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APR 07 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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On Petition for Writ of Certiorari to Anderson County

The Honorable Thomas W. Cooper, Jr., Trial Judge  
The Honorable Alexander S. Macaulay, First PCR Judge  
The Honorable Eugene C. Griffith, Jr., Second PCR Judge

Appellate Case No. 2020-001619

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HERMAN BELTON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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**MOTION TO DISMISS AND MOTION TO FILE OUT OF TIME**

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The State (“Respondent”) hereby moves before this Court to dismiss this appeal or, in the alternative, to allow Respondent to file a return to Herman Belton’s (“Petitioner”) petition for a writ of certiorari out of time. In support of this motion, the undersigned shows the following:

1. On February 5, 2007, Petitioner was convicted of trafficking in crack cocaine (2006-GS-04-1844), and the Honorable Thomas W. Cooper, Jr., sentenced Petitioner to imprisonment for twenty-five years.
2. This Court affirmed Petitioner’s conviction and sentence. State v. Belton, Op. No. 2009-UP-526 (S.C. Ct. App. filed November 19, 2009) (per curiam).
3. Petitioner filed an application for post-conviction relief (2010-CP-04-0678) on February

24, 2010, challenging the conviction and sentence.

4. The Honorable Alexander S. Macaulay denied Petitioner's application with prejudice in an order issued on November 7, 2011.
5. This Court, after the resulting appeal was transferred to it by the South Carolina Supreme Court, denied Petitioner's petition for a writ of certiorari. Belton v. State, S.C. Ct. App. Order filed July 3, 2014.
6. On February 4, 2019, Petitioner filed a motion for relief from judgement in the circuit court, pursuant to Rule 60(b), SCRCP, praying for relief from Judge Macaulay's order denying the application for post-conviction relief.
7. After a hearing on that motion, the Honorable Eugene C. Griffith, Jr., issued an order on October 26, 2020, denying the motion.
8. Petitioner filed his notice of appeal with the Supreme Court on December 10, 2020.
9. The undersigned was notified on April 1, 2021, by an employee of the Clerk's Office of the Supreme Court that Respondent's deadline for filing a return to Petitioner's petition for a writ of certiorari had passed and that Respondent would have to file a motion out of time if it wanted to respond to the petition.
10. Upon review, the South Carolina Appellate Case Management System indicates that Petitioner filed his petition for a writ of certiorari and appendix in this appeal on February 4, 2021.
11. The undersigned and six other employees of the South Carolina Attorney General's Office reviewed their open files for Petitioner and the mail logs dating back to February of this year and can find no indication that Respondent ever received a copy of the petition and appendix from Petitioner.

12. Petitioner was required to serve a copy of the petition for a writ of certiorari and the appendix on Respondent within thirty days of his receipt of the transcript from the hearing on his Rule 60(b) motion. Rule 243(d), SCACR.
13. This Court has the authority to dismiss an appeal whenever a petitioner fails to comply with the requirements of the South Carolina Appellate Court Rules. Rule 260(a), SCACR.
14. The Appellate Court Rules “are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.” Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) (acknowledging that the Court would have been justified in dismissing the appeal but deciding instead to require a party to file a brief complying with the Rules within fifteen days).
15. Because Petitioner did not serve Respondent with the petition for a writ of certiorari and appendix, Respondent moves for the dismissal of this appeal.
16. In the alternative, if this Court decides not to dismiss the appeal, Respondent moves for the opportunity to file its return to the petition for a writ of certiorari out of time.
17. “The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended by the appellate court, or by any judge or justice thereof.” Rules 263(b), SCACR.
18. The undersigned has not consulted with Petitioner about this motion because Petitioner is a pro se party and because the undersigned believes that such consultation would serve no useful purpose.

**WHEREFORE**, Respondent prays that this Court will dismiss the appeal due to Petitioner’s failure to serve Respondent with the petition for a writ of certiorari and appendix or, in the alternative, to allow Respondent to file its return to the petition out of time; prays that this

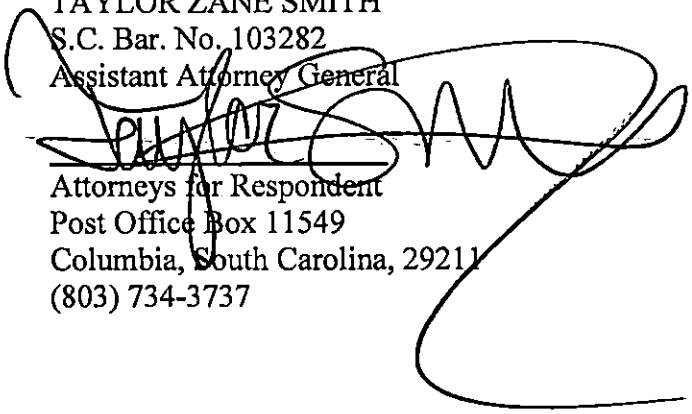
Court will stay any deadlines until it has ruled upon this motion; and prays that this Court will grant further relief as is just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

TAYLOR ZANE SMITH  
S.C. Bar. No. 103282  
Assistant Attorney General

By:



Attorneys for Respondent  
Post Office Box 11549  
Columbia, South Carolina, 29211  
(803) 734-3737

April 5, 2021

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HERMAN BELTON,

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**CERTIFICATE OF SERVICE BY MAILING**

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1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the ~~Motion to Dismiss and Motion to File Out of Time~~ in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Herman Belton, #256396  
Allendale C.I. (HAB-0010-B)  
1057 Revolutionary Trail  
Fairfax, SC 29827**

DATED this the 5th day of April, 2021



Hannah Bradham  
Legal Assistant for Respondent



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SC Court of Appeals

ALAN WILSON  
ATTORNEY GENERAL

April 5, 2021

The Honorable Jenny A. Kitchings  
SC Court of Appeals Clerk of Court  
1220 Senate Street  
Columbia, South Carolina 29201

**Re: Herman Belton v. State of South Carolina**  
**Appellate Case No.: 2020-001619**

Dear Ms. Kitchings:

Enclosed please find the original **Motion to Dismiss and Motion to File Out of Time** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Taylor Z. Smith  
Assistant Attorney General

TZS/hb  
Enclosure

cc: Herman Belton, #256396



POST OFFICE BOX 11549  
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Taylor Z. Smith, AAG  
South Carolina Attorney Generals Office  
P.O. Box 11549  
Columbia, SC 29211

The Honorable Jenny A. Kitchings  
SC Court of Appeals Clerk of Court  
1220 Senate Street  
Columbia, South Carolina 29201

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