

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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MAY 24 2023
SC Court of Appeals

Appellate Case No. 2022-000671

The State of South Carolina.....Respondent

v.

Terron Dizzley..... Appellant

**MOTION FOR RECONSIDERATION, OBJECTIONS PURSUANT TO ORDER DENYING
EMERGENCY MOTION TO RELIEVE COUNSEL AND PROCEED PRO SE, AND A
REQUEST FOR *FULLER AND FARETTA HEARING***

Appellant Terron Gerhard Dizzley moves before this Honorable Court with a Motion for Reconsideration, Objections Pursuant to Order Denying Emergency Motion To Relieve Counsel And Proceed Pro Se, And A Request For State v. Fuller, 337 S.C 236 (1999) and Faretta v. California, 422 U.S. 806 (1975), on the grounds that:

1. The S.C. Court of Appeals order does not state specifically any findings of facts and conclusions of law which supports its order as required by law.
2. The S.C. Court of Appeals order is arbitrary, disproportionate, serves no legitimate interest , and is contrary to S.C. Supreme Court law, SCACR, clearly established U.S. Supreme Court law, and violates Appellant's Sixth Amendment right to self-representation.

State v. Barnes, 407 S.C. 27 (2014), " A South Carolina criminal defendant has the constitutional right to represent himself under both the federal and state constitutions. U.S.C.A Const. Amend. 6, Const. Art. 1 s 14." ; Faretta v. California, 422 U.S. 806 (1975), "forcing a lawyer upon an unwilling defendant is contrary to the basic right to defend himself if he truly wants to do so." State v. Richardson, 377 S.C. 103 (2008), " While an applicant seeking post-conviction relief may have a right to reject or discharge "court-appointed" counsel and proceed pro se or retain his own counsel, he does not have the right, without a showing of satisfactory cause, to refuse or dismiss the counsel "appointed" and have other counsel appointed."

Appellant contends that Attorney Yarborough is not an "appointed" counsel, but, retained, and according to South Carolina's own Appellate Court rules, Appellant is not required to show cause to discharge a lawyer that *he* retained.

SCACR Rule 407, Rules of Professional Conduct, Rule 1.16, Comment {4} "A client has a right to discharge a lawyer at any time, with or without cause, subject to liability of payment for lawyer's services. Where future dispute may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

3. The S.C. Court of Appeals failed to conduct an adequate hearing to fully assess the purpose behind Appellant's Emergency Motion to Relieve Counsel and Proceed Pro, which is according to S.C. Supreme Court law, a reversible error. Therefore, Appellant respectfully request a hearing pursuant to this motion. State v. Fuller, 337 S.C. 236 (1999).

REQUEST FOR FULLER, AND FARETTA HEARING

STATEMENT OF FACTS

The S.C. Supreme Court established in State v. Fuller, 337 S.C. 236 (1999), "Failure to conduct hearing on murder defendant's request to represent himself, made on morning of trial, was reversible error; fact that defendant's request was made in an atmosphere of his escalating dissatisfaction with his attorney suggested that defendant's purpose in making request was not to delay or stall the proceedings,

but rather to address his growing concerns about his attorney, and failure to conduct a hearing precluded both full assessment of purpose behind defendant's request and determination of what effect granting request would have on proceedings."

Appellant contends that the record from the November 17, 2022, hearing shows that his request to fire Attorney Yarborough was made at the hearing in an atmosphere of watching Attorney Yarborough breach his contract by failing to raise all of Appellant's issues as he agreed and failing to defend and protect Appellant's right to testify in his own defense. See: November 17, 2022, hearing transcript P. 19, L11-23.

STATEMENT OF CASE

On September 22, 2022, Appellant entered into a fee agreement with Attorney William G. Yarbrough for representation to raise all of the issues in Appellants, Terron Dizzley, Gwendolyn B. Frasier, and LaQuesha Felder's Emergency Motion For Alteration, Modification, Amend, Reconsideration, and Rescission of Order, pursuant to their Emergency Exparte and Proposed Motions for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence, First and Fourteenth Amendment rights to Familial Association. This representation was sought pursuant to an order from the S.C. Court of Appeals remanding Appellants case back to the circuit court for a ruling on Appellants case pursuant to findings of facts and conclusions of law. The agreement was that Attorney Yarborough would be paid \$7,500.00 to represent them at the hearing, of which Attorney Yarborough got scheduled for November 17, 2022, and an additional \$7,500.00 retainer fee which would be refunded if Appellants did not allow him to file the Appellate Brief if necessary and would like to hire someone else to file it, or file it themselves.

Appellant contends that at no time did Appellants agree to waive their rights to be heard on any of their issues. However, at the November 17, 2022, hearing, Attorney Yarborough breached his contract and did not raise all of Appellants issues as agreed to do. The record from the hearing proves that Appellant, Terron Dizzley requested to fire Attorney Yarborough at the hearing, and to represent himself because of this. The Honorable Judge Culbertson denied Appellant's request to represent himself, which violated his Sixth Amendment right to self-representation, and right to due process to fully and fairly present his case.

After the hearing, Appellants agreed to fire Attorney Yarborough, hire someone else to do the Appellate Brief, or file the Brief themselves. After Appellant Terron Dizzley spoke to Attorney Yarborough in person and informed him that they were firing him, Attorney Yarborough pleaded with Appellant Terron Dizzley, stating that he did not raise all of the issues at the November 17, 2022 hearing because the Honorable Judge Culbertson was bias towards both him and Appellant, was not impartial, and that the case should have never been heard before the Honorable Judge Culbertson because he was the same judge that denied Appellants Emergency Motions For Immediate Release... without any findings of facts and conclusions of law, which is the reason why the appellate court remanded the case back to the circuit court. Attorney Yarborough indicated that if Appellants allowed him to draw up the Appellate Brief, he would incorporate "all" of their issues, allow them to review it and if Appellants didn't agree with it, he would return the \$7,500.00 retainer fee for filing the Appellate Brief and Appellants could file it themselves or hire someone else to file it.

However, after months of filing extensions against Appellants wishes, Attorney Yarborough, finally provided Appellants with a copy of the Appellate Brief. After reviewing the Appellate Brief, it was clear that Attorney Yarborough had breached his contract again. As a result, Appellants informed Attorney Yarborough on March 13, 2023, via email that they were firing him, not to file the Appellate Brief, and to return the \$7,500 retainer for filing the Appellate Brief. Attorney Yarborough respond with a letter, indicating that he received the email from Appellant Gwendolyn B. Frasier and that he filed another extension on their behalf so that Appellants would have time to file their Brief, and that the Court had granted the extension for April 19, 2023.

Appellants filed an Emergency Motion to Relieve Counsel and Proceed Pro, the Initial Brief of Appellants, and a Habeas Corpus in Aid of Appellate Jurisdiction on March 28, 2023. On March 30, 2023, Appellant Gwendolyn B. Frasier sent Attorney Yarborough another email informing him that they had filed a Motion to Relieve Counsel and Proceed Pro and had filed the Appellate Brief and again requested that he return the \$7,500.00 retainer which was agreed would be refunded if Appellants did not allow for him to file the Appellate Brief. Appellants also requested that Attorney Yarborough return the

\$7,500.00 paid to him for representation at November 17, 2023, hearing, because he had breached their contract. See: Emergency Motion to Relieve Counsel and Proceed Pro Se ; Motion to Amend Emergency Motion to Relieve Counsel and Proceed Pro Se and Appellant Terron Dizzley's Response to Attorney Yarborough's Response to Terron's Motion to Amend Emergency Motion to Relieve Counsel and Proceed Pro.

Appellant contends that the record shows that his request at the November 17, 2022, hearing, and his March 28, 2023, Emergency Motion to Relieve Counsel And Proceed Pro, were not made for the purpose to delay or stall proceedings, but to protect his constitutional rights to due process so that he may receive a ruling on all of his issues. Appellant contends that the S.C. Court of Appeals order violates his Sixth Amendment right to self-representation.

Therefore, Appellant respectfully request that this Honorable Court reconsider its order and grant Appellant a hearing pursuant to his Emergency Motion to Relieve Counsel and Proceed Pro Se, pursuant to State v. Fuller, 337 S.C. 236 (1999); and Faretta v. California, 422 U.S. 806 (1975).

RIGHT TO COUNSEL OF CHOICE FRAUD UPON THE COURT

Appellant contends that "*forcing*" Attorney Yarborough to represent Appellants on appeal would be interfering with Appellant's fee agreement with Attorney Yarborough, which would amount to an unlawful seizure and deprivation of a liberty interest without due process; that liberty interest is Appellant's funds to retain another lawyer of choice if he chooses. Appellant contends that the Court's order would allow the courts to "unlawfully" seize Appellant's money and award it to Attorney Yarborough, and force Appellant to pay Attorney Yarborough for conflicting representation against Appellants wishes. According to clearly established U.S. Supreme Court law, the court's decision constitutes an unconstitutional restraint on Appellants assets which violates Appellants Sixth Amendment right to retain "counsel of choice." See: Louis v. U.S., 146 S. Ct. 1083 (2016), "The Supreme Court, Justice Breyer, held that pretrial restraints on defendant's assets needed to obtain counsel of choice violates the Sixth Amendment. The Sixth Amendment right to counsel grants a defendant " a fair

opportunity to secure counsel of his own choice, Powell v. Alabama, 287 U.S. 45, 53 (1932), that he " can afford to hire," Caplin & Drysdal Chartered v. United States, 491 U.S. 617 (1989). "The Court has consistently referred to the right to counsel of choice as " fundamental." The right to select counsel of choice" is just, "the root meaning" of the Sixth Amendment right to counsel." U.S. v. Gonzalez- Lopez, 548 U.S. 140, 147-148 (2006)."

Appellant contends that the S.C. Court of Appeals order consist of one sentence: "After careful consideration, Appellant's motion to relieve counsel is denied." The Court supports it's order not with S.C. law but, with North Carolina law. State v. Robinson, 290 N.C. 56 (1976). However, *Robinson* does not support the Court's order, but supports the merits of Appellant's Emergency Motion to Relieve Counsel and Proceed Pro Se. State v. Robinson, 290 N.C. 56 (1976). "The Supreme Court, Lake, J. held that trial court's action in refusing to relieve defense counsel from his assignment, but instead leaving him in charge of a portion of trial while relieving him of responsibility for eliciting alleged perjured testimony denied defendant fair trial required by due process."

Appellant makes the same argument as *Robinson*. By refusing to relieve Attorney Yarborough of counsel, under such circumstances, would deny Appellant a fair appeal as required by due process. Whereas the record proves that Attorney Yarborough abandon his role as an advocate for Appellant and began to litigate against Appellant, his mother, Gwendolyn B. Frasier who paid him, and LaQuesha Felder, Appellants wife. Attorney Yarborough even began advocating for the State, also perjuring himself on public record in his response to Appellants Motion to Amend Emergency Motion to Relieve Counsel and Proceed Pro Se.

In Attorney Yarborough's response, he intentionally misrepresents the truth by stating that Appellant Terron Dizzley requested that he file three extensions and alleging that Appellants Motion to Relieve Counsel would somehow prejudice the State and the court by causing further

delay. Appellant provided emails sent to Attorney Yarborough by his mother, Gwendolyn B. Frasier, and from Attorney Yarborough, which proves that Attorney Yarborough filed these extensions on his own, against Appellant's wishes, after Appellant explained to Attorney Yarborough that these extensions were causing Appellant "irreparable harm" by such unnecessary delay which violated Appellant's right to due process. See Terron Dizzley's Response to Attorney Yarborough's Response to Terron Dizzley's Motion To Amend Emergency Motion to Relieve Counsel. (Note: Appellants filed their Emergency Exparte and Proposed Motions for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court's Jurisdiction to Impose Sentence, First and Fourteenth Amendment Rights to Familial Association, since October 28, 2021, requesting an Emergency Hearing within 24 hours of filing. Three years later, Appellants have still not received a fair hearing, no an opportunity to be heard.).

Appellant contends that allowing Attorney Yarborough to remain as his attorney would deprive Appellant from being heard on his issues which would amount to "fraud upon the court," and would deny Appellant a fair appeal required by due process, as stated in *Robinson. United States v. Throckmorton*, 98 U. S. 61 (1878). " Where unsuccessful party has been prevented from fully exhibiting his case, by fraud or deception, as by keeping him away from court, false promise of compromise, or keeping him ignorant of the suit; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where attorney regularly employed corruptly sells out his clients interest; and in similar cases where there has never been a real contest, new suit may be maintained to set aside and annul judgment or decree." See: *Sanders v. Smith*, 431 S.C. 605 (2020), "Fraud Upon the court, as a ground for relief from judgment, is a narrow and invidious species of fraud that subverts to the integrity of

the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." See also: Chewing v. Ford Motor Co., 354 S.C 72 (2003).

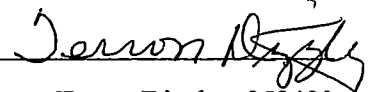
CONFLICT OF INTEREST

Appellant contends that allowing Attorney Yarborough to remain as his counsel would also result in a "conflict of interest, " which would violate his Sixth Amendment right to "conflict free" counsel. State v. Gregory, 364 S.C. 150 (2005), " Defense attorney had actual conflict of interest, and thus defendant was not required to demonstrate prejudice before court would grant motion to be relieved." Cuyler v. Sullivan, 446 U.S. 335 (1980).

For the foregoing reasons this motion must be granted.

Date: May 22, 2023

Respectfully submitted,

S. 
Terron Dizzley, 359480
ACI
1057 Revolutionary Trail
Fairfax, SC 29827

The South Carolina Court of Appeals

The State, Respondent,

v.

Terron Gerhard Dizzley, Appellant

Appellate Case No. 2022-000671

ORDER

After careful consideration, Appellant's motion to relieve counsel is denied. *See State v. Robinson*, 290 N.C. 56, 66, 224 S.E.2d 174, 179 (1976).



FOR THE COURT

Columbia, South Carolina

cc:

Terron G. Dizzley, 00359480
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
William G. Yarborough, III, Esquire
Lauren C Hobbis, Esquire

FILED
May 12 2023

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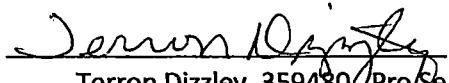
Certificate of Service

I, Terron Dizzley, hereby certify on this 22 day of May, 2023, filed Motion for Reconsideration, Objections Pursuant to Order Denying Emergency Motion to Relieve Counsel and Proceed Pro Se, and A Request for a Fuller and Fareetta Hearing in the above matter by placing in U. S. mail, postage prepaid, sent to the addresses below:

Clerk of Court of Appeals, Jenny A. Kitchings
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Attorney General Allen Wilson
Attorney General Office,
P. O. Box 11549,
Columbia, SC 29211

William Yarborough, III, Esquire
308 W. Stone Avenue
Greenville, SC 29609

s. 
Terron Dizzley, 359480, Pro Se
Allendale Correctional Facility
1057 Revolutionary Trail
Fairfax, SC 29827

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Notice

Dear Honorable Clerk:

Enclosed, please find one original and one copy of Motion for Reconsideration, Objections Pursuant to Order Denying Emergency Motion to Relieve Counsel and Proceed Pro Se, and A Request for Fuller and Fareetta Hearing. Stamp file; please send a copy to me.

Date: May 22, 2023

With kind regards,

s. Terron Dizzley

Terron Dizzley, #359480
ACI
1057 Revolutionary Trail
Fairfax, S.C. 29827



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SC Court of Appeals

Clerk of Court of Appeals, Jenny A. Kitchings
South Carolina Court of Appeals
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