

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Laurens County

RECEIVED

Honorable Thomas A. Russo, Circuit Court Judge JUN 13 2013

S.C. Supreme Court

DOMONIQUE BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2012-212940

MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

The undersigned respectfully shows the Court:

(1) Petitioner Domonique O'Neil Brown was indicted at the February 9, 2007 term of the Laurens County Grand Jury for the offenses of murder, armed robbery, and possession of a firearm or knife during the commission of a violent crime. The indictments alleged that Petitioner robbed the Burger King after hours, and killed his former co-worker and Manager there on January 12, 2007. App. 79-84.

(2) The state served its notice of intent to seek the death penalty. Bill McGuire of the Statewide Capital Trial Division of the Office of Indigent Defense, Circuit Public Defender Charles Grose and Laurens County Public Defender Chip Howe represented Petitioner.

(3) The state ultimately withdrew its notice of intent to seek the death penalty, and Petitioner pled guilty to the charges in exchange for a negotiated sentence of thirty years imprisonment. That guilty plea took place on May 18, 2009 before the Honorable D. Garrison Hill. E. Charles Grose represented Petitioner during the plea, and Solicitor Jerry Peace represented the state. App. 1, app. 2, ll. 2-11. Judge Hill imposed the thirty year concurrent negotiated sentences. App. 12, ll.6-10.

(4) Petitioner unsuccessfully attempted to appeal his guilty plea and sentence to the Court of Appeals. His appeal was dismissed by the Court of Appeals in its written order dated July 13, 2009 for failure to identify a preserved appellate issue pursuant to Rule 203, SCACR, and the remittitur was issued on August 4, 2009. App. 21.

(5) Petitioner filed an application for post-conviction relief (PCR) on July 6, 2010, and a PCR hearing was held on June 4, 2012 before the Honorable Thomas A. Russo. Spencer Langley represented Petitioner, and Assistant Attorney General J. Rutledge Johnson represented the state. App. 14-27. Judge Russo issued an order of dismissal which was filed on July 5, 2012. App. 71-77.

(6) Undersigned appellate counsel was assigned to handle the appeal from the denial of PCR relief. Petitioner telephoned appellate counsel several weeks ago and informed him that he thought counsel had a conflict of interest in representing him because Bill McGuire from the Capital Trial Division of the Commission on Indigent Defense represented Petitioner at the trial level. Counsel informed the client that Mr. McGuire worked in a separate trial division here at

Indigent Defense, and that he did not see any conflict of interest in the case. Counsel instructed the client to file a motion for the appointment of outside counsel if he thought such a conflict of interest indeed existed.

(7) In preparation for filing his petition for writ of certiorari in this case undersigned appellate counsel subsequently read the entire appendix. Petitioner Brown actually objected to trial counsel McGuire's decision to withdraw his motions to suppress based on police misconduct in return for the State withdrawing its notice of intent to seek the death penalty. In short, it appeared the police arrested Petitioner based upon a subterfuge, without probable cause, so that they could interrogate him. Petitioner gave an inculpatory statement while detained, and inculpatory evidence was obtained based on that statement. See, generally, Lanier v. South Carolina, 474 U.S. 25 (1985). The notice of intent to seek the death penalty was ultimately withdrawn, as were the motions to suppress Petitioner's statement and the fruits of that statement. Petitioner Brown pled guilty, and was sentenced, as seen above, to thirty year concurrent prison terms.

(8) Counsel McGuire acknowledged during the PCR hearing that Petitioner did not agree with his decision to withdraw his motions to suppress in return for the state withdrawing its notice of intent to seek the death penalty. Counsel McGuire testified that he made a strategic decision to withdraw his motions to suppress in exchange for the death penalty no longer being an option because he believed sufficient evidence to convict Petitioner would be introduced de hors the challenged evidence in any event. Counsel McGuire acknowledged Petitioner did not agree or consent to this strategy, and that Public Defenders Grose and Howe handled Petitioner's case because of the subsequent animosity Petitioner had towards him. App. 36-65.

(9) Having read the entire appendix, appellate counsel now recalls some conversation within the **appellate division** with Counsel McGuire about Petitioner's case while it was in the court below. Since Petitioner is challenging Counsel McGuire's decision to withdraw his motions to suppress in return for the notice of intent to seek the death penalty being withdrawn, counsel now agrees he has, at the very least, the strong appearance of a conflict of interest. Counsel makes the present motion for the appointment of outside counsel in good faith after reading the entire appendix, and he does not make this motion for purposes of delay.

WHEREFORE, counsel respectfully requests that counsel outside the appellate division of the Office of Indigent Defense be appointed to represent petitioner, and that the time limits for filing the petition for writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

This 13th day of June, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Laurens County

Honorable Thomas A. Russo, Circuit Court Judge

DOMONIQUE BROWN,

PETITIONER,

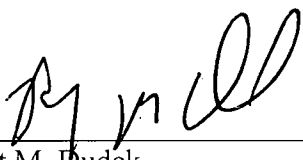
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Motion for Appointment of Outside Counsel in the above referenced case has been served upon opposing counsel, J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Domonique Brown, #336455 at Lee Correctional Institution this 13th day of June, 2013.



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 13th day of June, 2013.



Notary Public for South Carolina (L.S.)

My Commission Expires: October 2, 2013



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

June 13, 2013

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JUN 13 2013

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
PO Box 11330
Columbia, SC 29211

Re: Domonique Brown v. State of South Carolina

Dear Mr. Shearouse:

Enclosed are an original and six copies of the Motion for Appointment of Outside Counsel in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/kam

Enclosure

cc: J. Rutledge Johnson, Esquire
Mr. Domonique Brown