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NOV 09 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

WRIT OF CERTIORARI TO WILLIAMSBURG COUNTY

The Honorable George M. McFaddin, Circuit Court Judge

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NOV 10 2022

SC Court of Appeals

Appellate Case No: 2020-001426

Mr. Levern McCrea, 348291,

Petitioner,

v.

State of South Carolina,

Respondent,

MOTION FOR RELIEF FROM JUDGMENT
MOTION TO RELIEVE COUNSEL
MOTION FOR LEAVE TO PROCEED PRO-SE

MOTION FOR RELIEF FROM JUDGMENT

Comes now, Mr. Levern McCrea, 348291, the Petitioner, who moves with his pro-se Motion For Relief From Judgment, Motion to Relieve Counsel, and Motion For Leave To Proceed Pro-Se. Petitioner's motion for relief from judgment is based upon an erroneous judgment or order by the S.C. Supreme Court, on February 23rd, 2022. In the Order denying Petitioner's Motion to Relieve Counsel and request to proceed pro-se citing the case of * State v. Roberts, 364 S.C. 583, 614 S.E.2d 626 (2005), holding that there is no federal or state constitutional right to proceed pro-se on direct appeal from a criminal conviction, but instead the decision is in the discretion of the Court. Petitioner asserts that the judgment based upon the case of * State v. Roberts, is an erroneous judgment and should be set aside. Petitioner asserts that after doing his due diligence and carefully considering the case as it applies to death sentences or capital cases only! Petitioner contends under Newly Discovered Evidence, that he has a federal and state constitutional right to proceed pro-se in self-representation in pursuant to *U.S. v. Isaac,

655 F.3d 148, 153 (3rd Cir 2011) It is well settled that the Sixth Amendment guarantees a criminal Defendant the right to proceed pro-se equal to its guarantee of the right to counsel. Also, See * State v. Barnes, 407 S.C. 27, 35, 733 S.E.2d 545 550 (2014), A South Carolina Defendant has the constitutional right to represent himself under both federal and state constitutions on direct appeal from a criminal conviction.

Petitioner's motion for relief from judgment in pursuant to Rule 60(b)(2) under Newly Discovered Evidence of the Rules of Civil Procedures. For good cause shown, Petitioner's motion for relief from judgment should be granted.

MOTION TO RELIEVE COUNSEL

Petitioner contends that inside of the Courts decision to deny the Petitioner's Motion to Relieve Counsel and denying the Petitioner the right to proceed pro-se. The State filed a response disagreeing with the Petitioner about having Appellate Counsel Taylor D. Gilliam relieved, stipulating that the disagreement between lawyer and client does not constitute grounds to relieve counsel. Petitioner would reiterate his claims that constitutes grounds for relief to relieve counsel as follows:

- (1). Petitioner filed his complaint to the Supreme Court of South Carolina Commission on Lawyer's Conduct in which the Petitioner was given Notice of Final Disposition against Lawyer Taylor Davis Gilliam, Esquire, ODC File number 22-DE-L-0482. Petitioner is providing the Court with a copy.

- (2). Appellate Counsel Taylor D. Gilliam knowingly, and intentionally violated Rule 407 of the South Carolina Appellate Court Rules of Professional Conduct, Rule 1.1 Competence and Rule 1.4 Communication. 1.1 Competence A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Counsel Taylor D. Gilliam has failed to do so.

1.4 Communication- A Lawyer shall;

- (1). Promptly inform the client of any decisions or circumstances with respect to which the client's informed consent as defined in Rule 1.0 (g), is required by these rules;
- (2). Reasonably consult with the client about the means by which the client's objectives are to be accomplished
- (3). Keep the client reasonably informed about the status of the matter; and
- (4). Promptly comply with reasonable requests for information.

Petitioner asserts that Appellate Defender Taylor D. Gilliam, Esquire performance thus far, has been unreasonable, inadequate and a total violation of the S.C. Appellate Court Rules of 407 Rules of Professional Conduct which constitutes grounds to relieve counsel for failure to comply with the court rules. For good cause shown, Petitioner's motion to relieve counsel Taylor D. Gilliam, Esquire, should be granted.

MOTION FOR LEAVE TO PROCEED PRO-SE

Petitioner, comes now, and move for leave to proceed pro-se under the following circumstances:

- (1). That he understands the dangers and disadvantages of proceeding pro-se;
- (2). That Petitioner conduct himself in a professional manner and comply with all rules of the court in good faith as he makes an informed decision to self-representation and respectfully waives his right to counsel or an Appellate Defender, willingly, knowingly, intelligently voluntarily to protect his legal rights and "Liberty Interest".;
- (3). Based upon Newly Discovered Evidence in pursuant to * State v. Barnes, 407 S.C. 27, 35 733 S.E.2d 545, 550 (2014) and * U.S. v. Isaac, 655 F.3rd 148 153 (3rd Cir 2011), in regards to an federal and state constitutional right to proceeding pro-se in a criminal appeal from a conviction.

11/10/2022

Petitioner's Motion for Relief from Judgment in pursuant to Rule 60(b)(2), under Newly Discovered Evidence of the South Carolina Civil Procedures. For good cause shown, Petitioner's Motion for Relief from the Judgment should be granted. Petitioner's Motion to Relieve Counsel should be granted. Petitioner's Motion for Leave to Proceed Pro-Se should be granted and allowed 45 days in which to provide the Court with a pro-se petition the same as a * Johnson v. State, petition would allow as a matter of law.

CONCLUSION

Wherefore, the Petitioner, Mr. Levern McCrea, prays for consideration of his Motion for Relief from the Judgment in pursuant to Rule 60(b)(2), of the South Carolina Rules of Civil Procedures, his Motion to Relieve Counsel on the grounds of prejudice, conflict of interest which constitutes grounds for relief, and consideration of the Petitioner's Motion for leave to Proceed Pro-Se, and lastly, Petitioner respectfully asks this Honorable Court, to grant 45 days in which to provide an pro-se petition as a matter of law as required in the case of * Johnson v. State.

Dated: NOV 7, 2022

Respectfully submitted,

/s/ Mr. Levern McCrea
Mr. Levern McCrea, 348291
ACI. Bamberg Unit F-4 B-32
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Petitioner

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
CERTIORARI TO WILLIAMSBURG COUNTY
The Honorable George M. McFaddin, Circuit Court Judge

APPELLATE CASE NO: 2020-001426

Mr. Levern McCrea, 348291,

Petitioner,

v.

State of South Carolina,

Respondent,

AFFIDAVIT

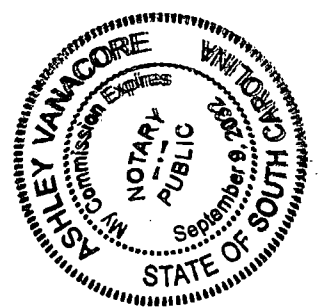
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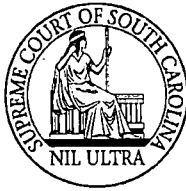
Personally appearing before me, Ashley Vanacore, this 7th day of November, 2022, the affiant/ Petitioner, Mr. Levern McCrea, 348291, being duly sworn upon my oath, depose and say that all allegations and matters alleged in his Motion for Relief from Judgment, Motion to Relieve Counsel, and Motion for leave to Proceed Pro-Se, have been served; that he subscribed and has read, and that all matters are true to the best of his knowledge.

1st Mr. Levern McCrea
Pro-Se Petitioner Mr. Levern McCrea

SWORN TO AND AFFIRMED TO BY THE AFFIANT
this 7th day of November, 2022.
Ashley Vanacore (L.S.)
NOTARY PUBLIC

My Commission Expires: Sept 9, 2032





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NOV 09 2022

S.C. SUPREME COUR

The Supreme Court of South Carolina
COMMISSION ON LAWYER CONDUCT

Deborah S. McKeown
Commission Counsel

1220 Senate Street, Suite 111
Columbia, South Carolina 29201
Telephone: (803) 734-2037
Fax: (803) 734-0363

October 24, 2022

PERSONAL & CONFIDENTIAL

Levern McCrea #348291
Allendale Correctional Institution
Post Office Box 1151
BBB-32
Fairfax, SC 29827

Re: NOTICE OF FINAL DISPOSITION
Lawyer: Taylor Davis Gilliam, Esquire
ODC File Number: 22-DE-L-0482

Dear Mr. McCrea:

An investigative panel of the Commission on Lawyer Conduct considered the results of the Disciplinary Counsel's investigation in the above-referenced matter at your request. The panel concurred in the decision to dismiss this matter. Accordingly, the complaint in this matter is dismissed pursuant to the provisions of Rules 18 and 19(d)(1), RLDE, Rule 413, SCACR. As required by these rules, a copy of this letter is being sent to Mr. Gilliam and the Disciplinary Counsel as notice of the dismissal of this complaint.

Sincerely,

Barbara W. Hinson
Barbara W. Hinson
Legal Assistant

BWH/

cc: Taylor Davis Gilliam, Esquire

Jamie E. Wilson, Esquire
Assistant Disciplinary Counsel

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The Supreme Court of South Carolina NOV 09 2022

Levern McCrea, Petitioner,

S.C. SUPREME COURT

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-001426

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ORDER

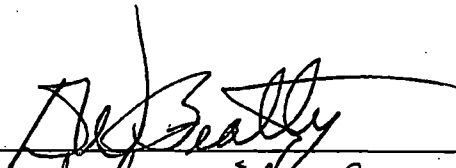
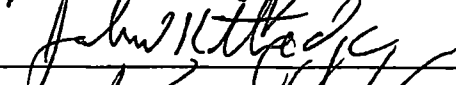
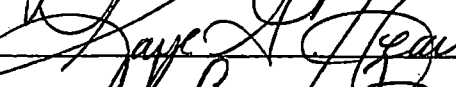


In 2019, Petitioner was granted post-conviction relief (PCR) on one issue raised in his PCR application but denied relief as to the remaining issues. Petitioner was represented at the PCR hearing by retained counsel, but the case was subsequently assigned to the Commission on Indigent Defense, Division of Appellate Defense, which represents Petitioner at present. The State filed a Rule 59(e), SCRCP, motion to alter or amend the PCR court's order, which was granted, thereby denying Petitioner PCR relief. Counsel for Petitioner subsequently filed a notice of appeal, and Appellate Defender Taylor D. Gilliam has filed a petition for a writ of certiorari on Petitioner's behalf raising two issues.

Petitioner has filed a *pro se* "Motion to have Appellate Counsel Relieved" and asks that he be allowed to proceed *pro se*. This Court has held that there is no federal or state constitutional right to proceed *pro se* on direct appeal

from a criminal conviction, but instead the decision is in the discretion of the Court. *State v. Roberts*, 364 S.C. 583, 614 S.E.2d 626 (2005). The Court has applied that holding in appeals from the denial of PCR as well. Gilliam has not filed a return to Petitioner's motion. The State has filed a response to Petitioner's motion arguing Petitioner's disagreement with his counsel over which issues to raise on appeal does not constitute grounds to relieve counsel.

After considering this information, Petitioner's motion to relieve counsel and proceed *pro se* is denied.

IT IS SO ORDERED.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
February 23, 2022

cc:
Taylor Davis Gilliam, Esquire
David A. Spencer, Esquire
The Honorable Jenny Abbott Kitchings

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
CERTIORARI TO WILLIAMSBURG COUNTY
THE HONORABLE GEORGE M. McFADIN, Circuit Court Judge

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STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFY THAT ON THIS 7 DAY OF November
~~2022~~ THE PETITIONER HAS PROVIDED THE RESPONDENT, MR. TAYLOR D. GILLIAM, THE
HONORABLE PATRICIA A. HOWARD, CLERK OF COURT, AND JANELL H. GREGORY, ASST.
GENERAL, OFFICE OF THE ATTORNEY GENERAL, P.O. BOX 11549, Columbia, S.C. 29211,
SOUTH CAROLINA SUPREME COURT, P.O. BOX 11330, Columbia, S.C. 29211, S.C.
Commission on Indigent Defense, P.O. Box 11589, Columbia, S.C. 29211.

Respectfully submitted,

Dated: NOV 7, 2022

/s/ Mr. Levern McCrea
Mr. Levern McCrea, 348291
ACI. Bamberg Unit F-4B-32
P.O. Box 1151
Fairfax, S.C. 29827
Pro-Se Petitioner

Dated: NOVEMBER 7, 2022

The Honorable Patricia A. Howard
Clerk of the Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC. 29211

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S.C. SUPREME COURT

RE: Mrs. Levern McCrea, #348291, -vs- State of South Carolina
Appellate Case No: 2020-00436

Dear Mrs. Howard:

Enclosed you will find Petitioner's Motion for Relief from Judgment / Motion to Relieve Counsel, / Motion for leave to proceed pro-se. Please file with the Court and send back a date stamped copy for my records. You will also find inside a copy of Final Disposition from the South Carolina Commission on Lawyer's Conduct dated October 24th, 2022, along with the Supreme Court's Order dated February 23rd, 2022.

Respectfully submitted,
Mr. Levern McCrea
Mr. Levern McCrea, #348291
ACI. Bamberg Unit F-4 B#32
P.O. Box 1151
Fairfax, S.C. 29827
Pro-se Petitioner

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Mr. Levern McCrea, #348291

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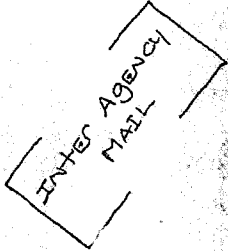
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S.C. SUPREME COURT

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Clerk of the Supreme Court of S.C.

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LEGAL MAIL