

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Richland County
Honorable G. Thomas Cooper, Jr., Trial Judge
Honorable Jocelyn Newman, Post-Conviction Relief Judge

S.C. SUPREME COURT

Appellate Case No. 2020-000712

Fred Jack Sanders,

Petitioner,

vs.

The State of South Carolina,

Respondent.

STATE'S MOTION TO SUPPLEMENT APPENDIX

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

1. Petitioner was indicted by the September 2013 term of the Richland County Grand Jury for manufacturing methamphetamine (2013-GS-40-05845), possession with intent to distribute methamphetamine (2013-GS-40-05848), possession with intent to distribute crack cocaine (2103-GS-40-05848), possession of a firearm by a person convicted of a crime of violence (2013-GS-40-05849), possession of a controlled substance (diazepam) (2013-GS-40-05850), and possession with intent to distribute heroin – third or subsequent offense (2013-GS-40-05851). Assistant solicitors Kathryn Cavanaugh and Foster M. Matthews prosecuted the case. Lucas Hawkes and John Christopher

Shipman, Esquires, represented Petitioner. Following pretrial motions, Petitioner entered a guilty plea to the firearm charge and was sentenced to five years' imprisonment. Then, from March 17-19, 2014, Petitioner proceeded to trial before the Honorable G. Thomas Cooper, Jr., and a jury on the remaining charges. The jury convicted Petitioner as indicted of manufacturing methamphetamine, possession of a controlled substance (diazepam), and possession with intent to distribute heroin. The jury also convicted Petitioner of the lesser-included offenses of possession of methamphetamine and possession of crack cocaine. Judge Cooper sentenced Petitioner to twenty years' imprisonment each for manufacturing methamphetamine and possession with intent to distribute heroin; five years' imprisonment each for possession of methamphetamine and possession of crack cocaine; and six months' imprisonment for possession of a controlled substance. All of Petitioner's sentences were to be served concurrently.

2. Petitioner then filed a motion for reconsideration of the sentence. A hearing was held on June 9, 2014. Judge Cooper reduced the twenty-year sentences for manufacturing methamphetamine and possession with intent to distribute heroin to fifteen years each.
3. Petitioner filed a notice of appeal, which was perfected by the filing of a merits brief by LaNelle Cantey DuRant of the South Carolina Commission on Indigent Defense – Office of Appellate Defense. Petitioner raised two issues: (1) whether the jury charge properly charged the jury on the required elements of manufacturing methamphetamine; and (2) whether the trial court properly denied Petitioner's motion for a mistrial. Petitioner's convictions were affirmed in a *per curiam*, unpublished

opinion filed on December 14, 2016. The remittitur issued on December 30, 2016.

4. Petitioner timely file an application for post-conviction relief on July 28, 2017. Petitioner amended the application on August 14, 2018, and November 14, 2018. An evidentiary hearing convened June 19, 2019, at the Richland County Courthouse, before the Honorable Jocelyn Newman. Petitioner was present and represented at the hearing by Tricia Blanchette, Esquire. Petitioner and trial counsel testified at the hearing. On May 16, 2019, by written order, the PCR court denied relief and dismissed the action with prejudice.
5. Petitioner then filed a Motion to Alter or Amend Judgment pursuant to Rule 59(e) SCRPC, on May 24, 2019, and a supplemental motion on June 6, 2019. By Order filed March 30, 2020, the PCR court denied Petitioner's motion in its entirety.
6. Petitioner filed a timely notice of appeal of the denial of post-conviction relief and the denial of the motion to alter or amend, and filed a petition for writ of certiorari on December 4, 2020. The Appendix, however, does not contain the amendments to the application, the motion to alter or amend, the supplemental motion, or the Order denying the motion.
7. Without these documents, the appellate record in this PCR matter is incomplete. Therefore, Respondent submits the amendments to the application, the motion to alter or amend filed on May 24, 2019; the supplemental motion filed on June 6, 2019; and the Order denying Petitioner's motion to alter or amend filed March 30, 2020, should be included in the Appendix to the Petition for Writ of Certiorari, as Petitioner proceeded on the allegations in his amended application at the evidentiary hearing, and

Petitioner is appealing the denial of the motion to alter or amend as well the denial of relief in the Order of Dismissal.

8. Inasmuch as the above-listed 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.
9. Counsel for Petitioner consented to this motion via telephone on May 3, 2021.

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,

ALAN WILSON
Attorney General

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General
S.C. Bar #79054

Post Office Box 11549
Columbia, S.C. 29211
(803) 734-3737

By: s/ Lindsey A. McCallister
ATTORNEYS FOR RESPONDENT

May 3, 2021