

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Spartanburg County  
Paul M. Burch, Circuit Court Judge

Appellate Case No. 2012-206087

**RECEIVED**

APR 15 2013

**S.C. Supreme Court**

**MARION ALEXANDER LINDSEY,**

**Petitioner,**

v.

**STATE OF SOUTH CAROLINA,**

**Respondent**

**MOTION TO ALLOW FILING OF SUPPLEMENTAL APPENDIX**

The Respondent, above-named, hereby make a motion to this Court to allow the filing of a Supplemental Appendix to include matters which were before the lower court. Respondent attaches the prepared Supplemental Appendix with this motion.

Upon review of the Appendix prepared and filed by the Petitioner, below-signed counsel became aware that certain documents were not included which are relevant to Petitioner's Issue

5. This issue is set forth in the Petition for Writ of Certiorari as:

5. Whether Marion Lindsey's rights under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and under state law were violated because the trial judge failed to properly consider his application as evidenced by the court's wholesale adoption of the State's proposed order?

The requested matters for inclusion are the following documents which are included in

the attached proposed supplemental appendix:

May 2, 2011 Letter from Judge Burch to Zelenka requesting proposed Order “reflecting the Respondent’s Post-Hearing Memorandum” Within 30 days from receipt of letter . . . . . 1

May 12, 2011 Email from Judge Burch to Applicant’s counsel Vieth giving Vieth reasonable amount of time to submit a proposed order . . . 2

May 12, 2011 Email from Vieth to Judge Burch requesting a month to submit Applicant’s proposed order . . . . . 3

May 26, 2011 Letter from counsel to Shearouse advising that parties are working on proposed orders . . . . . 4

June 2, 2011 Cover letter to Judge Burch from Respondent’s counsel providing Proposed Order of Dismissal [Respondent’s Proposed Order set out in Appendix 3752-3943] . . . . . 6

June 7, 2011 Email from Vieth requesting couple of weeks to provide proposed order before end of June . . . . . 7

July 29, 2011 Cover letter from counsel Vieth submitting Applicant’s Proposed Order Granting Post-Conviction Relief . . . . . 8

Applicant’s UNSIGNED Proposed “Order Granting Post-Conviction Relief” . . . . . 9

II.

Counsel has contacted the office of opposing counsel Robert Dudek and been advised that they consent to this request.

III.

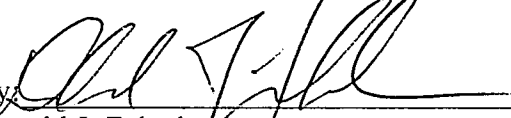
Wherefore Respondents respectfully moves this Court to allow the filing of the attached Supplemental Appendix.

Respectfully submitted,  
ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Senior Assistant Deputy Attorney General

**ATTORNEYS FOR RESPONDENT**

By   
Donald J. Zelenka  
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803-734-6305

April 15, 2013

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**CERTIFICATE OF SERVICE**


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*I, Donald J. Zelenka,* hereby certify that I have served Respondents **MOTION TO ALLOW FILING OF SUPPLEMENTAL APPENDIX and Supplemental Appendix** on:

Robert M. Dudek, Esquire  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201

David Alexander, Esquire  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201

by depositing a copy in the Mail with sufficient postage this 15th day of April, 2013.

  
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**DONALD J. ZELENKA**

Senior Assistant Deputy Attorney General