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JAN 30 2024  
S.C. SUPREME COURT

Appellate No:  
2023 001478

## Motion Affidavit And Cause For Appointment of Counsel

Now COMES the Appellant Ben Robert Stewart, filing prose and against the South Carolina Commission on Indigent Defense representation in totality from the Division of Appellate Defense and request this Honorable Court to consider Appellants Motion For Appointment of Counsel filed November 2023, and Petition to Amend filed December 2023, see Exhibit C-6 against Robert M. Dudek, Chief Appellate Defender, Letter in lieu to the Supreme Court Dated November 30, 2023 as Exhibit C11. The Petitioner cause for Appointment of Counsel for outside Attorney and in the interest of justice is shown in the following stated:

1. I am the Appellant in the initial Post Conviction Relief filed Dec. 9, 2013 and prejudiced in excessive delay of ten years and an intentional tactic for the lost of a vital witness Val Hudson.
2. I raised a total of 32 claims for review pursuant to 17-27-20 s.c. code ann that included 22 claims Amended from PCR Attorney Ola A. Johnson. To be included in Nance v. Ozmint holding
3. The claims filed and submitted for review however, None of the claims were properly argued or ruled on according to the applicable law and standard of review nor were

they supported with the evidence or exhibits to conclude fact finding.

4. PCR Attorney Ola A. Johnson, has been cited for misconduct in office to the Disciplinary Counsel and he also failed to obey a statutory 59 Motion filing.

5. PCR Attorney Ola A. Johnson, continued misconduct when he forwarded and agree to an agreement to representation from the Division of Appellate Defense see; Exhibit C11 Indigent Defense letter November 30, 2023

6. My Cause for Appointment of Counsel exist because Appeals Attorney Wanda Carter was cited for ineffectiveness see; Exhibit C11 Indigent Defense letter Nov. 30, 2023 (refer to claims), also see; C7 Cash slip Receipt For Postage to Wanda Carter, Re; Extradition postage #510, including, Motion For Extension of time and Motion For Transcript at pg 2. "did not follow any instructions which was mailed to this attorney on July 20, 2010 to December 6, 2010," and instead filed an order's opinion, which denied Assistance of Counsel under the Sixth Amendment.

7. PCR Appeals Attorney was also cited for misconduct in office to the Disciplinary Counsel for violation of Rule 1.7 conflict of interest because Attorney Dudek, works at the same office and failed to file requested 59 Motion see; Exhibit C-3 Letter to Appellate Attorney also see; Petition to Amend  
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at pg 2. No. 6.

8. I received notice on January 12, 2024 that Sarah E Shipe Esquire, from the same office (Division of Appellate Defense)

Now represents me.

9. The Request that was seeked from this Honorable Court in the Amended Petition at pg 3. No 7 states; "In the interest of justice Appellant request the Honorable Court to take judicial notice with the facts herein and Appoint Counsel to represent Appellant outside of the stated concurrent conflict".

10. The New PCR Appeals Attorney is cited for Disciplinary review for violation of Conduct and Misconduct because the Attorney lacks in Rule 1.1 competence Rule of Professional Conduct, her letter demonstrates that she does not understand the forms of appellate review, according to 71.1(g) SCRCP (Post Conviction Relief) appellate review; her letter states; "as I decide which issue or issues to submit to the appellate court, Please note that the decision about which issues to submit is mine," see Exhibit C-12, Indigent Defense letter, dated January 9, 2024, also she will not send me my transcript to the PCR hearing and Attorney General file stating; "When I file the Petition, I will send you a copy of all relevant hearing transcripts

and material in the form of an appendix."

11. PCR Appeals Attorney fails to understand her role as advocate to Sixth Amendment Assistance of Counsel and provide assistance under the Uniform Post Conviction Procedure Act, 71.1(d) Appointment of Counsel and appellate review pursuant to 71.1(g) and all "available grounds raised" citing sec(d) still apply and it is the Appellants burden to establish the claims raised at the April 17, 2023 PCR proceedings however, due to PCR Attorney Ola A. Johnson, misconduct in office and disobeyed statutory 59 filing, as well as Attorney Robert Dudek, Chief Appellate Defender refusing to file a 59 motion and the new PCR Appeals Attorney from the Indigent Defense Sarah Shipe Esquire lacked competence Rule 1.1 in violation of Professional Conduct in not appealing the precise claims raised in the PCR Court and correcting the statutory deprivation occurred by Attorney Ola A. Johnson in not filing a 59 Motion, or otherwise depriving appellate review or adjudication.

12. PCR Appeals Attorney violates 1.7 conflict of interest because it should be raised that Appeals Attorney, Wanda Carter was cited in PCR for ineffectiveness but did not defer her stewardship at the April 17, 2023 PCR hearing, by not opposing representing Appellant, the Petitioner now contends that it is intentional conflict of interest and in violation of 8.4(d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

also 8.4(e) engage in conduct prejudicial to the administration of justice and violation of Rules of Professional Conduct, Misconduct 8.4(g) knowingly assist a judicial officer in conduct that is a violation of applicable rules of Judicial conduct or other law.


13. The Appellant, Petitioner, Post Conviction Relief remedy is being denied and equity is uneven.

14. The fact that I sent Appeals Attorney Wanda Carter a package on July 2010 for \$5<sup>10</sup> and Attorney has the case file, with instructions for the Direct Appeal and that Attorney disregarded those instructions speaks volumes; proves lack of communication and denies Assistance of Counsel under the Sixth Amendment when Attorney Carter instead filed on Ander's Brief with false facts of the case that implicates Appellant see; Exhibit C8 Ander's Brief at that demonstrates that even when Appellant plead not guilty and proceeded to trial; presented a defense for actual and factual innocent under the Winship Rule, Attorney Carter destroyed Appellant's legal defense for an appeal and otherwise aided the State see; Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006) quoting United States v. Croniz, 466 U.S. 648 (1984)

15. This violates Due Process and Equal Protection of the laws under, S.C. Const. Art. 1 section 3 and Art. 1 section 14 fair trial and United States Constitution 14<sup>th</sup> Amendment Due Process and Equal Protection of the laws because Petitioner's Habeas Corpus inquiry in Pretrial under the 1<sup>st</sup> for violations under the

4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendment see; Exhibit #1 PCR Application filed December 9, 2013 at pg 8 procedural history Writ of Habeas Corpus filed 02/06/2009 Pre-trial.


WHEREFORE, the Appellant, Petitioner prays this Honorable Courts Grants Appointed Counsel outside of the Indigent Defense Because of the Conflict of Interest and intentional misconduct by Attorneys.

  
Ben Robert Stewart, 223006  
990 Wisacky Highway  
Bishopville, S.C. 29010

PROOF OF SERVICE

I, Ben Robert Stewart, hereby submit my Motion Affidavit And Cause for Appointment of Counsel petition to the Honorable Patricia A. Howard, at Clerk of South Carolina Supreme Court, Post office Box 11330, Columbia, South Carolina 29211, Also, I am submitting A Declaration and Affidavit of facts.

ON this 2<sup>nd</sup> / ST<sup>h</sup> January 2024

  
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