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SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332

Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

November 30, 2023

RECEIVED

Nov 30 2023

S.C. SUPREME COURT

The Honorable Patricia A. Howard  
Clerk, S.C. Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

Re: Ben Robert Stewart v. The State  
Appellate Case No. 2023-001478

Dear Ms. Howard:

Please accept this letter in lieu of a formal return to Mr. Stewart's *pro se* motion for the appointment of outside counsel filed with this Court on November 27, 2023. Mr. Stewart asserts that the Office of Appellate Defense has a conflict of interest because an Anders brief was filed for him during his direct appeal by Wanda Carter, Esquire of this office. Mr. Stewart also asserts a conflict of interest because he raised the issue of ineffective assistance of appellate counsel in post-conviction relief.

From the order of dismissal, it does appear that Mr. Stewart raised three separate allegations of ineffective assistance of appellate counsel, all pertaining to appellate counsel not raising the legal issue of trial court's abuse of discretion in refusing to grant a directed verdict of acquittal at trial. See Order of Dismissal at page 3. In amended application for post-conviction relief, filed through counsel, Mr. Stewart raised two separate issues of ineffective assistance of appellate counsel for not raising the issue of a jury instruction on inferred malice, and failing to raise the issue of "the trial court's failure to charge constructive possession following a jury charge about the applicability of accomplice liability to the charge of possession of a firearm during the commission of a violent crime." See Order of Dismissal at page 4.

From the order of dismissal, it does not appear that any issue of ineffective assistance of appellate counsel was pursued, and in a telephone conversation with PCR Counsel Ola Johnson, Mr. Johnson did not recall Mr. Stewart's appellate counsel, Wanda Carter, being called as a witness during the PCR hearing. Therefore, it does not appear that there is any meaningful legal issue of the Office of Appellate Defense having a conflict of interest in this case.

Honorable Patricia Howard  
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However, given Mr. Stewart's strong feelings against this office representing him in his present PCR appeal, undersigned counsel respectfully leaves the matter to the discretion of this Court.

If any questions or concerns, please contact me.

Sincerely,



Robert M. Dudek  
Chief Appellate Defender

RMD/sep

cc: Ben Robert Stewart  
Ola Johnson, Esquire  
Mark Farthing, Esquire