

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

CHARLES F. PLYMAIL,)	
)	
Petitioner,)	
)	
v.)	Civil Action Nos. 3:14-06201
)	
PATRICK A. MIRANDY, Warden,)	
)	
Respondent.)	

ORDER

Pending before the Court is Petitioner’s “Motion for Entry of State Court File Pursuant to 28 U.S.C. § 2254(f)” (Document No. 107), filed on November 15, 2018, by counsel, Troy N. Giatras. Specifically, Petitioner requests the Court require the State of West Virginia to provide the Appendix Record filed in Petitioner’s State court appeal in its entirety to this Court for entry into the record. (Id.) In support, Petitioner explains that the Appendix Record is voluminous in nature and Petitioner is indigent. (Id.) Petitioner further states that the Appendix Record is currently in the custody of the Supreme Court of Appeal of West Virginia. (Id.) Respondent has not filed a response to Petitioner’s above Motion.

Section 2254(f) provides as follows:

If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court’s determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official.

28 U.S.C. § 2254(f). In the above *habeas* proceedings, Petitioner is challenging the sufficiency of

the evidence adduced in the State court proceeding supporting the State court's determination of factual issues. Additionally, Petitioner is clearly unable to produce a copy of the Appendix Record due to his indigency. Based upon the foregoing, it is hereby **ORDERED** that Petitioner's above Motion (Document No. 107) is **GRANTED**. The Clerk of the Supreme Court of Appeals of West Virginia is **ORDERED** to provide the Clerk of this Court a complete copy of the Appendix Record concerning State v. Plymail, No. 14-0016 (Nov. 20, 2015)¹ for filing with this Court.

The Clerk is directed to send a copy of this Order to counsel of record and to Edythe Nash Gaiser, Clerk of the Supreme Court of Appeals of West Virginia, State Capitol Room E-317, 1900 Kanawha Blvd. East, Charleston, WV 25305.

ENTER: December 3, 2018.



Omar J. Aboulhosn
United States Magistrate Judge

¹ The underlying criminal action was *State v. Plymail*, Criminal Action No. 93-F-50 (Cir. Ct. Cabell Co. Aug. 18, 2013).