

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Cherokee County
The Honorable J. Michael Baxley, Circuit Court Judge
Appellate case No. 2012-212107

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APR 23 2013

S.C. Supreme Court

JONATHAN KYLE BINNEY, #6009,

Petitioner-Respondent,

vs.

THE STATE,

Respondent-Petitioner.

**MOTION TO ALLOW THE FILING OF A RETURN TO PETITION
FOR WRIT OF CERTIORARI EXCEEDING THE TWENTY-FIVE PAGE LIMIT**

Pursuant to Rule 243(g), SCACR, the undersigned counsel for Respondent respectfully asks this Court to permit the filing of the Return to Petition for Writ of Certiorari exceeding the twenty-five page limit for the following reasons:

This is a capital case on certiorari following the denial of Post-Conviction Relief as to all guilt phase claims and all sentencing phase claims except for the PCR judge's finding that trial counsel were ineffective in failing to object to the sentencing phase instruction that the jury "may recommend a sentence of life imprisonment for any reason or for no reason at all other than as an act of mercy." The PCR hearing lasted a week and the Appendix to the Petition for Writ of Certiorari is in over 5,000 pages long.

In his Petition, Petitioner-Respondent Binney claims that the PCR judge erred by finding that (1) trial counsel were not ineffective for failing to adequately investigate and present evidence concerning the possibility that the victim's husband may have had some involvement in her death; and (2) trial counsel were not ineffective in failing to develop and present evidence to support their theory that Binney entered the victim's home with the intent to commit suicide.

Respondent submits that the first of these issues is very fact intensive, and that Petitioner-Respondent Binney has omitted from the Petition a great deal of evidence related to the strategy employed by counsel, the investigative efforts that led to their ultimate strategy, and the evidence of Allen Southern's possible involvement that was actually presented to Binney's jury. In order to fairly and adequately respond to the issues presented, Respondent would ask the Court to grant it permission to file a Return to Petitioner's Petition for Writ of Certiorari exceeding the twenty-five page limit. The Return to Petition for Writ of Certiorari submitted on April 22, 2013, is 34 pages in length.

Therefore, Respondent would ask the Court to grant it permission to file a Return to Petition for Writ of Certiorari exceeding the twenty-five page limit in Rule 243(g), SCACR.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 23, 2013.

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 23rd day of April, 2013, he served the Respondent-Petitioner's Motion to Allow The Filing of a Return to Petition for Writ of Certiorari Exceeding the Twenty-Five Page Limit on counsel for the Petitioner-Respondent by depositing two copies of same in the United States mail, first class, postage prepaid, and addressed as follows:

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