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Sep 13 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PRESTON EMMANUEL HANCOCK,

APPELLANT

APPELLATE CASE NO. 2022-001742

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion by denying Appellant's motion to relieve defense Counsel Boatwright where Appellant providing satisfactory cause for removal having filed a grievance against Counsel Boatwright and retained the services of new counsel, resulting in a violation of Appellant's Sixth Amendment right to the counsel of his own choice?

STATEMENT OF THE CASE

Appellant was indicted during the February 2019 term of the Greenville County grand jury for possession of a weapon by a person convicted of a violent felony. R. 423-424. During the November 2020 term of the Greenville County grand jury Appellant was indicted for two counts of armed robbery. R.425-428. The State, represented by Brian Moroney, called the case to trial on November 28, 2022, before the Honorable Perry H. Gravely and a jury. Appellant was represented by Ashaley Boatwright. R. 1.

Prior to jury selection, defense counsel moved to be relieved. The trial judge ultimately denied the motion and Appellant proceeded to trial with Counsel Boatwright. R. 9-19. Appellant was found guilty as charged after a four-day trial. R. 402, ll. 5-22. The State had initially served Appellant with notice to seek a sentence of life without parole. However, Judge Gravely found that Appellant did not have the necessary prior qualifying convictions under S.C. Code Ann. 17-25-45(F) and therefore, the LWOP notice was not proper. R. 404-418. Appellant was sentenced to twenty-eight years imprisonment on each armed robbery, to be served concurrently, and to five years imprisonment on the weapons charge to be served consecutively, for an aggregate sentence of thirty-three years incarceration. R. 421, ll. 6-12; R. 429-434.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). A motion to relieve counsel is addressed to the discretion of the trial judge and will not be disturbed absent an abuse of discretion. State v. Childers, 373 S.C. 367, 372, 645 S.E.2d 233, 235 (2007) *citing* State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005); State v. Graddick, 345 S.C. 383, 385, 548 S.E.2d 210, 211 (2001). The movant bears the burden to show satisfactory cause for removal. Id.

ARGUMENT

The trial court abused its discretion in denying Appellant's motion to relieve defense Counsel Boatwright where Appellant providing satisfactory cause for removal having filed a grievance against Counsel Boatwright and already retained the services of new counsel, resulting in a violation of Appellant's Sixth Amendment right to the counsel of his own choice.

Relevant Facts

Prior to the start of trial Counsel Boatwright informed the trial court that he had a motion to be relieved as counsel at the request of Appellant. Counsel Boatwright joined in the motion because Appellant had filed a grievance against him with the South Carolina Bar. The grievance alleged that Counsel Boatwright had not investigated the case and had not communicated with Appellant. R. 9, ll. 12-19. Appellant informed the trial court that he had retained Randy Chambers to represent him in the matter. R. 9, l. 24-R. 10, l. 4.

Mr. Chambers was present in the courtroom and confirmed that he had been retained by Appellant's family the prior week but was unaware at the time he was retained that the case was set for trial. He informed the trial court that he was willing to step in and take the case if the court would grant him a reasonable continuance to prepare for trial. He argued that any prejudice from a continuance would fall on Appellant who was incarcerated and would remain incarcerated until the case was tried. R. 10, l. 5-R. 11, l. 13.

The State objected to the motion to relieve counsel arguing that every time the case came close to trial or a plea, Appellant would fire his current counsel and hire another lawyer to delay the proceedings. The State informed the court that Appellant was currently on his eighth retained lawyer in the case. Additionally, the State reminded the trial court that at a status conference on July 21, 2022, the court had cautioned Appellant that he if wanted to change

counsel it had to be ahead of time and that the trial was date certain. After that status conference Appellant relieved his then counsel, Todd Rutherford, and hired Counsel Boatwright. The State characterized the attempt to relieve Counsel Boatwright as “nothing other than a transparent attempt to continue to delay [the case] again.” R. 11, l. 16-R. 12, 23.

The trial court denied the motion to relieve Counsel Boatwright. R. 13, ll. 5-11. However, after a brief recess the court reconsidered the matter to give Appellant a “full opportunity” to speak on his motion to relieve Counsel Boatwright. R. 13, l. 24-R. 14, l. 10. Appellant stated he wanted to relieve Counsel Boatwright so that he could hire a lawyer with more experience. He also informed the trial court that Counsel Boatwright had not been to see him in the three weeks leading up to his trial. Appellant stated there were things they needed to do such as review the videos and come up with pre-trial motions. R. 14, l. 11-R. 15, l. 16. In response to questions from the trial court, Counsel Boatwright stated he had reviewed everything with Appellant and had met with him sufficient times. R. 15, ll. 17-24.

The trial court determined that none of the information provided by Appellant was a basis upon which to change his earlier denial of the motion. R. 17, ll. 3-7. The court offered Appellant the opportunity to go forward *pro se* or to move forward with Counsel Boatwright. Appellant opted to proceed with Counsel Boatwright representing him. R. 18, l. 4-R. 19, l. 14.

Discussion

The Sixth Amendment provides that all criminal defendants shall enjoy the right to have assistance of counsel for their defense. United States v. Gonzalez-Lopez, 548 U.S. 140, 144 (2006). However, “[t]he Sixth Amendment does not confer an absolute right to be represented by one's preferred attorney.” State v. Sanders, 341 S.C. 386, 389, 534 S.E.2d 696, 697 (2000) *citing* Wheat v. United States, 486 U.S. 153 (1988). “This right is circumscribed by the trial

court's obligation to safeguard the integrity of the proceedings and ensure trials are conducted according to the ethical standards of the profession.” *Id. citing United States v. Howard*, 115 F.3d 1151, 1155 (4th Cir.1997); *United States v. Williams*, 81 F.3d 1321, 1324 (4th Cir.1996). “Although the right to an attorney of one's choosing is not unlimited, the Sixth Amendment does give some protection to a criminal defendant's selection of retained counsel.” *Id.* at 390, 534 S.E.2d 697 *citing United States v. Cunningham*, 672 F.2d 1064, 1071 (2d Cir.1982). “Where this Sixth Amendment right is invoked, the court must balance the defendant's right to his own freely chosen counsel against the need to maintain the highest ethical standards of professional responsibility.” *Id.* at 390, 534 S.E.2d at 697–98 *citing Cunningham*, 672 F.2d at 1071.

Trial courts are afforded wide latitude “in balancing the right to counsel of choice with the needs of fairness, and its interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.” *State v. Cottrell*, 421 S.C. 622, 634-635, 809 S.E.2d 423, 430 (2017) (cleaned up). “[T]he *erroneous* deprivation of a defendant’s counsel of choice is a structural error in violation of the Sixth Amendment.” *Id.* at 634, 809 S.E.2d at 430 (emphasis in original).

In evaluating whether the circuit court abused its discretion in denying a motion to relieve or substitute counsel, the appellate court may consider several factors including “the timeliness of the motion, the adequacy of the lower court’s inquiry into the defendant’s complaint, and whether the attorney-client conflict was so great that it resulted in a total lack of communication, thereby preventing an adequate defense.” *State v. Sims*, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991).

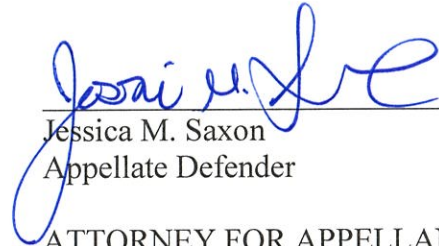
Based upon the factors set forth in *Sims*, the trial court abused its discretion in denying the motion to relieve Counsel Boatwright. Admittedly, Appellant’s motion to relieve Counsel

Boatwright was made on the first day of trial. However, Appellant made the motion at the first available opportunity, which was at the call of the case, and had already gone through the process of retaining new counsel the prior week. Further, the motion was made prior to the jury being selected and sworn. Therefore, Appellant's motion was timely. A reasonable continuance would not have been prejudicial to the State and would have ensured that Appellant proceeded to trial on extremely serious charges with the counsel of his choice.

While the trial court conducted some inquiry into Appellant's complaint against Counsel Boatwright the main thrust of the motion to relieve counsel, that Appellant had filed a grievance against Counsel Boatwright, was not explored. It is important to recognize that Appellant's filing a of grievance entitled Counsel Boatwright to reveal information relating to the representation of Appellant that would otherwise be deemed confidential. See Rule 1.6(b)(6), RPC, Rule 407, SCACR. The main pillar of the attorney-client relationship, ensured private communication between counsel and the accused, was no longer in place at the time of Appellant's trial. Further, at the time of trial, Counsel Boatwright's interest was divided between that of Appellant and that of self-protection to avoid further grievances. Thus, an attorney-client conflict existed which limited the ability of Appellant to freely communicate with his counsel and "was so great that it resulted in a total lack of communication, thereby preventing an adequate defense." Sims, supra.

CONCLUSION

By reason of the forgoing argument, Appellant respectfully request this Court vacate his conviction and remand his case back to the General Sessions Court of Greenville County for a new trial.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 13th day of September, 2023.

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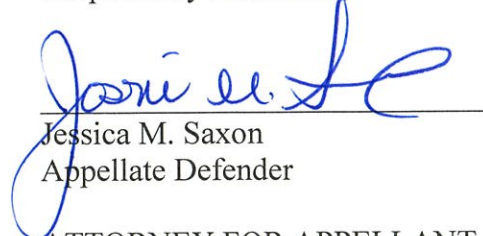
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Preston Emmanuel Hancock states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Perry H. Gravely, which was held on November 28 - December 1, 2022, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, she asks the Court to relieve her as counsel for Preston Emmanuel Hancock.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

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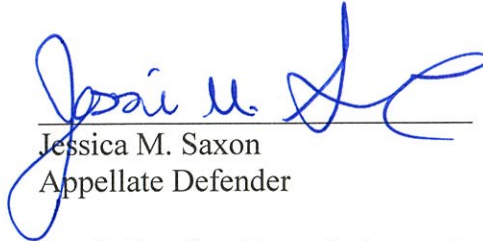
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s): 2019-GS-23-001232, 2020-GS-23-006650A, 2020-GS-23-006651A
- (2) Trial Transcript dated November 28-December 1, 2022
- (3) Sentencing sheets

I certify that this designation contains no matter which is irrelevant to this appeal.



Jessica M. Saxon
Appellate Defender

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Division of Appellate Defense
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This 13th day of September, 2023.

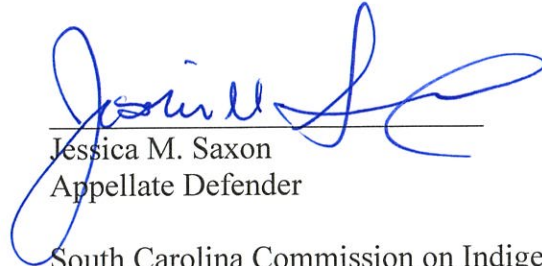
CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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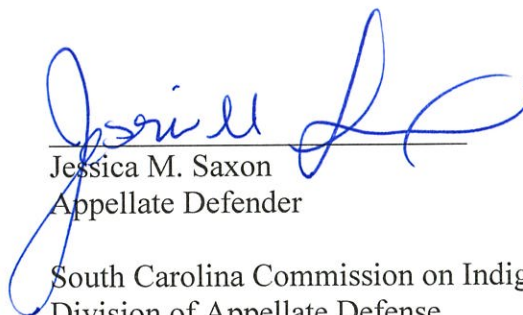
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APPELLANT

APPELLATE CASE NO. 2022-001742

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Preston Emmanuel Hancock, #368170, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 13th day of September, 2023.



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Appellate Defender

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