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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ON WRIT OF CERTIORARI TO ORANGEBURG COUNTY

Court of Common Pleas

The Honorable Edgar W. Dickson, PCR Judge

Appellate Case No. 2019-001099

RUSSELL MONTGOMERY,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION TO FILE A SUPPLEMENTAL APPENDIX

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

1. Russell Montgomery (Petitioner) is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Orangeburg County Clerk of Court. In August 2002, the Orangeburg County grand jury indicted Petitioner for kidnapping (2002-GS-38-1573) and armed robbery (2002-GS-38-1574). On July 16, 2003, Petitioner proceeded to a jury trial before the Honorable Edward B. Cottingham. Margaret Peggy Hinds, Esquire represented Petitioner. The jury convicted Petitioner as indicted of kidnapping and to the lesser-included

offense of strong arm robbery. Judge Cottingham sentenced Petitioner to consecutive terms of twenty years' imprisonment for kidnapping and fifteen years for robbery.

2. Petitioner appealed. Appellate Defender Robert M. Dudek perfected Petitioner's appeal by filing an *Anders*¹ brief and petition to be relieved as counsel. Petitioner did not file a *pro se* brief. On April 20, 2005, Court of Appeals affirmed Petitioner's convictions and granted appellate counsel's request to withdraw. *State v. Montgomery*, 2005-UP-285, (S.C. Ct. App. filed April 20, 2005). Petitioner subsequently filed a petition for rehearing, which was denied by Order dated June 22, 2005. The case was remitted back to the circuit court on July 27, 2005.
3. Petitioner filed the underlying post-conviction relief action on September 27, 2013. Respondent made its return and motion to dismiss on May 16, 2014, requesting the action be summarily dismissed. With its return, Respondent submitted the Orangeburg County Clerk of Court records regarding the subject convictions; Petitioner's records from the South Carolina Department of Corrections; the records from Petitioner's direct appeal, including the trial transcript; Petitioner's prior post-conviction relief records challenging these convictions and the appeals therefrom; Petitioner's federal habeas records; and the records of the current post-conviction relief action.
4. The Honorable Dianne S. Goodstein subsequently issued a Conditional Order of Dismissal on May 26, 2014, provisionally denying and dismissing the action, while giving Petitioner twenty days from the date of service of said order in which to

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

show why the dismissal should not become final. Petitioner filed a response, and the Court thereafter ordered a hearing on Respondent's motion to dismiss.

5. On July 20, 2017, the PCR court convened a hearing before the Honorable Edgar W. Dickson. Petitioner was present at the hearing and represented by Arthur K. Aiken, Esquire. Assistant Attorney General Ruston W. Neely appeared on behalf of Respondent. On June 6, 2019, Judge Dickson issued an order granting Respondent's motion to dismiss, denying relief, and dismissing the action with prejudice. This appeal follows.
6. The Petition for Writ of Certiorari and Appendix in this case were filed on May 15, 2020. The Appendix, however, does not contain the following (listed chronologically):
 - a. Final *Anders* brief;
 - b. Unpublished opinion from the Court of Appeals (2005-UP-285);
 - c. Petition for rehearing;
 - d. Remittitur
 - e. First post-conviction relief application (2006-CP-38-0209);
 - f. State's return;
 - g. Order of dismissal;
 - h. *Johnson* petition;
 - i. *Pro se* response to *Johnson* petition;
 - j. Order denying petition for writ of certiorari;
 - k. Remittitur;
 - l. Petition for writ of habeas corpus;
 - m. Respondent's return and memo in support of motion for summary judgment;
 - n. Petitioner's reply to Respondent's motion for summary judgment
 - o. Report and recommendation;
 - p. Petitioner's objections to the report and recommendation;
 - q. District court's opinion and order granting summary judgment;
 - r. Second post-conviction relief action (2011-CP-38-0857);
 - s. Conditional order of dismissal
 - t. Petitioner's response to the conditional order of dismissal
 - u. Final order of dismissal
 - v. Notice of appeal
 - w. Remittitur

7. 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 Supplemental Appendix, provisionally filed along with this motion.
8. Undersigned counsel has conferred with counsel for Petitioner, who consents to the filing of the 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 Supplemental Appendix for filing today.

Respectfully submitted,

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