

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Jan 17 2024

S.C. SUPREME COURT

Appeal from Lexington County

Honorable Kristi F. Curtis, Circuit Court Judge

NATHANIEL A. HUNTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001611

RETURN TO MOTION FOR APPOINTMENT  
OF OUTSIDE COUNSEL

Undersigned counsel, making this Return to the Motion for Appointment of Outside Counsel in this case, asserts that:

1. In December of 2014, the Lexington County Grand Jury indicted petitioner for first-degree burglary, third-degree criminal sexual conduct with a minor, attempted murder, and possession of a weapon during the commission of a violent crime.

2. On April 24, 2017, petitioner proceeded to a jury trial before the Honorable Thomas W. Cooper. Dayne C. Phillips, Jael D. Gilreath, and Jason S. Chehoski represented Petitioner. L. Suzanne Mayes and Robert E. McNair, III, prosecuted the case. The jury found petitioner guilty on all counts.

3. Judge Cooper sentenced Petitioner to forty-five years imprisonment for burglary in first-degree, fifteen years for third-degree criminal sexual conduct with a minor, thirty years for attempted murder, and five years for possession of a weapon during the commission of a violent crime. These sentences were to run concurrently.

4. Petitioner timely appealed the convictions and sentences. Katherine H. Hudgins, with the Office of Appellate Defense, represented Petitioner on appeal. Counsel Hudgins raised four issues on appeal. The Court of Appeals issued an opinion, State v. Hunter, 2019-UP-312, on August 28, 2019, affirming the convictions and sentences.

5. Petitioner timely filed his post-conviction relief (PCR) application on November 20, 2019. An evidentiary hearing was convened on April 3, 2023 before the Honorable Kristi F. Curtis. Ashley McMahan represented Petitioner. Assistant Attorney General Zachary W. Jones represented the state.

6. Appellate Defender Kathrine Hudgins testified during the PCR hearing. By written order dated October 3, 2023, Judge Curtis denied petitioner's application for post-conviction relief. Judge Curtis ruled that Appellate Defender Hudgins was not ineffective in representing petitioner on appeal while addressing seven separate allegations of ineffective assistance of appellate counsel. Order of Dismissal at 29-33.

7. A timely notice of intent to appeal was filed with this Court. Appellate Defender Joanna Delaney was assigned to represent petitioner in his PCR appeal.

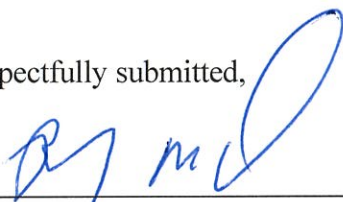
8. Petitioner filed a Motion to Relieve Counsel and Appoint New Counsel with this Court on January 12, 2024. Petitioner asserted a conflict of interest would exist if the Division of Appellate Defense represented him on appeal. Specifically, petitioner wrote: "I have a viable claim that I am raising in the South Carolina Supreme Court against my former appellate counsel Kathrine Hudgins who is currently still employed and active as a lawyer in the South Carolina Commission on

Indigent Defense. For me to go forward with the claim against Kathrine Hudgins will [would be] inappropriate based upon that fact that my current counsel Joanna K. Delany works in the same office as Kathrine Hudgins which will result in a conflict of interest.” Motion to Relieve Counsel and Appoint New Counsel at 1.

9. Since Appellate Defender Kathrine Hudgins testified at the PCR hearing, and the PCR court addressed seven separate allegations of ineffective assistance of appellate counsel in the order of dismissal, while nonetheless finding appellate counsel was not ineffective, undersigned counsel does not oppose the Motion to Appoint Outside Counsel in this case.

WHEREFORE, the Division of Appellate Defense, Commission on Indigent Defense, does not oppose the motion to appoint outside counsel to represent petitioner in his PCR appeal.

Respectfully submitted,



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Robert M. Dudek  
Chief Appellate Defender

January 17, 2024