

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Anderson County

Eugene C. Griffith, Circuit Court Judge

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**RECEIVED**  
**Feb 10 2023**  
S.C. SUPREME COURT

BILLY RAY SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-001682

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PETITION FOR SUBSTITUTE COUNSEL

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Pursuant to Rule 224 of the South Carolina Appellate Court Rules, the undersigned counsel for petitioner, who is employed by SCCID, would petition this Court for an Order to Substitute Counsel in the above-captioned PCR appeal. The reason being that the undersigned counsel presently represents petitioner in his PCR appeal, but counsel has noted a conflict because petitioner alleged ineffective assistance of counsel claims against two attorneys also employed by SCCID, one of whom is Hervery B.O.Young, who is Deputy Director and General Counsel at SCCID, and another, David Alexander, who is an Appellate Defender at SCCID. The supportive facts follow:

1.) Petitioner Billy Ray Smith was convicted of attempted murder, possession of a weapon during the commission of a violent crime, unlawful possession of a pistol, and obstruction of justice per jury trial held during the November 2015 term of the Anderson County General Sessions Court before Judge R. Scott Sprouse. Herverly B.O.Young, presently employed by SCCID as the Deputy Director – General Counsel. He was formerly the Public Defender for Anderson County and represented petitioner at trial. Assistant Solicitors Kristin W. Reeves and Chelsey Moore appeared at trial on behalf of the state. Judge Sprouse sentenced petitioner to an aggregate twenty-year sentence. Note that petitioner filed a grievance against Counsel Young in November 2015.

2.) Petitioner appealed and was represented on appeal by Assistant Appellate Defender David Alexander of SCCID, who filed an Anders Brief with the South Carolina Court of Appeals in the case. On June 28, 2017, the South Carolina Court of Appeals dismissed petitioner’s direct appeal pursuant to Anders. See State v. Smith, Op. No. 2017-UP-257 (S.C. Ct. App. 2017).

3.) On August 28, 2017, petitioner filed a PCR application with the Anderson County Office of the Clerk of Court therein raising allegations of ineffective assistance of trial and appellate counsels. The Respondent filed a Return dated November 29, 2017. A PCR hearing was convened on August 14, 2019, at the Anderson County Courthouse before Judge Eugene O. Griffith, Junior. Petitioner was present at the hearing and represented by Rodney Wade Richey, Esquire, and Assistant Attorney General Taylor Zane Smith appeared at the hearing on behalf of the state. Appellant Defender David Alexander did not testify at the PCR hearing because petitioner withdrew his allegation against appellate counsel. However, Herverly B.O.Young testified at the PCR hearing regarding petitioner’s claims of ineffective assistance of trial counsel. On November 21, 2022,

Judge Griffith filed an Order of Dismissal after finding no ineffective assistance of counsel in the case. Petitioner appealed the PCR Order. The undersigned counsel has been assigned to represent petitioner on PCR appeal.

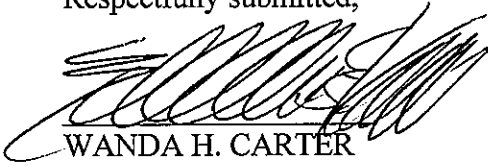
4.) In as much as trial counsel and appellate counsel in petitioner's prior legal proceedings are presently employed in the same office (SCCID) as the undersigned counsel, an ethical dilemma and conflict has arisen with respect to the undersigned counsel's assignment to represent petitioner in his PCR appeal. In effect, the undersigned counsel is placed in the position of having to evaluate the effectiveness or ineffectiveness of the Deputy Director-General Counsel of the SCCID, and another Appellate Defender in this office. The undersigned counsel would seek to avoid even the appearance of impropriety in the instant representation on PCR appeal due to concurrent and/or dual representation. See South Carolina Appellate Court Rule 407, Rules of Professional Conduct, Generally, Rules 1.10, 1.11, and 1.9.

5.) The right to effective assistance of counsel means there must be an examination of every potential infringement of that right, including divided loyalties and dual representation, particularly where an attorney places himself in a situation inherently conducive to divided loyalties. See Duncan v. State 281 S.C. 435, 315 S.E.2d 809 (1984), citing to Zuck v. State of Alabama, 588 F.2d 436 (5<sup>th</sup> Cir. 1979) and Castillo v. Estelle, 504 F.2d 1243 (5<sup>th</sup> Cir. 1974).

6.) It is my understanding that Scarlet Moore, Esquire, has been contacted and agreed to represent petitioner on PCR appeal if this Court grants this motion.

WHEREFORE, the undersigned counsel requests an Order for Substitute Counsel in petitioner's PCR appeal, and that said appeal be held in abeyance until the resolution of this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

WANDA H. CARTER  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 10th day of February, 2023.