

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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

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

JAMES DEJARNETTE ROBERTSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2023-000505

RETURN TO MOTION FOR COSTS

The South Carolina Commission on Indigent Defense, Division of Appellate Defense (Agency), shows this Court the following:

1. On May 17, 2023, this Court issued an order granting Counsel William Harry Ehlied, II's Motion to Appoint Counsel Ehlied and Derrick Joseph Enderlin, as petitioner's counsel in this post-conviction relief (PCR) appeal due to petitioner's asserted conflict of interest with the Division of Appellate Defense.

2. This Court also ordered that: "The Commission on Indigent Defense, Division of Appellate Defense, is to remain associated with the case for the purpose of paying for copying and filing services."

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3. In Counsel Ehlies' September 11, 2023, motion for costs he **incorrectly states** the position of the Commission on Indigent Defense, Division of Appellate Defense. It is **not the position** of Appellate Defense that "the attorney's conflict resulting in the appointment of outside counsel extends to the Office of Appellate Defense's print staff and no adequate firewall can be erected to shelter the conflicted attorney".

4. Chief Appellate Defender Robert M. Dudek, informed Counsel Ehlies that while Appellate Defense is responsible for printing, serving, and filing the petition for writ of certiorari and the Appendices, the Division of Appellate Defense cannot be involved in making discretionary decisions on what documents or transcripts to include in the Appendix or how to label documents or arrange items in the Appendix due to this conflict. The Chief Appellate Defender told Counsel Ehlies by email dated Friday, September 8, 2023, that "If you send the Appendix to us print ready, we will print it, file it, and serve it. 'Print ready' simply means that the index is complete, and the Appendix is numbered. We are conflicted out of this case, and therefore we cannot make any discretionary calls on what should be contained in the Appendix or how to index certain matters. Appellate Defense being ready and able to print, serve, and file **your completely compiled Appendix** following the Court's order has never been at issue" (emphasis included in the email).

5. The Agency stands ready to print, file, and serve the petition for certiorari and accompanying appendices. This is a common practice and often ordered by the Court, in cases where Appellate Defense has a conflict.¹ However, what Attorney Ehlies seeks goes far beyond these services to having Agency staff make discretionary calls and advise counsel how to prepare the appendix. Attorney Ehlies appears to assert he does not have the necessary brief writing experience and therefore had to associate Attorney Enderlin as he "has brief writing experience;

¹ Providing in-house copying enables the agency to preserve critical resources for current and future capital litigation.

however, Counsel Enderlin has practiced appellate law only in the Fourth Circuit for the last ten years”.

6. Petitioner through a motion for the appointment of outside counsel dated March 29, 2023, specifically requested continued representation by Attorney Ehliés and Enderlin. This Agency is unaware of any issue being raised at the time of appointment regarding counsel lacking the necessary expertise to complete the brief. Counsel now seeks either to be allowed to “hire paralegal services or in the alternative to appointment other counsel with the ability to finalize the petition. Finally, counsel moves that the briefing schedule be held in abeyance pending resolution of this issue”. This request would only increase the costs of this matter with the appointment of additional counsel or paralegal and could have potentially been avoided had counsel made the Court aware of these limitations.

7. The Commission on Indigent Defense, Division of Appellate Defense, can print the Appendices and Petition for Writ of Certiorari and file them with this Court, and serve opposing Counsel as ordered by this Court’s on May 17, 2023. If certiorari is granted for petitioner, the Division of Appellate Defense can print the briefs and additional copies of the Appendices, serve them on opposing counsel, and file them with this Court. However, due to the conflict of interest the Division of Appellate Defense should respectfully not be forced to be involved in any discretionary decisions pertaining to the content contained in the Appendices or ordered to perform “paralegal” functions such as indexing and numbering of the Appendices.

WHEREFORE, the Commission on Indigent Defense respectfully requests:

1. The Court deny the petitioner's request for paralegal services or additional counsel.
2. Counsel for petitioner be required to submit a timely "print ready" appendix and petition for writ of certiorari at which time this Agency will print, file, and serve these documents.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Hugh Ryan, III", is written over a solid horizontal line.

J. HUGH RYAN, III
Executive Director

HERVERY B. O. YOUNG
Deputy Director and General Counsel

Robert M. Dudek
Chief Appellate Defender

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This 20th day of September, 2023