

The State Of South Carolina
In The Supreme Court

RECEIVED

Sep 29 2020

S.C. SUPREME COURT

Appeal From Lexington County
Court Of Common Pleas
For The 11th Judicial Circuit
William A. McKinnon Presiding Judge

Appellate Case No. 2019-000031

Andra B. Jamison
Pro Se Litigant

Petitioner

V.

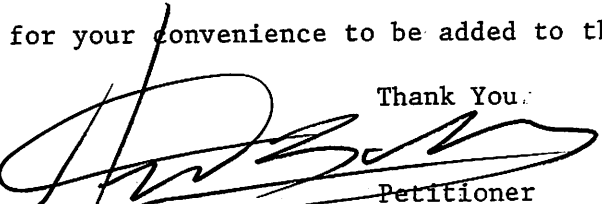
State Of South Carolina

Respondent

**Supplemental Submission And Amendment To The Amended
Appendix For Petition Of Writ Of Certiorari**

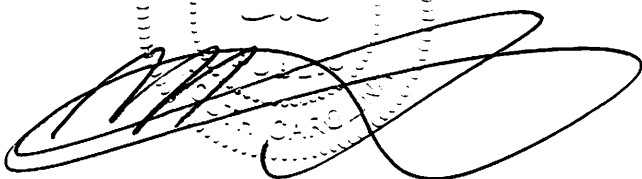
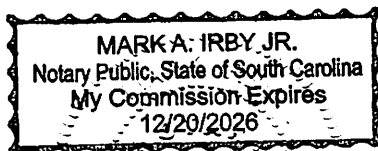
Now comes Petitioner Andra B. Jamison, Pro Se Litigant, requesting permission to supplement the amended appendix notarized on the 31st day of August with document entitled petition for rehearing, perfected by Jeremy A. Thompson, Attorney at law, and also order dated August 10, 2020 to comply with rule 243(f), due to the fact that the documents were inadvertently left out. I am including a copy of the said documents for your convenience to be added to the amended appendix.

Thank You.



Petitioner
Andra B. Jamison, Pro Se Litigant
Anderson County Detention Center
1009 David Lee Coffee Pl.
Anderson S.c. 29625

24th Of September 2020



STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No. 2009-GS-32-5283

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ANDRA JAMISON,

APPELLANT.

PETITION FOR REHEARING

JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
(803) 779-2555
(803) 779-2556 FAX

ATTORNEY FOR APPELLANT.

NOW COMES the Appellant in the above-captioned action, acting by and through undersigned counsel, respectfully petitioning this Court to rehear his appeal and reconsider its decision in State v. Jamison, Op. No. 2012-UP-058 (S.C. Ct. App. filed February 1, 2012). The Appellant would assert that the following critical matters of fact and law were overlooked or misapprehended by the Court in its decision:

On appeal, the Appellant contended that his right to have a reasonable opportunity to obtain a blood test following his arrest for felony driving under the influence was violated. In its opinion in this matter, this Court agreed with the Appellant and ruled that “the trial court erred in admitting the results of testing the State performed on its sample of Jamison’s blood.” Jamison, *supra*. The Appellant agrees with this portion of the Court’s opinion. This Court, however, affirmed the Appellant’s conviction because “we find the error to be harmless.” Id. This Court did not state what evidence the Court found to be overwhelming. Instead, the Court cited to State v. Wilson, 296 S.C. 73, 370 S.E.2d 715 (1988) for the proposition that “erroneous admission of blood test results was not prejudicial in a DUI trial when other evidence demonstrated defendant’s intoxication.” Id.

The Appellant respectfully petitions for rehearing because the Appellant contends that this Court misapprehended Wilson, and other relevant Supreme Court precedent, in affirming the Appellant’s conviction in this case. As an initial matter, the Appellant would note that this Court did not detail what evidence it found to be overwhelming. The lack of explanation on this issue is critical because this case is inapposite to Wilson and other cases where evidence of intoxication has been found to be overwhelming. Furthermore, the factual scenario presented in this case is far more analogous to other cases where the evidence has not been found to be

overwhelming. Accordingly, the Appellant would petition for rehearing on the ground that this Court did not explain its ruling beyond a citation to Wilson.

The Appellant respectfully submits that a cursory review of Wilson shows how readily distinguishable this case is from that decision. In Wilson, the Supreme Court found overwhelming evidence of intoxication because the defendant admitted to the police "that he had consumed a half pint of Vodka." 296 S.C. at 74, 370 S.E.2d at 715. The defendant had also taken a breathalyzer test "which registered a blood alcohol content of .28." Id. Given this evidence, the Supreme Court found that the blood test results "were cumulative to the other evidence." Id. at 76, 370 S.E.2d at 716. The Appellant's case is clearly distinguishable from Wilson because there is no evidence that he ever admitted to being intoxicated and he did not take a breathalyzer test. Therefore, the blood test results in this case cannot be "cumulative" to "other evidence" because there is no other evidence demonstrating intoxication in the manner presented in Wilson. Id.

Furthermore, the other decisions finding overwhelming evidence in this type of case—City of Columbia v. Ervin, 330 S.C. 516, 500 S.E.2d 483 (1998), and State v. Degnan, 305 S.C. 369, 409 S.E.2d 346 (1991)—are also readily distinguishable from the Appellant's case. In Degnan, the Supreme Court found the following evidence overwhelming:

The record reflects ... that she admitted drinking five or six beers, was unable to complete the alphabet, was dazed, had trouble walking and had to lean on the car.

305 S.C. at 372, 409 S.E.2d at 348. Therefore, similar to Wilson, the evidence of intoxication found to be overwhelming in Degnan included an admission of intoxication by the defendant, which did not occur in this case. In Ervin, the defendant was extremely belligerent in a manner not present in this case:

Officer Daniels testified Ervin was unsteady on his feet when he got out of the car and had a high odor of alcohol about his person. She further testified Ervin exhibited slurred speech. Another officer at the scene testified that Ervin cursed the officers, made verbal threats toward them, and tried to kick the window of the patrol car.

City of Columbia v. Ervin, 325 S.C. 644, 646, 482 S.E.2d 781, 782 (Ct. App. 1997); see also Ervin, 330 S.C. at 522, 500 S.E.2d at 486 (footnote 6) (“Officers testified Ervin ... used profanity. A RMH nurse testified Ervin was verbally and physically abusive to the arresting officer”). There is no indication that the Appellant behaved in a manner similar to Ervin following the accident in this case.

The Appellant submits that his case is far more factually akin to cases where evidence of intoxication has not been found to be overwhelming. In State v. Masters, 308 S.C. 433, 418 S.E.2d 552 (1992), the Supreme Court overturned a conviction where “the officer observed that Masters was unsteady on his feet and ‘glassy-eyed,’ smelled strongly of alcohol, and spoke in a very slurred and disjointed manner.” 308 S.C. at 436, 418 S.E.2d at 554 (Moore, J., dissenting). Furthermore, in State v. Pipkin, 294 S.C. 336, 364 S.E.2d 464 (1988), the Supreme Court overturned a conviction where the defendant “failed a field sobriety test” and the arresting officer “smelled alcohol on Pipkin’s breath and noticed a slurring of his speech.” 294 S.C. at 337, 364 S.E.2d at 465. Similar to both Masters and Pipkin, the only evidence of the Appellant’s intoxication is that the “Appellant was confused, slurred his speech, smelled of alcohol, was unsteady on his feet, and appeared intoxicated following the accident.” Brief of Respondent at 18. Pursuant to Masters and Pipkin, therefore, the evidence of the Appellant’s guilt should not be overwhelming.

Given Ervin, Degnan, Wilson, Masters, and Pipkin, it is clear something more than an appearance of intoxication, such as extremely belligerent conduct or an admission of guilt, is

required prior to a valid finding of overwhelming evidence of intoxication. The Respondent, however, can only point to evidence that the Appellant "appeared intoxicated following the accident" to demonstrate that he was intoxicated. Brief of Respondent at 18. The Respondent can only show evidence of the appearance of intoxication because there was no evidence presented in this case that would be factually similar to Ervin, Degnan, or Wilson. Consequently, the Appellant respectfully submits that this Court's decision finding overwhelming evidence of guilt is directly contrary to the controlling authority of Ervin, Degnan, Wilson, Masters, and Pipkin.

"[A]n insubstantial error not affecting the result of the trial is harmless where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.'" State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) (quoting State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989)). The Appellant is unaware of any appellate court decision, prior to this Court's ruling in this case, where testimony that the defendant "appeared intoxicated following the accident" was found to be overwhelming evidence of intoxication. Brief of Respondent at 18. As has been demonstrated, the State did not meet this high burden in this case based on Supreme Court precedent. Since this Court's finding that the error present in this case was harmless was contrary to controlling Supreme Court precedent, the Appellant respectfully requests that this Court rehear his appeal.

CONCLUSION

WHEREFORE, having set forth his grounds, the Appellant respectfully petitions this Court to rehear its opinion issued in this matter. See State v. Jamison, Op. No. 2012-UP-058 (S.C. Ct. App. filed February 1, 2012).

Respectfully submitted,



JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555
803-779-2556 FAX
jeremyatlaw@yahoo.com

ATTORNEY FOR APPELLANT.

This 15th day of February, 2012.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No. 2009-GS-32-5283

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ANDRA JAMISON,

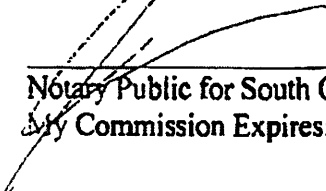
APPELLANT.

CERTIFICATE OF SERVICE

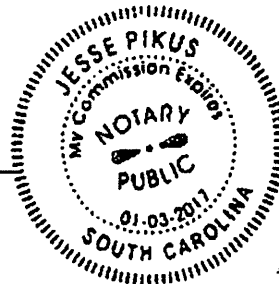
The undersigned hereby certifies that one copy of the Appellant's Petition for Rehearing in the above-entitled case has been served upon opposing counsel, Mark Farthing, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 15th day of February, 2012.


JEREMY A. THOMPSON
ATTORNEY FOR THE PETITIONER

SWORN TO BEFORE me this 15th day
of February, 2012.



(L.S.)
Notary Public for South Carolina
My Commission Expires: 1/31/17



The Supreme Court of South Carolina

Andra Jamison, Petitioner,

v.

State of South Carolina, Respondent.


Appellate Case No. 2019-000031

ORDER

Respondent moves to require Petitioner to comply with the Court's order directing Petitioner to file an Amended Appendix and setting forth those items that should be added to and deleted from the original Appendix. *Jamison v. State*, S.C. Sup. Ct. Order dated May 26, 2020. Respondent also moves to require Petitioner to supplement the Amended Appendix with the circuit court's order issued in response to Petitioner's *pro se* Rule 59(e), SCRCP, motion. Respondent's motions are granted. Respondent shall provide the circuit court's order to Petitioner within five (5) days of this order.

Petitioner shall have fifteen (15) days from the date of the receipt of the circuit court order on his Rule 59(e) motion to serve and file a complete Amended Appendix as directed by this Court's May 26, 2020 order and this order. The Amended Appendix shall include: (1) the materials in Petitioner's original Appendix, with the exception of the documents struck by the Court's May 26, 2020 order; (2) the omitted portions of the trial court transcript; (3) the M.A.I.T. report; and (4) the trial court's order ruling on Petitioner's *pro se* Rule 59(e) motion. The Amended Appendix shall be in the form required for a Record on Appeal under Rule 210, SCACR. The service and filing of the Amended Appendix shall comply with the provisions of *In re: Operation of the Appellate Courts During the Coronavirus Emergency*, S.C. Sup. Ct. Order Amended May 29, 2020. At the same time the Amended Appendix is served and filed, Petitioner shall serve and file an Amended Petition for a Writ of Certiorari referencing the updated pages in the Amended Appendix.

We hold this matter in abeyance until Petitioner serves and files a proper Amended Appendix and Amended Petition for a Writ of Certiorari. Respondent shall have thirty (30) days after service of the Amended Appendix and Amended Petition for a Writ of Certiorari in which to serve and file its return.



C.J.

FOR THE COURT

Columbia, South Carolina

August 10, 2020

cc: Adam Sinclair Ruffin, Esquire
Lillian Loch Meadows, Esquire
Andra Jamison, 337461

The State Of South Carolina
In The Supreme Court

RECEIVED

Sep 29 2020

S.C. SUPREME COURT

Appeal From Lexington County
Court Of Common Pleas
For The 11th Judicial Circuit
William A. McKinnon Presiding Judge

Appellate Case No. 2019-000031

Andra B. Jamison
Pro Se Litigant

Petitioner

V.

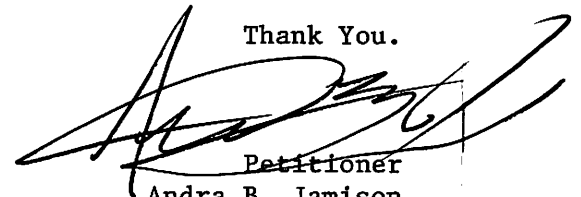
State Of South Carolina

Respondent

Motion To Strike And Clarification

Now comes the Petitioner Andra B. Jamison, Pro Se Litigant, respectfully requesting the court to strike both the original petition of Writ of Certiorari and original appendix, and replace them with the amended petition of Writ of Certiorari and appendix clocked stamped Sept. 2, 2020. This will help avoid any ambiguity and/or confusion regarding the referencing of evidence.

Thank You.



Petitioner
Andra B. Jamison
Pro Se Litigant

A.C.D.C.
1009 David Lee Coffee Pl.
Anderson S.C. 29625

Date 24th Of September 2020

