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Oct 21 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ON WRIT OF CERTIORARI TO LEXINGTON COUNTY
Court of Common Pleas
The Honorable William A. McKinnon, PCR Judge

Appellate Case No. 2019-000031

ANDRA B. JAMISON,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RETURN TO PETITIONER'S MOTION TO AMEND THE AMENDED WRIT OF
PETITION FOR CERTIORARI AND MOTION TO FILE OUT OF TIME**

Respondent, the State, through its undersigned counsel, would respectfully show unto this Court the following:

I.

Petitioner Andra B. Jamison's post-conviction relief appeal is currently pending before this Court. Petitioner served and filed the Petitioner for Writ of Certiorari and Appendix on October 9, 2019. The State then filed a motion out of time for extension to file the Return to Petition for Writ of Certiorari, which the Supreme Court granted on December 17, 2019. On March 19, 2020, the State filed a motion strike the appendix and require Petitioner to serve and file an Amended Appendix that complies with Rule 243(f), SCACR, and to hold the time limits for filing its Return

to Petition for Writ of Certiorari in abeyance pending Petitioner's service of a proper appendix. Petitioner then filed a motion to supplement the appendix with the report from the Midlands Multi-Disciplinary Accident Investigation Team Report and request to supplement the record with a table of authorities.

On May 26, 2020, the Supreme Court issued an order holding the matter in abeyance, directing Petitioner to file an Amended Appendix, and setting forth the items that should be added to and deleted from the original Appendix. On June 4, 2020, Petitioner filed a "Supplemental Submission And Amendment To Appendix for Petition Of Writ of Certiorari," which included only the missing portions of the trial transcript. Petitioner did not file an amended appendix as directed in the order, leaving the matters the Supreme Court struck from the record in the original appendix.

On June 16, 2020, undersigned counsel filed a motion to require Petitioner to comply with the Court's May 26, 2020, Order and motion to require Petitioner to supplement the Amended Appendix with the circuit court's order issued in response to Petitioner's *pro se* Rule 59(e), SCRCR, motion. By Order dated August 10, 2020, the Supreme Court granted the State's motions and directed Petitioner to serve and file a complete Amended Appendix as directed by the Court's previous order and again set forth the matters to be included in the Amended Appendix. The Court further held the matter in abeyance and directed the State to file its Return to the Amended Petition for Writ of Certiorari within thirty days after service of the Amended Appendix and Amended Petition for Writ of Certiorari.

On September 24, 2020, Petitioner filed an Amended Appendix and Amended Petition for Writ of Certiorari. Undersigned counsel filed the State's Return to the Petition for Writ of Certiorari on October 2, 2020. Petitioner then filed a Reply to the Return to the Petition for Writ of

Certiorari on October 30, 2020. That same day, the case was transferred to this Court pursuant to Rule 243(l), SCACR.

On September 28, 2021, undersigned counsel received a deficiency letter from this Court, indicating Petitioner filed a motion to amend the amended petition for writ of certiorari but failed to provide proof of service on the State. Petitioner then filed a “Motion to Amend the Amended Petition for Writ of Certiorari filed September 2, 2020,” and included a certificate of service dated October 1, 2021. The State received the motion on October 8, 2021.

II.

The State respectfully asks this Court to relax the requirements of Rule 240(e) of the South Carolina Appellate Court Rules and permit the State to file and serve the Return to Petitioner’s Motion to Amend the Amended Petition for Writ of Certiorari out of time. *See* Rule 240(b), SCACR (“The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rule 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.”). The undersigned counsel apologizes for any inconvenience this request has caused to the Court and to Petitioner and does not believe this request will result in any prejudice to Petitioner should it be granted.

III.

The State respectfully submits this Court should deny Petitioner’s motion because it is untimely and because the allegation Petitioner seeks to raise in his Amended Petition for Writ of Certiorari is neither preserved for appeal nor cognizable under the Uniform Post-Conviction Procedure Act.

The instant motion was filed two years after Petitioner filed his Petition for Writ of Certiorari and nearly one year after Petitioner filed his Amended Petition for Writ of Certiorari.

Although all the briefing related to the certiorari petition process has been completed, Petitioner is seeking to delay this matter even further by requesting further briefing at the certiorari petition stage. Applicant cites Rule 15(a) of the South Carolina Rules of Civil Procedure in support of his request to raise the additional issue of actual innocence. The Rules of Civil Procedure do not apply to appellate matters. The issue of actual innocence is not a cognizable post-conviction relief claim, nor was it raised in the lower court. Therefore, the stated purpose of Petitioner's motion to amend is entirely unrelated to the matter currently pending before this Court, which is an appeal of the post-conviction relief judge's order denying post-conviction relief.


Accordingly, the State respectfully requests this Court deny Petitioner's motion.

Respectfully submitted,

ALAN WILSON
Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

BY:



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October 21, 2021

ATTORNEYS FOR RESPONDENT

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v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petitioner's Motion to Amend the Amended Writ of Petition for Certiorari and Motion to File Out of Time has been served upon the applicant by sending two copies via USPS, addressed to:

Andra B. Jamison
Goodman Corr. Inst. (B2-0001-B)
4556 Broad River Road
Columbia, South Carolina 29210

This 21st day of October, 2021.



Hannah Bradham
Legal Assistant for Respondent



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Oct 21 2021
SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

October 21, 2021

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

RE: Andra B. Jamison v. State of South Carolina
Appellate Case No: 2019-000031

Dear Ms. Kitchings:

Enclosed please find the original Return to Petitioner's Motion to Amend the Amended Writ of Petition for Certiorari and Motion to File Out of Time in the above matter for filing. Please let me know if anything additional is needed.

Sincerely,

Lillian L. Meadows
Assistant Attorney General
S.C. Bar # 103665

LLM/hb
Enclosures

cc: Andra B. Jamison, #337461
Adam S. Ruffin, Esquire