *pro se* 59(e) motion (App. 975–1016) and sworn statement of the Honorable R. Knox McMahon from the Judicial Merit Selection Commission taken August 9, 2011 (App. 1297–1303). Additionally, this Court granted the State's motion to supplement the Appendix to include pages

467–478 and 501–614 of Petitioner’s trial transcript, granted the State’s motion to hold the matter in abeyance, and ordered Petitioner to serve and file an amended appendix, which complies with the Order, within twenty (20) days from the date of the Order. This Court further ordered that the State shall have thirty (30) days after service of the amended appendix in which to serve and file its return.

On June 4, 2020, Petitioner filed a “Supplemental Submission And Amendment To Appendix for Petition Of Writ of Certiorari,” which included only the missing portions of the trial transcript. Petitioner did not file an amended appendix as directed in the order, leaving the matters this Court struck from the record in the original appendix. Additionally, this Court granted Petitioner’s motion to supplement the record with the Midlands Multi-Disciplinary Accident Investigation Team Report. Petitioner’s “Supplemental Submission And Amendment To Appendix for Petition Of Writ of Certiorari” and the Midlands Multi-Disciplinary Accident Investigation Team Report now have the same page numbers which both begin on page 1421.

Because Petitioner failed to comply with this Court’s order, the State respectfully asks this Court to require the filing of an amended appendix as directed in the Order and in accordance with the requirements of Rule 243(f) of the South Carolina Appellate Court Rules.

IV. Motion to Supplement Appendix

The State further requests this Court permit and require the inclusion of the PCR court’s order striking Petitioner’s *pro se* alter or amend in the amended appendix when filed. Petitioner included an improper *pro se* 59(e) motion in the appendix as filed but failed to include the order issued in response to it. Without the order, the *pro se* 59(e) motion’s inclusion in the appendix is highly misleading. Therefore, to ensure completeness of the appendix and enable the Court to conduct meaningful appellate review, the PCR court’s order on the *pro se* motion is necessary pursuant to Rule 243(f) of the South Carolina Appellate Court Rules.

Finally, the State respectfully requests this Court hold the filing of the amended appendix in abeyance pending a ruling on this motion.

Respectfully submitted,

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June 16, 2020

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