

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Orangeburg County

Honorable Edgar W. Dickson, Circuit Court Judge

Lower Court Case Number: 2015-CP-38-764
Appellate Case Number: 2024-000140

BAYAN ALEKSEY, #5059,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION FOR APPOINTMENT OF OUTSIDE COUNSEL

The undersigned respectfully moves this Court for the appointment of outside counsel for Petitioner, Bayan Aleksey, in order to promote efficiency and conservation of resources and allow for continuity of counsel. In support of this motion, the undersigned would show this Court:

- (1) Petitioner was convicted of murder and sentenced to death by an Orangeburg County jury on September 1, 1998. This Court affirmed the conviction and sentence on direct appeal on November 13, 2000. *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000).
- (2) Petitioner timely sought post-conviction relief (“PCR”), which was denied by the circuit court on February 4, 2010. Petitioner appealed, and this Court denied his petition for writ of certiorari on May 22, 2014.

- (3) Petitioner then sought appointment of counsel to pursue federal habeas relief. In the course of their federal habeas investigation, Petitioner’s counsel identified claims that had not been presented to the state courts, including a claim that Petitioner is a person with intellectual disability for whom the death penalty is barred pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002). Because Petitioner’s claims had not previously been considered by the state courts, counsel filed a successive PCR application raising the *Atkins*, and other, claims. The federal court stayed Petitioner’s federal habeas proceedings pending the resolution of the state PCR proceedings.
- (4) The state circuit court proceeded to a hearing on the *Atkins* claim¹ at which Petitioner was represented by undersigned counsel and Elizabeth Franklin-Best as appointed counsel. Thus, undersigned counsel has represented Petitioner since 2019.
- (5) Petitioner now appeals the denial of his *Atkins* claim. A determination of whether an individual is a person with intellectual disability is fact-intensive and requires consideration of multiple diagnostic criteria. Undersigned counsel is intimately familiar with the facts and diagnostic issues in this case. She was responsible for preparing and presenting the evidence at an evidentiary hearing and was responsible for preparing briefing in the court below. Appointment of undersigned counsel, therefore, would create judicial efficiencies because undersigned counsel would not require additional time to become familiar with the record and legal issues.
- (6) Undersigned counsel is also appointed to represent Petitioner in his currently stayed federal habeas proceedings.

¹ The PCR court dismissed the non-*Atkins* claims finding they “are procedurally barred as untimely and successive without exception.”

(7) Finally, though he understands he does not have a right to counsel of his choice, Petitioner has indicated that he desires undersigned counsel to continue to represent him in this appeal.

Respectfully, for the above reasons, undersigned counsel requests that this Court appoint her to represent Petitioner on appeal. Furthermore, counsel request that time limits governing assembling the appendix and filing of a petition for writ of certiorari be tolled during the pendency of this motion.

Respectfully submitted,

s/ Lindsey S. Vann

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February 7, 2024.