

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Kristi F. Curtis, Circuit Court Judge

RECEIVED

May 18 2023

S.C. SUPREME COURT

McKINLEY DANIELS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2023-000087

MOTION FOR APPOINTMENT OF
OUTSIDE SUCCESSOR POST-CONVICTION RELIEF COUNSEL

The undersigned counsel respectfully moves this Court to appoint an outside successor post-conviction relief (PCR) counsel to represent Petitioner McKinley Daniels. This Court appointed James K. Falk, Esquire as outside post-conviction relief counsel in its order dated March 8, 2023. Counsel Falk died on Tuesday, May 9, 2023. Counsel would show this Court that:

1. Petitioner was indicted during the April 2015 term of the Horry County Grand Jury for the offenses of murder and armed robbery.

2. On January 22, 2019, Petitioner, with his trial attorneys, James Galmore and William McGuire appeared before the Honorable Robert E. Hood. Petitioner pled guilty to the charges of murder and armed robbery. It had been determined earlier that petitioner was intellectually disabled pursuant to Atkins v. Virginia, 536 U.S. 304 (2002) which precluded the state from seeking the death penalty against him.

3. Judge Hood sentenced petitioner forty-five years imprisonment for murder, and thirty years imprisonment for armed robbery. Petitioner did not pursue a direct appeal from his guilty plea.

4. A post-conviction relief (PCR) application was filed by petitioner on January 13, 2020.

5. The Attorney General's Office made its return on August 25, 2020, requesting that an evidentiary hearing be convened.

6. An evidentiary hearing was held on September 6, 2022, at the Horry County Courthouse before the Honorable Kristi F. Curtis. Petitioner was present at the hearing and represented by appointed counsel, the late James K. Falk. Chelsey F. Marto of the Attorney General's Office represented respondent.

7. An order of dismissal was issued on November 23, 2022 by Judge Curtis. A timely notice of intent to appeal was filed by Counsel Falk, and the Office of Appellate Defense represented petitioner in his PCR appeal before this Court at that point.

8. Undersigned counsel previously represented Petitioner's co-defendant, the brother of Petitioner McKinley Daniels, Jerome Jenkins, Jr., as lead counsel in the mandatory appeal of his death sentence before this Court wherein this Court affirmed the conviction and sentence.

See State v. Jerome Jenkins, Jr., 436 S.C. 362, 369, 872 S.E.2d 620, 624 (2022), *cert. denied in Jerome Jenkins v. South Carolina*, 143 S.Ct. 409 (November 7, 2022).

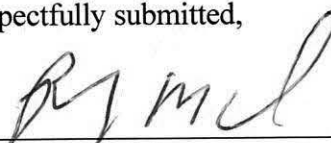
9. The refusal to allow forensic psychiatrist Donna Maddox to testify what Petitioner Daniels told her during an evaluation regarding his conversation with co-defendant Jerome Jenkins J., during the crime spree was a major issue in co-defendant Jerome Jenkins, Jr.'s direct appeal before this Court. See, State v. Jerome Jenkins, Jr., 436 S.C. 362, 872 S.E.2d 620 (2022)

10. The issue of whether petitioner's trial attorneys were ineffective for failing to call Petitioner McKinley Daniels as a witness during the Jerome Jenkins death penalty trial is now an issue in the Jerome Jenkins, Jr. v. The State, 2022-CP-26-08071, post-conviction relief (PCR) case which is pending in the Horry County Court of Common Pleas. Again, undersigned counsel was lead counsel in the State v. Jerome Jenkins, Jr., 436 S.C. 362, 872 S.E.2d 620 (2022) direct appeal, and therefore counsel is a potential PCR "target" and PCR witness in the Jerome Jenkins, Jr. v. The State 2022-CP-26-08071, post-conviction relief case. To avoid the appearance of a conflict of interest, impropriety or divided loyalties in counsel's office -- the Office of Appellate Defense -- which could occur if Appellate Defense represented Petitioner McKinley Daniels in his PCR appeal before this Court at the same time Petitioner Daniels is a probable witness during the PCR hearing of counsel's former death penalty client, Jerome Jenkins, Jr., undersigned counsel moved for the appointment of outside counsel.

11. This Court then appointed James K. Falk, Esquire as appellate PCR counsel for petitioner. However, Counsel Falk died on May 9, 2023 and it respectfully is therefore necessary for this Court to appoint successor appellate counsel in place of Counsel Falk.

WHEREFORE, undersigned counsel respectfully requests the appointment of a successor post-conviction relief counsel to represent Petitioner McKinley Daniels in his PCR appeal before this Court since prior appointed counsel James K. Falk, Esquire is deceased. Counsel also requests that all timelines be held in abeyance pending a ruling on this motion.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender
Attorney for Petitioner

This 18th day of May, 2023.

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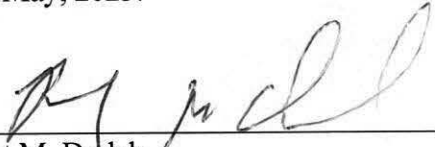
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion for Appointment of a Successor Post-Conviction Relief Counsel in the above referenced case has been served upon opposing counsel, Megan Harrigan Jameson, Esquire, at her primary email address listed in the Attorney Information System (AIS), this 18th day of May, 2023.



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 18th day of May, 2023.



(L.S.)
Notary Public for South Carolina
My Commission Expires: March 10, 2025