

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from York County  
Capital Action  
Honorable R. Keith Kelly, Circuit Court Judge

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Lower Court Case No. 2011-CP-46-0072

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JAMES DEJARNETTE ROBERTSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2023-000505

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**RETURN TO MOTION TO CONTINUE THE CASE PENDING APPOINTMENT OF  
OUTSIDE COUNSEL**

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Undersigned counsel makes the following return to petitioner's motion for the appointment of outside counsel to handle his death penalty post-conviction relief appeal:

1. Petitioner asserts that he alleged ineffective assistance of prior appellate counsel from the Office of Appellate Defense in his post-conviction relief action in the circuit court, that the circuit court made an adverse ruling against him as to these allegations of ineffective assistance of appellate counsel, and that he intends to challenge those adverse rulings in his appeal to this Court.

2. Petitioner requests that **both** of his circuit court post-conviction relief appointed attorneys, William Harry Ehlied, II., and Derek Joseph Enderlin, be appointed to represent him on appeal to this Court.

3. Undersigned counsel, the Chief Appellate Defender, does not oppose the appointment of outside counsel in this case, and he does not oppose that counsel being **either** William Harry Ehlied, II or Derek Joseph Enderlin. South Carolina Code § 17-27-160 (B) provides that in a trial level capital post-conviction relief matter “two counsel shall be immediately appointed to represent the petitioner in this action.” However, this statute clearly provides for the appointment of two counsel only in the circuit court. There is no provision in the statute, court rule, or this state’s case law providing for the appointment of two compensated outside counsel in a capital post-conviction relief **appeal** to this Court.

4. Where an indigent post-conviction applicant has been appointed counsel in a post-conviction relief proceeding, such as in this case, the appeal from that post-conviction action automatically comes to the Office of Appellate Defense, pursuant to Rule 71.1 (g) SCRCF, Rule 602, SCACR and S.C. Code Section 17-3-360. When the Office of Appellate Defense has a conflict in handling a capital direct appeal, or capital post-conviction relief appeal, this Court in nearly every instance has appointed only one **compensated attorney** or on the rare occasion two attorneys have been appointed counsel was required to “split any compensation associated with the appointment” Inman v. State of South Carolina (Appellate Case No. 2020-000881). The Court with this language limited total compensation to that of one attorney, as compensation limits are established as a maximum per case not per attorney.

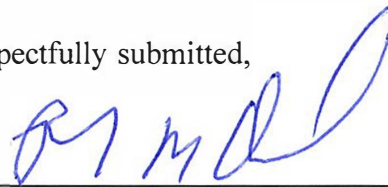
5. SCACR, Rule 602(h) also establishes any combined fees shall not exceed case maximums. Rule 602(h) states: “in any case in which more than one attorney is appointed to

represent a defendant, the combined fees paid to such attorneys shall not exceed the maximum amounts as provided by statute relating to indigent representation”.

6. The maximum amounts in capital appeals are established by budget proviso. The most recent General Appropriations Act (H. 5150), Proviso 61.3 (Appellate Conflict Fund) establishes a maximum fee of \$10,000 per capital appeal, regardless of the number of attorneys.

WHEREFORE undersigned counsel does not oppose Petitioner James Dejarnette Robertson’s request for the appointment of outside counsel, and to hold this case in abeyance pending that appointment. The Commission on Indigent Defense does, however, oppose the appointment of more than one compensated outside counsel to handle petitioner’s capital post-conviction appeal.

Respectfully submitted,



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This 6th day of April, 2023