

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

FREDDIE EUGENE OWENS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-001026

RETURN TO MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

- 1) Undersigned Counsel agrees with petitioner's procedural history of the case. Petitioner was represented on his second and third appeals of his murder conviction and death sentence by then Chief Appellate Defender Joseph L. Savitz, III. See State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001) (new sentencing hearing ordered); State v. Owens, 362 S.C. 175, 607 S.E.2d 78 (2004) (new sentencing hearing ordered); State v. Owens, 378 S.C. 636, 664 S.E.2d 80 (2008) (affirmed).
- 2) Petitioner was represented during his subsequent post-conviction relief action by Emily C. Paavola and Keir M. Weyble. Petitioner raised the issues of ineffective assistance of appellate

counsel in that PCR proceeding, as well as ineffective assistance of trial counsel. Counsel for petitioner, Emily Paavola, stated in her motion that Appellate Counsel Savitz testified in detail at the post-conviction hearing. A review of the order of dismissal of the Honorable Edward W. Miller dated February 13, 2013 did address the issue of ineffective assistance of appellate counsel Savitz.

3) Counsel Paavola, therefore asserted that the Office of Appellate Defense “has a conflict of interest given that the former Chief Attorney of the office was petitioner’s appellate counsel.” See Motion for the Appointment of Outside Counsel at 2. Joseph L. Savitz was in fact the Chief Appellate Defender at the time he represented petitioner Owens on his direct appeal in 2008. See State v. Owens, 378 S.C. 636, 664 S.E.2d 80 (2008).

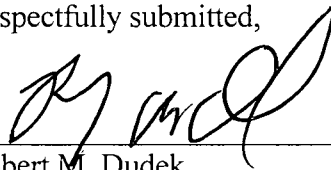
4) In addition to asserting the Office of Appellate Defense has a conflict of interest, Counsel Paavola states she “is intimately familiar with the trial and PCR record and was responsible for handling extensive post-hearing briefing which, in addition to the record below, draws on voluminous social history records entered as exhibits during the PCR hearing. Thus, even aside from the conflict of interest, undersigned counsel is better situated to provide representation on appeal. Under these circumstances, the appointment of outside counsel would be a more efficient use of judicial time and resources. Further, should this Court decide to appoint outside counsel, Keir Weyble, who also served as PCR counsel, has agreed to assist undersigned counsel in a *pro bono* capacity.” Motion at 2.

5) Given the totality of petitioner’s assertions, and her assurances on the representation of petitioner on appeal if this Court chooses to appoint her undersigned counsel does not oppose the motion since at a minimum it raises the appearance of a conflict of interest on behalf of Appellate

Defense since Joseph L. Savitz was the Chief Appellate Defender of the Office at the time he represented petitioner on his direct appeal. Further, Counsel Paavola asserted, as an officer of the Court, that Appellate Defender Savitz testified in detail at the PCR hearing. In addition, the order of Judge Miller addresses the issue of ineffective assistance of Appellate Counsel. Since Counsel Paavola also is familiar with the voluminous record, and also given the fact that Cornell Law Professor Keir Weyble has agreed to assist Counsel Paavola in a *pro bono* capacity on petitioner's appeal, undersigned counsel does not disagree that it would a more efficient use of judicial time and government resources for Counsel Paavola and *pro bono* Counsel Weyble to represent petitioner Owens on appeal.

WHEREFORE, undersigned counsel does not oppose the motion for the appointment of outside counsel for the reasons stated above, and submits the matter of petitioner's representation to the sound discretion of this Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

June 5, 2013

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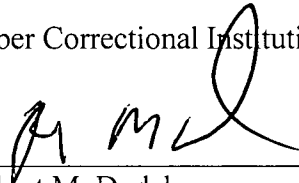
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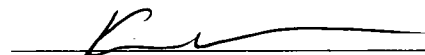
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the return to the motion for outside counsel in the above-referenced case has been served upon opposing counsel, J. Anthony Mabry, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and upon Emily C. Paavola, Esquire, at 900 Elmwood Ave., Suite 101, Columbia, SC 29201, and Freddie Owens, #5065, at Lieber Correctional Institution, this 5th day of June, 2013.



Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 5th day of June, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.