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Jun 16 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Florence County

George M. McFaddin, Circuit Court Judge

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TAMARQUIS ANTWAIN WINGATE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-001329

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MOTION FOR APPOINTMENT OF OUTSIDE COUNSEL

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Undersigned counsel respectfully moves this Court to appoint outside counsel to represent petitioner Tamarquis Wingate in his appeal from the denial of his application for post-conviction relief (PCR).

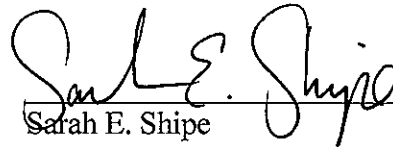
1. Petitioner was indicted for two counts of criminal sexual conduct with a minor, first degree. He proceeded to trial before the Honorable Donald B. Hocker, and a jury, on December 9, 2014. Daniel Jordan represented petitioner.
2. Petitioner was found guilty, and Judge Hocker sentenced petitioner to concurrent terms of twenty years' imprisonment.

3. Petitioner filed a timely notice of appeal and on October 23, 2015, Robert M. Dudek, Chief Appellate Defender, of the South Carolina Commission on Indigent Defense perfected the appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967). Petitioner subsequently filed multiple *pro se* responses. The South Carolina Court of Appeals affirmed petitioner's convictions. *State v. Wingate*, Op. No. 2017-UP-064 (S.C. Ct. App. filed February 1, 2017).
4. Subsequently, petitioner filed an application for PCR. Petitioner's allegations included ineffective assistance of appellate counsel, Robert Dudek. An evidentiary hearing was held on August 30, 2021, before the Honorable George M. McFaddin, Jr. Jonathan Waller represented petitioner. Yasmeen Klein, assistant attorney general, represented the state. Mr. Dudek testified at the evidentiary hearing.
5. Judge McFaddin signed an order denying PCR on October 13, 2021. Since petitioner was indigent, the appeal came to the Office of Appellate Defense, and the undersigned was assigned the case.
6. On June 15, 2022, for the first time, undersigned counsel spoke to Mr. Dudek regarding this case. After the discussion undersigned counsel believes that because Mr. Dudek is the Chief Appellate Defender, undersigned counsel's direct superior that, to avoid any appearance of conflict, undersigned counsel should move this Court to appoint outside counsel in this case.
7. Undersigned counsel believes that outside counsel should be appointed to represent petitioner on appeal given the above. Counsel regrets not knowing of this potential conflict of interest or conflict of interest earlier.

8. Undersigned counsel can provide the Court additional specificity if desired by the Court prior to it ruling on this motion for the appointment of outside counsel.

WHEREFORE, undersigned counsel respectfully requests the appointment of outside counsel to represent petitioner in his appeal before this Court on the PCR court's order denying relief. Undersigned counsel also requests that this Court hold the timelines for filing the petition for writ of certiorari and appendix in abeyance pending a decision on this motion. If the motion for outside counsel is granted, undersigned counsel will immediately turn over her file and the compiled appendix to newly appointed counsel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sarah E. Shipe", written over a horizontal line.

Sarah E. Shipe  
Appellate Defender  
Attorney for Appellant

This 16<sup>th</sup> day of June, 2022.