

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Post Conviction Relief

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Apr 02 2021

SC Court of Appeals

Honorable Robert E. Hood, Circuit Court Judge

App. Case No.: 2017-002311

Miguel Alejandro Urena, 354385,

Petitioner,

vs.

State of South Carolina,

Respondent.

RETURN TO RESPONDENT'S
MOTION TO DISMISS

On April 2, 2021, Respondent filed a Return to Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of Trial and Sentencing or the Granting of a New Trial and Respondent's Motion to Dismiss (hereinafter Motion to Dismiss). This Return is filed in response to the Motion to Dismiss, and Petitioner would ask that the entire record before this Court be considered in support thereof, to include the Petition for Writ of Certiorari, the Appendix, and the above referenced Motion filed on March 22, 2021.

Petitioner would ask this Court to not dismiss the appeal as is requested by the State and to rule upon Petitioner's pending Motion. In addition to the arguments already made to this Court that support this request, Petitioner would also submit the following:

1. Respondent's argument that Petitioner and Petitioner's counsel have failed to address reconstruction at a prior stage during the pendency of counsel's representation is a gross misrepresentation of the record. As the complete record reflects and as is noted in the State's Motion to Dismiss, Petitioner, through counsel, moved for discovery due to the absence of trial and sentencing transcripts. As is addressed in Petitioner's pending Motion, discovery was fruitless, which espoused the position as set forth by Petitioner that reconstruction may not possible. This matter was fully addressed to the lower court and in the Petition for Writ of Certiorari prior to the issuance of this Court's Order granting the Petition and ordering the direct appeal to proceed.¹
2. As is addressed in Petitioner's pending Motion, Petitioner submits that reconstruction was not ripe for this Court's consideration until the belated direct appeal was granted and the lower court was reversed.
3. A Motion to Dismiss at this stage for the reasons set forth by the State is simply an attempt to get this Court to reconsider the Order issued February 23, 2021, which was issued upon the Petition for Writ of Certiorari and Appendix that clearly informed this Court that a transcript of trial and sentencing could not be produced and the results of the exercise of the discovery process in the lower court.

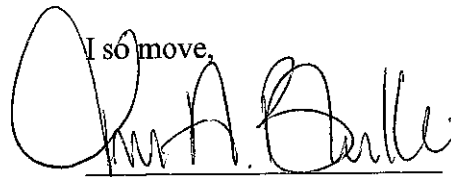
¹ In response to Respondent's Footnote 3, requesting the transcripts prior to the filing of the Petition for Writ of Certiorari and Appendix would have been frivolous when it was known to counsel and part of the record that no transcripts could be produced. At no time prior to April 2, 2021 during the nearly four-year pendency of this appeal did Respondent raise concern with counsel failing to request the transcripts as part of the appellate process prior to the filing of the Petition for Writ of Certiorari and Appendix.

4. Granting the State's Motion to Dismiss would be a reversal of the Court's Order issued on February 23, 2021 due to facts and argument that were in the record when the Order was issued.²
5. It appears Respondent is arguing that Petitioner should have filed the Final Brief as clarified in the March 18, 2021 letter and not filed the pending Motion. This argument is disingenuous to the discussion had with the Respondent and the position communicated to counsel prior to the filing of Petitioner's pending Motion. So, it must be made known to the Court that counsel has previously prepared the requested Final Brief to file and will file if Petitioner's pending Motion for reconstruction is not granted. Petitioner submits that if this Court finds the pending motions should be denied, then filing of the Final Briefs not dismissal of the appeal is the appropriate result.
6. The dismissal of Petitioner's belated direct appeal would likely result in the filing of a Post Conviction Relief Application alleging ineffective assistance of appellate (undersigned) counsel following the issuance of this Court's Order on February 23, 2021 granting a belated direct appeal. The filing of a subsequent application which would further and unnecessarily lengthen an adjudication on Petitioner's request for post conviction relief from his twenty-five year sentence.

For these reasons and those previously argued to this Court, Petitioner would urge this Court to deny Respondent's Motion to Dismiss Appeal and would further ask this Court to render a decision based upon the arguments set forth in Petitioner's pending

² Attachment 2 is in the Appendix, and Attachment 1 is an email that would have been improper to include in the Appendix that accompanied the sending of Attachment 2 to the Office of the Attorney General.

Motion. Petitioner would also respectfully request that the time for filing the Final Brief be held in abeyance until a decision is rendered on the pending Motions.

I so move,


Tricia A. Blanchette
S.C. Bar No. 74904
PO Box 2147
Leesville, SC 29070
(803) 908-3266

April 2, 2021

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Return to Respondent's Motion to Dismiss has been served on opposing counsel by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

Lindsey McCallister, Esquire
LMcCallister@scag.gov

This 2nd day of April 2021.



Tricia A. Blanchette
S.C. Bar No. 74904
PO Box 2147
Leesville, SC 29070
(803) 908-3266

April 2, 2021



Tricia Blanchette <blanchettelaw@gmail.com>

Miguel Urena v. State

1 message

Tricia Blanchette <blanchettelaw@gmail.com>
To: Lindsey McCallister <lmccallister@scag.gov>

Fri, Apr 2, 2021 at 12:04 PM

Lindsey,

For the above referenced case, I have attached a letter, Return and Certificate of Service that I will be e-filing with the Court of Appeals. I will be printing this email to e-file.


Yours truly,

Tricia Blanchette

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Tricia Blanchette
Attorney at LawLaw Office of Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
803-908-3266

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LAW OFFICE OF
TRICIA A. BLANCHETTE

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Apr 02 2021

SC Court of Appeals

April 2, 2021
VIA E-FILING

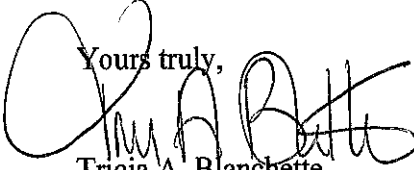
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Miguel Alejandro Urena v. State; Appellate Case No.: 2017-002311

Dear Madam Clerk:

For filing with your office, I will be uploading in conjunction with this letter a Return to Respondent's Motion to Dismiss. I will also be uploading a Certificate of Service and email verifying service.

Please let me know if any additional information is needed. I appreciate your assistance with this matter.

Yours truly,

Tricia A. Blanchette
Attorney at Law

cc: Lindsey McCallister, Esquire
Miguel Alejandro Urena