

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lexington County

Brooks P. Goldsmith, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

**Oct 16 2020**

S.C. SUPREME COURT

QUINCY A. MCCANTS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001436  
\_\_\_\_\_

RETURN TO MOTION TO COMPEL  
PETITIONER TO SUPPLEMENT APPENDIX  
\_\_\_\_\_

In response to Respondent's Motion to Compel Petitioner to Supplement Appendix, Petitioner submits the following and asks that the motion be denied, because (1) the direct appeal records were not before the lower court; (2) the documents are irrelevant due to Petitioner's withdrawal of his ineffective assistance of appellate counsel claim; and (3) assembling and printing irrelevant materials wastes taxpayer money.

1. Petitioner was tried in 2006 on an armed robbery charge in Lexington County. On appeal, Deputy Chief Appellate Defender Wanda Carter filed an Anders<sup>1</sup> brief, and the Court of

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<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

Appeals affirmed Petitioner's conviction. Petitioner waived his ineffective assistance of appellate counsel claim at the PCR evidentiary hearing in his case, as seen on page 741 of the Appendix, also attached hereto as Exhibit 1. There are no issues of ineffective assistance of appellate counsel involved in this appeal.

2. Furthermore, it appears the direct appeal documents (Anders brief, *pro se* response, Court of Appeals opinion affirming Petitioner's conviction and granting the motion to be relieved, and remittitur) were not before the PCR court at the June 26, 2019 hearing. They were not made an exhibit at the hearing or discussed by any of the witnesses.

3. The Order of Dismissal, ostensibly drafted by Counsel for Respondent, did not contain a specific reference to the direct appeal documents, as seen in Exhibit 2, at the beginning of the "Findings of Fact and Conclusions of Law" section of the Order of Dismissal.

4. The direct appeal documents were not included in the Appendix because there was not any issue of ineffective assistance of appellate counsel following Petitioner's waiver and the documents were not before the lower court.

5. All documents necessary for appellate review and those which were before the lower court are already before this Court in the Appendix. Respondent's motion should be denied.

*Facts bearing on the motion*

6. This case has a long and convoluted procedural history. For ease of reference, the index to the Appendix is attached as Exhibit 3.

7. Petitioner was charged with armed robbery in Lexington County in December 2005. He proceeded to trial before the Honorable R. Knox McMahon on October 16, 2006. He was found guilty as indicted and sentenced to twenty-two years' imprisonment.

8. Petitioner filed an application for post-conviction relief in August 2009. The state filed its Return in February 2010. Petitioner filed an amended PCR application in November 2012.

9. An evidentiary hearing was held before the Honorable Edgar W. Dickson in 2013.

10. The transcript of that hearing was unavailable. This Court remanded the matter for reconstruction of the record. McCants v. State, Case No. 2015-002142.

11. After a reconstruction hearing on November 8, 2017, Judge Dickson issued an order indicating that the PCR hearing could not be reconstructed.

12. On February 1, 2019, this Court vacated the prior Order of Dismissal and remanded the case for a new PCR hearing.

13. A new PCR hearing was held before the Honorable Brooks P. Goldsmith, IV, on June 26, 2019. Relief was denied at the conclusion of the hearing, and Counsel for Respondent was directed to draft a proposed Order of Dismissal.

14. An Order of Dismissal was filed on July 30, 2019. A Notice of Appeal was filed with this Court on August 29, 2019.

15. The undersigned filed a Petition for Writ of Certiorari and Appendix on June 23, 2020. Five meritorious issues were raised in the Petition.

16. On Monday, October 5, 2020, Counsel for Respondent e-mailed the undersigned about filing a supplemental appendix to include multiple items: the notice of appeal, Anders brief, the Record on Appeal, Petitioner's *pro se* response to the Anders brief, the Court of Appeals opinion, and documents which were filed following this Court's order granting a new PCR hearing.

17. The entire e-mail exchange is attached hereto as Exhibit 4.

18. Counsel for Respondent and the undersigned spoke by telephone on Tuesday, October 6, 2020. The undersigned attempted to resolve this matter with Counsel for Respondent during the call.

19. As reflected in the follow-up e-mails, the undersigned consented during the telephone call should Counsel for Respondent move to file a supplemental appendix containing all of the requested documents. However, based upon a review of the file, it was not conclusively established whether the direct appeal documents, which are the subject of Respondent's motion, were before the PCR court. Again, there is no allegation of ineffective assistance of appellate counsel in this case. As a result, the undersigned did not include the direct appeal documents in the supplemental appendix.

20. The undersigned filed a motion to file a supplemental appendix with the accompanying supplemental appendix on October 7, 2020. Included in the supplemental appendix were a Notice of Appeal, an Order Appointing Counsel, a letter from Assistant Attorney General Kelly Oppenheimer to the Lexington County Clerk of Court, and an Order of Continuance, which the undersigned readily agreed were before the circuit court.

21. Therefore, all documents that were before the PCR court are now before this Court.

22. The subject motion was filed the following day, on October 8, 2020.

#### Discussion

23. Rule 243, SCACR, does not automatically require inclusion of the direct appeal documents. Rather, subsection (f)(1) notes that the appendix shall contain, among other things, “[t]he entire lower court record.”

24. The direct appeal documents in this case were not printed or included in the appendix because they were extraneous, unnecessary, and superfluous as any issue regarding appellate counsel's representation was waived and the documents were not before the PCR court.

25. It would have been a waste of taxpayer money to print and include irrelevant documents which were not before the lower court in an appendix.

26. The undersigned cannot agree to include and print documents which are extraneous and superfluous, since that would be a callous disregard of taxpayer money.

27. The Appellate Division of the South Carolina Commission on Indigent Defense has a duty to be good stewards of taxpayer resources.

28. This office wishes to avoid establishing a precedent that direct appeal documents should be included and printed in every case, especially in cases where the documents are both irrelevant and not part of the lower court record. There is no issue of ineffective assistance of appellate counsel before this Court.

29. Counsel for Respondent contends the direct appeal documents were before the PCR court. Specifically, Respondent asserts that the direct appeal documents were attached to the Return filed in the lower court. Motion to Compel ¶ 6. However, that is not clear from the record.

30. Viewing the filings in the PCR action at the circuit court, Case No. 2009-CP-32-04236 Quincy McCants #318280 v. State of South Carolina via the case records search on [sccourts.org](http://sccourts.org) shows a single Return filed by Respondent in February 2010.

31. That Return, filed by Assistant Attorney General A. West Lee, was three pages long. A note in the document, seemingly added by the Lexington County Clerk of Court and attached hereto as Exhibit 5, sets forth that the "Documents Not Scanned" in this case were twofold: 1) the "General Sessions File" and 2) the "Copy of Transcript of Record." Notably, **the direct appeal**

**documents Respondent seeks to be filed in a supplemental appendix were not received by the Lexington County Clerk of Court.** There is no separate filing referencing the remaining direct appeal records. A second Return was never filed after Petitioner was granted a new PCR hearing.

32. The second and only other avenue by which Counsel for Respondent contends that the direct appeal documents were before the PCR court is via presentation to the PCR judge at the beginning of the evidentiary hearing. Motion to Compel ¶ 6. The record does not support this claim.

33. Although eight exhibits were entered into evidence at the PCR evidentiary hearing, the direct appeal documents were not made an exhibit. App. 735. Every exhibit which was marked and entered at the evidentiary hearing was included in the original appendix in this case.

34. Reference was made to a “packet” prepared for the PCR court, but the only documents listed as appearing in the packet were Petitioner’s PCR application as well as the subsequent amendment. App. 737 l. 24 – 738 l. 8. The word “packet” does not appear anywhere else in the PCR evidentiary hearing transcript. None of the witnesses were asked about the direct appeal documents, and the only mention of the direct appeal by Petitioner or his counsel was when Petitioner withdrew his allegations of ineffective assistance of appellate counsel. Thus, the transcript of the hearing does not support Counsel for Respondent’s claim.

35. At the conclusion of the hearing, the PCR judge directed Counsel for Respondent to draft a proposed order. App. 883 l. 18 – 884 l. 4. The PCR judge’s forty-two page Order of Dismissal contained no indication that the direct appeal documents were before the PCR court. Thus, the order does not support Counsel for Respondent’s claim.

36. Without specific mention in the Order of Dismissal, there is no proof, in either the clerk of court records, the PCR evidentiary hearing transcript, or the Order of Dismissal, that the

direct appeal documents, which are the subject of Respondent’s motion, were before the PCR court and thereby part of the “entire lower court record.”

37. The undersigned acknowledges his duty to compile documents and file the appendix under Rule 243(d). However, Respondent shares in the duty to build the record from which the appendix is drawn. Multiple opportunities existed to establish that these documents were part of the record.

38. Concluding that direct appeal documents were part of the lower court record and therefore should be in an appendix in a PCR appeal cannot be predicated solely upon the statement of counsel that the documents were part of a packet handed up to the judge where no evidence supports the contention. Allowing either party to dictate what documents this Court relies on without establishing that the documents were definitively part of the record undermines the rule of law.

39. Both methods by which Respondent suggested that these documents were before the lower court have been refuted. The undersigned respectfully requests that the Court deny Respondent’s motion.

Respectfully submitted,

s/Taylor D. Gilliam  
Taylor D. Gilliam  
Appellate Defender  
Attorney for Petitioner

October 16, 2020