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Nov 29 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appellate Case No. 2022-001410

Honorable Roger M. Young, Sr.
Circuit Court Judge
Charleston County
Trial Court Case No. 2012GS1002533

DAVID ISRAEL SMITH,

APPELLANT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

COMES NOW, Luke J. Malloy, Esq. ("Counsel"), who states the following in support of his petition to be relieved as counsel for David Israel Smith pursuant to Rule 264 of the South Carolina Appellate Court Rules:

1. In 2014 Counsel was appointed to represent the Appellant in Case No. 2012GS1002533 as a staff attorney with the Charleston County Public Defender's Office;
2. On July 10, 2014, the Appellant pled guilty in the above-referenced case, and was sentenced to 20 years by the Honorable Roger M. Young, Sr.;
3. On July 18, 2014, Counsel filed a motion to reconsider sentence on behalf of the Appellant. Counsel believes that he represented Appellant at a hearing on the motion to reconsider sometime in 2014, which the trial court orally denied. However, Counsel has reviewed the Charleston County Clerk of Court filings and cannot find a record of a hearing on Counsel's motion to reconsider. The Charleston County Public Defender's Office is retrieving Appellant's file from storage, and Counsel will supplement this motion if necessary after reviewing the file;
4. Counsel's representation of the Appellant concluded in 2014, and Counsel took no further action on his behalf;

5. Counsel left the employ of the Charleston County Public Defender's Office in September of 2017, and is currently practicing law in Virginia;

6. Appellant subsequently filed several *pro se* motions with the Charleston County Clerk of Court;

8. Apparently, in response to Appellant's *pro se* filings, the trial court issued a written order denying Appellant's motion to reconsider on August 3, 2022. Counsel did not receive notice of entry of this Order;

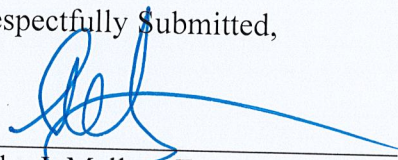
9. Unbeknownst to Counsel, Appellant filed this appeal of the trial court's order denying his motion to reconsider on October 4, 2022;

10. Justifiable cause exists for the withdrawal of Counsel, as Counsel's representation of Appellant concluded in 2014, and Counsel is no longer employed with the Charleston County Public Defender's Office;

11. Appellant has been functioning *pro se* since 2014, and has diligently attempted to preserve his appellate rights, therefore his appeal should be reinstated and he should be allowed to proceed *pro se* or have Appellate Defense appointed to represent him. In the alternative, Counsel has advised Appellant that he has a right to file an application for post-conviction relief within one year of the dismissal of his appeal, and may seek a belated appeal of the trial court's denial of the motion to reconsider sentence. See White v. State, 262 S.C. 110, 208 S.E.2d 35 (1974).

Therefore, Counsel requests that the Court relieve him as counsel for Appellant pursuant to South Carolina Appellate Court Rule 264 (b).

Respectfully Submitted,



Luke J. Malloy, Esq.

This 29th day of November 2022.

CERTIFICATE OF SERVICE

I, Luke J. Malloy, Esq., certify that on this 29th day of November, 2022 a copy of this Petition was served on the persons listed below by regular US mail:

David Israel Smith, 00360603
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

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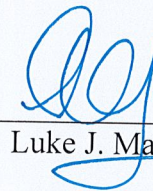
SC Court of Appeals

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