

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

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**APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
J. Derham Cole, Circuit Court Judge**

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**Case No. 2020-001418**

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John Garvin..... Petitioner-Appellant,

v.

The State of South Carolina..... Respondent-Appellee.

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**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR REINSTATEMENT AND SUBSEQUENT  
APPLICATION FOR RELIEF, PURSUANT TO  
RULE – 260(a), AND RULE – 266, SCACR**

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Petitioner, John Garvin, proceeding as pro-se, makes this Memorandum of Law in Support of his Motion for Reinstatement and Subsequent Application for Relief, pursuant to Rule – 260(a), and Rule – 266, SCACR. This motion is made seeking the reinstatement of a Motion for Access to Disciplinary Information, a Motion for Request to Listen to Audio Recordings and to Read Steno Notes, and a Motion to Supplement the Record, that was improvidently denied and dismissed on May 25, and May 26, 2021. (see Exhibit – 1 and 2). Whereas, Petitioner seeks an Order granting him this Subsequent Application for Relief, pursuant to Rule – 260(a) and Rule – 266, SCACR.

**FACTS OF THE CASE**

The Petitioner adopts the Facts of the Case as stated in his Memorandum of Law in Support of his Motion for Access to Disciplinary Information, his Motion for Request to Listen to Audio

Recordings and to Read Steno Notes, and his Motion to Supplement the Record, that was submitted to this Court by Petitioner as if set forth at length herein. The Petitioner, however, reserves the right to supplement the Facts of the Case in Legal Argument, *infra*.

### **STANDARD OF REVIEW**

“When any justice of any of the courts of this State has declined to grant any order or writ in any case, and thereafter application for the same order or writ, or an order or writ of a similar character, is made to an appellate court or any member thereof, it shall be incumbent upon the party, or his attorney, to show in the application the former refusal and the judge or justice who refused the same, and if the refusal has been reduced to writing, a copy of the Order shall be attached to the application.” Rule – 266, SCACR. “A case shall not be reinstated except by leave of the Court, upon good cause shown, after notice to all parties.... [Upon] [a] motion to reinstate the [Motion] has been actually received by the Court within fifteen (15) days of filing of the Order of dismissal.” See Rule – 260(a), SCACR.

### **ARGUMENT**

Rule – 266 is an appellate court rule regarding when a “justice of any of the Courts of this State has declined to grant any order... and thereafter [allows a subsequent] application” to be made before the court for relief. See Rule – 266, SCACR. “A case shall not be reinstated except by leave of the Court, upon good cause shown, after notice to all parties.... [Upon] [a] motion to reinstate the [Motion] has been actually received by the Court within fifteen (15) days of filing of the Order of dismissal.” See Rule – 260(a), SCACR.

Here in this case Petitioner would move before this Court three Motions, whereas, two out of the three Motions were denied and the other one was dismissed in an order that was entered on May 25, and May 26, 2021. (See Exhibits – 1 and 2). On the first motion that was ruled on and

dismissed, Petitioner had asked for access to certain lawyer disciplinary records for the purpose of supplementing the appendix with those records, pursuant to Rules – 212(b)(c), Rule – 243(f)(3), and Rule – 208(b)(1)(c) and (2), SCACR. Due to a complaint that was filed with the Office of Disciplinary Counsel (ODC), that he was directly involved with in the matter and seeks Asst. Solicitor, James E. Hunter and Scott D. Robinson, Esquire’s, answer/response and the ODC’s finding of their investigation to the complaint that was filed against them both on January 13, 2013, for case no.(s): 13-DE-L-0150 and 13-DE-L-0151.

The Order would state that “since these disciplinary records were not before the PCR judge, they are not part of the lower court record, and cannot be included in the appendix.” Petitioner would state that he did present documents of the lawyer disciplinary records to the PCR judge in an affidavit in support of a Rule – 59(e), Motion for Reconsideration to Alter/Amend Judgment as Exhibits – I, K, and L. (See Exhibit – 3). Whereas, the PCR Judge denied that Motion. (See Exhibit – 4). Inasmuch as, Petitioner would like to utilize the lawyer disciplinary records of James E. Hunter and Scott D. Robinson’s answer/response to the complaint that was filed against them both with the ODC on January 13, 2021. The uses of the lawyer disciplinary records is to be utilized for supplementing the record and setting forth the principal matter of ineffective assistance of counsel that will be presented in Petitioner’s Petition for Writ of Certiorari and Appendix, pursuant to Rules – 212(b)(c), Rule – 243(f)(3), and Rule – 208(b)(1)(c) and (2).

The second motion, was a Motion for Request to Listen to Audio Recordings and to Read Steno Notes. Petitioner states that he wrote the Court Reporter, Linda D. Moffitt, about challenging the accuracy of the PCR transcript. (see Exhibit – 5). Whereas, she would refer him to get in contact with Karama T. Bailey, Deputy Director, Court Reporter/Court Interpreting at the Office of South Carolina Court Administration. (See Exhibit – 6).

On March 23, 2021, Petitioner would write a letter to the Presiding Judge of that PCR hearing, J. Derham Cole, (see Exhibit – 7), who is now the Chief Administration Judge, for the Spartanburg County Court of Common Pleas, about a request to listen to the PCR audio recordings. Whereas, Judge Cole, has fail to even respond to Petitioner’s request. On May 6, 2021, Petitioner would write a letter to Karama T. Bailey, about Petitioner’s desire to challenge the accuracy of Court Reporter, Linda D. Moffitt’s transcription of the PCR transcript in question. And is currently awaiting for the results of her review of the PCR transcript. (See Exhibit – 8).

The third Motion, was a Motion to Supplement the Record with various documents. This Court would deny that Motion, stating that the “motion is seeking to include documents or materials in the appendix beyond those specified by Rule – 243(f) of the South Carolina Appellate Court Rules (SCACR), the motion is denied. When the appendix is filed in this case, it shall only include the materials specified by Rule – 243(f), SCACR.” (see Exhibit – 2). In Petitioner’s case those additional documents are needed to set “forth the principal matter contained in the Appendix.” Rule – 243(f)(3), SCACR.

This Court has improvidently denied Petitioner’s Motion for Access to Disciplinary Information and his Motion to Supplement the Record, pursuant to Rule – 243(f), SCACR. Whereas, South Carolina Appellate Court Rules, does allows “a party to supplement the record on appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the record must move the appellate court for leave to do so. In response to that motion, the other party(s) shall designate any supplement materials which that party desires to add if the court grants the motion.” “Supplemental material filed under Rule – 212(b) shall be included in an Appendix to the Record on Appeal. Unless otherwise agree by the

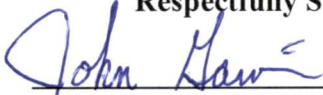
parties or ordered by the Court, the Appendix shall be compiled, serve and file by the party initially proposing it.” Rule – 212(b)(c), SCACR.

Rule – 243(f)(3), states that the appendix shall contain “an index setting forth the principal matter contained in the Appendix. This index shall be in the same form required for a Record on Appeal under Rule – 210(e).” see Rule – 243(f)(3), SCACR.

### **CONCLUSION**

For the reasons set out above, Petitioner respectfully request that this Honorable Court grants this Motion for Reinstatement and Subsequent Application for Relief, pursuant to Rule – 260(a), and Rule – 266, SCACR. Because South Carolina Appellate Court Rules does allows Petitioner to Supplement the Record on Appeal at anytime before argument commences with the consent of the court for leave to do so, pursuant to Rules – 208(b)(1)(c)(2), Rule – 212(b)(c), and Rule – 243(f)(3), SCACR.

**DATED:** June 9, 2021  
Ridgeville, South Carolina

**Respectfully Submitted,**  
  
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**John Garvin, # 355509, Pro-se.**  
**Lieber Correctional Institution**  
**136 Wilborn Avenue**  
**Ridgeville, S.C. 2947**