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**Apr 05 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Certiorari to Kershaw County  
The Honorable Casey Manning, Trial Judge  
The Honorable G. Thomas Cooper, PCR Judge

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Appellate Case No. 2018-001643

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MITCHELL LOGAN HINSON,

Petitioner,

v.

THE STATE,

Respondent.

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**MOTION TO HOLD TIME FOR FILING BRIEF OF RESPONDENT IN ABEYANCE  
UNTIL BRIEF OF PETITIONER PURSUANT TO WHITE V. STATE IS FILED**

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The State through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

In March 2011, the Kershaw County Grand Jury indicted Petitioner for first degree burglary. In June 2011, a jury trial was held in the Kershaw County Court of General Sessions with the Honorable Casey Manning, presiding. Petitioner was represented by Neil Riley, Esq. At the conclusion of trial, Petitioner was convicted as indicted and sentenced to fifteen years' imprisonment. On July 8, 2011, trial counsel filed a motion for a new trial on Petitioner's behalf. (App. 205-06). While Petitioner's motion for a new trial was pending, Petitioner filed a post-conviction relief application on November 3, 2015. (App. 231). Petitioner's application was dismissed without prejudice by the Honorable Alison Lee on January 12, 2016 because

Petitioner's motion for a new trial was pending. (App. 231). On March 24, 2016, Judge Manning denied Petitioner's motion for a new trial in a written order. (App. 208). Subsequently, Petitioner filed a second application for post-conviction relief on November 4, 2016. (App. 209-17).

An evidentiary hearing was held on July 19, 2017 with the Honorable G. Thomas Cooper, presiding. Petitioner was represented by Kristy Goldberg, Esq. and the State was represented by Jessica Kinard of the South Carolina Attorney General's Office. Petitioner testified that he requested trial counsel to file an appeal following his conviction, but trial counsel filed a motion for a new trial instead. (App. 249). Petitioner further testified he never appeared in court for the motion for a new trial to be heard. (App. 249). The State called trial counsel as a witness at the hearing. Trial counsel testified that he retired approximately five months before Petitioner's motion for a new trial was ruled upon. (App. 270). Trial counsel testified he never heard anything regarding the status of the motion after his retirement, nor did he attempt to alert or notify anyone at the Kershaw County Public Defender's Office that Petitioner wanted an appeal filed. (App. 270, 295-97). Assistant Public Defender Jason Kirincich testified that he was contacted by the Attorney General's Office regarding the status of Petitioner's order after Petitioner filed his initial PCR application. (App. 301-02). Kirincich contacted Judge Manning about another unrelated matter and mentioned Petitioner's case to Judge Manning. (App. 302). Kirincich subsequently discovered that Judge Manning signed the order denying Petitioner's motion, but never attempted to contact Petitioner regarding the order or otherwise ensure that an appeal was filed on Petitioner's behalf. (App. 302-03).

## II.

Petitioner's second PCR application was denied via a written order filed by Judge Cooper on April 12, 2018. (App. 325-41). Petitioner filed a motion to amend judgement on April 24,

2018. Petitioner's motion was denied on September 5, 2018. Thereafter, Petitioner filed a notice of appeal on September 10, 2018 and a petition for a writ of certiorari with the South Carolina Supreme Court on April 26, 2019. The State filed a return on September 9, 2019. On September 24, 2019, the Supreme Court transferred Petitioner's case to this Court. On December 10, 2021, this Court granted certiorari as to Petitioner's third and fourth issues. Petitioner filed a brief on January 10, 2022.

### III.

On appeal, Petitioner alleges, among other things, that the PCR judge erred in finding Petitioner knowingly and intelligently waived his right to a direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). After reviewing the transcript of the post-conviction relief hearing, undersigned counsel for the State concedes that the PCR judge erred in finding Petitioner knowingly and intelligently waived his right to a direct appeal. Counsel for the State has discussed the State's concession with Petitioner's appellate counsel, Kathrine Hudgins. In light of the State's concession, the State hereby respectfully asks this Court to hold the time for the State to file the Brief of Respondent in abeyance until Petitioner is able to file a Brief of Petitioner pursuant to White v. State. The State further requests this Court grant Petitioner sixty days in which to file its Brief of Petitioner pursuant to White and an additional thirty days after submission of the Brief of Petitioner for the State to file the Brief of Respondent. Appellate counsel for Petitioner consents to this request.

WHEREFORE, Respondent prays that this Court hold the time for the State to file the Brief of Respondent in abeyance and allow a total of ninety days for Petitioner and the State to file briefs to address Petitioner's belated appeal pursuant to White; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

SCOTT MATTHEWS  
Assistant Attorney General

By: Scott Matthews  
Scott Matthews

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\_\_\_\_\_  
**PROOF OF SERVICE**  
\_\_\_\_\_

I, Leigh Ann Stone, certify that I have served the within Motion to Hold Time For Filing Brief of Respondent in Abeyance Until Brief of Petitioner pursuant to White v. State is Filed on Petitioner by sending electronic copies via email to the address listed in AIS for the following individual:

Kathrine H. Hudgins, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.  
This fifth day of April, 2022.

  
\_\_\_\_\_  
Leigh Ann Stone  
Legal Assistant  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

## Leigh Ann Stone

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**From:** Leigh Ann Stone  
**Sent:** Tuesday, April 5, 2022 4:33 PM  
**To:** 'khudgins@sccid.sc.gov'  
**Cc:** Scott Matthews; William Blicht; 'Stock, Chris'  
**Subject:** Mitchell Logan Hinson v. The State (2018-001643)  
**Attachments:** HINSON Mitchell - Motion to Hold Time for Filing Brief of Respondent (02943858xD2C78).PDF

Good Afternoon Ms. Hudgins,

Attached please find a copy of the Motion to Hold Time for Filing Brief of Respondent in Mitchell Logan Hinson v. The State (2018-001643). This motion will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you!

**LEIGH ANN STONE**, Legal Assistant  
South Carolina Attorney General's Office  
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