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Nov 21 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Petition for a Writ of Certiorari from Greenville County

Honorable Michael S. Holt, Circuit Court Judge

EMMANUEL ELLEBY,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER.

Appellate Case No. 2023-001269

MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

The undersigned respectfully shows the Court:

1. The above-captioned case is a State's appeal of a grant of post-conviction relief. Respondent Emmanuel Elleby is indigent, incarcerated, and currently represented by Appellate Defense. Respondent's case was assigned by the Chief Appellate Defender, Robert M. Dudek, to the undersigned ("Appellate Counsel").
2. Respondent is currently serving a sentence of life imprisonment without the possibility of parole for armed robbery and kidnapping. Adam Ruffin of the Richland County

Public Defender's Office represented petitioner during his trial. Subsequently, Mr. Ruffin was employed by Appellate Defense. He now works for the Department of Social Services in Charleston.

3. Respondent's PCR application was granted by the Honorable Michael S. Holt on November 3, 2021, and the State's Rule 59(e) motion was denied on July 5, 2023. Jonathan D. Waller represented respondent at his PCR hearing. Judge Holt's Order Granting PCR is attached as Exhibit A.
4. The ground on which Judge Holt granted PCR was that Adam Ruffin was ineffective in handling his trial.
5. Mr. Ruffin testified at the PCR hearing about an incident that led to Mr. Elleby going to the emergency room and eventually being tried *in absentia*. The PCR court held Mr. Ruffin ineffective for failing to obtain medical records from Respondent's visit to the hospital in order to obtain a continuance and consummate a favorable plea offer. Representing Respondent in this case will require Appellate Counsel to attack Mr. Ruffin's decision-making concerning these medical records.
6. Appellate Counsel discussed Mr. Ruffin's former employment at Appellate Defense and the Order's findings with Respondent. Respondent perceives this to be a conflict of interest and does not consent to waive the perceived conflict. Respondent requested that Appellate Counsel ask this Court to appoint outside counsel to represent him in the State's appeal.
7. Appellate Counsel therefore files this motion requesting that the Court, in its discretion, appoint Respondent an attorney from outside the Office of Appellate Defense and relieve Appellate Counsel as petitioner's attorney.

8. Appellate Counsel has conferred with Russ Barlow, Esq., with the Attorney General's Office, who is representing the State, and he indicates that the State does not oppose this motion.
9. The State has not yet filed its petition for certiorari, but in the event it does so before the Court decides this Motion, Appellate Counsel requests that the deadlines for submitting the return be held in abeyance until the Court issues its decision on this motion.

Respectfully submitted,



David Alexander
Appellate Defender

Attorney for Respondent

November 21, 2023