

STATE OF SOUTH CAROLINA
In The Supreme Court

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CERTIORARI TO FLORENCE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Thomas A. Russo, Trial Judge
The Honorable George M. McFaddin, Jr., Post-Conviction Relief Judge

Appellate Case No. 2018-000813

David G. Johnson, # 312138,

Petitioner,

v.

State of South Carolina,

Respondent.

STATE'S 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. The Florence County Grand Jury indicted Petitioner at the September 2009 term for murder, first-degree burglary, armed robbery, possession of weapon during the commission of a violent crime, and conspiracy (2009-GS-21-1564). W. James Hoffmeyer (Counsel), Esquire, represented Petitioner. Solicitor E. L. Clements, III,

Esquire, and Deputy Solicitor John C. Jepertinger, Esquire, prosecuted the case. On February 13-17, 2012, Petitioner proceeded to trial before the Honorable Thomas A. Russo and a jury. On February 17, 2012, the jury found Petitioner guilty as indicted on all five counts. Judge Russo sentenced him to imprisonment for consecutive terms of life without the possibility of parole for murder and first-degree burglary. Judge Russo also sentenced Petitioner to thirty years for armed robbery and five years for conspiracy to run concurrent with the murder and first-degree burglary sentences. Judge Russo did not impose a sentence for possession of a weapon during the commission of a violent crime because Petitioner had been sentenced to life without the possibility of parole.

2. Petitioner filed a timely notice of appeal. Susan B. Hackett, Esquire, of the South Carolina Office of Indigent Defense – Appellate Defense Division perfected the appeal and raised several issues, including whether the trial court abused its discretion in admitting Petitioner’s statements to police because evidence showed Petitioner has an intellectual disability. After briefing and oral argument, the South Carolina Court of Appeals affirmed Petitioner’s conviction on April 9, 2014. State v. Johnson, Op. No. 2014-UP-167 (S.C. Ct. App. filed April 9, 2014). Petitioner filed a petition for rehearing with the South Carolina Court of Appeals on April 24, 2014, which the Court of Appeals denied by order filed on June 13, 2014.
3. Petitioner then filed a petition for writ of certiorari to the South Carolina Supreme Court on July 17, 2014, again raising the voluntariness and intellectual disability issue. By order dated February 20, 2015, the Supreme Court partially granted certiorari. The

- Supreme Court dismissed the writ as improvidently granted on December 2, 2015. State v. Johnson, Op. No. 2015-MO-067 (S.C. Sup. Ct. filed December 2, 2015). The remittitur was returned to the circuit court on December 2, 2015.
4. Petitioner filed a petition for writ of certiorari to the United States Supreme Court on March 1, 2016. The United States Supreme Court denied the petition on April 18, 2016.
 5. Petitioner next filed an application for post-conviction relief (PCR) on October 19, 2016, raising, among other issues, an allegation Counsel was constitutionally ineffective for failing to present evidence of Petitioner's intellectual disability to the jury. An evidentiary hearing into the matter convened on April 3, 2018, at the Florence County Courthouse before the Honorable George M. McFaddin, Jr. The PCR court ultimately issued an order, filed May 13, 2019, denying relief and dismissing the application with prejudice.
 6. Petitioner filed a timely notice of appeal of the denial of post-conviction relief, and, through counsel, filed a petition for writ of certiorari on January 10, 2020. The Appendix, however, does not contain any of the appellate documents from the underlying criminal case.
 7. Without these documents, the appellate record in this PCR matter is incomplete. Therefore, Respondent submits the appellate record from State v. Johnson, Op. No. 2014-UP-167 (S.C. Ct. App. filed April 9, 2014); State v. Johnson, Op. No. 2015-MO-067 (S.C. Sup. Ct. filed December 2, 2015); and Johnson v. South Carolina, No. 15-8420, should be included in the Appendix to the Petition for Writ of Certiorari, as the issue Petitioner raises in his petition is directly related to one of the issues raised on

direct appeal.

5. Inasmuch as the underlying direct appellate record is 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. Counsel for Respondent attempted to contact Counsel for Petitioner to obtain his consent but was unable to reach him prior to the filing of this 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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