

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas
The Honorable Brooks P. Goldsmith, PCR Judge

S.C. SUPREME COURT

Appellate Case No. 2019-001694

CURTIS T. JOHNSON,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION TO FILE A SECOND SUPPLEMENTAL APPENDIX

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

1. Curtis T. Johnson (Petitioner) is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Lexington County Clerk of Court. In April 2007, the Lexington County Grand Jury indicted Petitioner for murder (2009-GS-32-1473); two counts of assault and battery with intent to kill (ABWIK) (2009-GS-32-1474, 1476); and possession of a firearm of knife during a violent crime (2007-GS-32-1475). On September 14, 2009, Petitioner proceeded to a joint jury trial with his brother and co-defendant, Kerwin

S. Parker, before the Honorable Robin B. Stilwell. Elizabeth Fullwood, Esquire, represented Petitioner. Eleventh Circuit Solicitor Donald V. Myers and Assistant Solicitor Colleen E. Dixon prosecuted the case.

2. On September 18, 2009, the jury convicted Petitioner of one count of the lesser-included offense of voluntary manslaughter; two counts of the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN); and one count of possession of a firearm during the commission of a violent crime.
3. Judge Stilwell sentenced Petitioner to concurrent terms of thirty years' imprisonment for voluntary manslaughter, ten years for each ABHAN conviction, and a consecutive five years' imprisonment for possession of a firearm during the commission of a violent crime.
4. Petitioner appealed. Appellate Defender Robert M. Pachak (Appellate Counsel) represented Petitioner on appeal. As a result of the trial transcript missing portions, a reconstruction hearing was held on October 3, 2011. Appellate Counsel thereafter filed an *Anders*¹ brief on June 4, 2012, and Petitioner filed a *pro se* brief.
5. On January 16, 2013, the Court of Appeals dismissed Petitioner's appeal and granted Appellate Counsel's petition to be relieved in an unpublished opinion. *State v. Johnson*, 2013-UP-022 (S.C. Ct. App. filed Jan. 16, 2013). Petitioner subsequently petitioned for rehearing, which was denied on February 21, 2013. The case was remitted back to the circuit court on April 7, 2013.
6. Petitioner filed an application for post-conviction relief (PCR) on August 22, 2013, raising multiple claims of ineffective assistance of trial counsel. The State

¹ *Anders v. California*, 386 U.S. 738 (1967).

submitted its return requesting an evidentiary hearing on December 18, 2013. An evidentiary hearing convened on April 21, 2015, before the Honorable Brooks P. Goldsmith. Petitioner was present and represented by Anna R. Good, Esquire. Assistant Attorney General J. Walt Whitmire represented the State.

7. On June 7, 2019, the PCR court issued an order denying relief and dismissing the action with prejudice. Petitioner thereafter filed a motion to reconsider pursuant to Rule 59(e), SCRCF. On September 10, 2019, the PCR court issued an order denying Petitioner's motion. This appeal follows.
8. The Petition for Writ of Certiorari, Appendix, and Supplemental Appendix in this case were filed on April 15, 2020. The Appendix, however, does not contain Petitioner's direct appeal records.
9. 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 Second Supplemental Appendix, provisionally filed along with this motion.
10. Undersigned counsel has conferred with counsel for Petitioner, who consents to the filing of a second supplemental appendix.

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 Second Supplemental Appendix for filing today.

Respectfully submitted,

ALAN WILSON
Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

BY: s/LillianMeadows
Lillian L. Meadows
S.C. Bar No. 103665
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

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ATTORNEYS FOR RESPONDENT