

Nathaniel A. Hunter # 372378  
Tyger River Correctional Institution-U2-126  
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Enoree, SC 29335



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THE SUPREME COURT OF  
SOUTH CAROLINA

NATHANIEL A. HUNTER #392378  
PETITIONER

v.

STATE OF SOUTH CAROLINA  
RESPONDANT

SUPREME COURT OF  
SOUTH CAROLINA

APPELLATE CASE NO.  
2023-001611

MOTION TO RELIEVE  
COUNSEL AND APPOINT  
NEW COUNSEL

Comes now, the Petitioner presenting his motion to Relieve Counsel and Appoint New Counsel due to a conflict of Interest pursuant to Rule 409 South Carolina Rules of Professional Conduct Rule 1.7 (a)(2).

Conflict of Intent: Current Client, Petitioner does not give Ashley A. McMahon informed consent to represent him for his writ of Certiorari appeal based upon the following REASONS.

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Petitioner was previously represented by Ashley A. Memahan at his post-conviction relief hearing on April 3<sup>rd</sup>, 2023. Petitioner's application was denied and dismissed with prejudice and filed with the Lexington County Clerk of Court on October 11<sup>th</sup>, 2023 by the Honorable Judge Kristi F. Curtis.

The following extreme conflict between Petitioner and Counsel Memahan took place before, during and after Petitioner's Post-Conviction Relief hearing.

First, Petitioner requested Counsel Memahan to hire a Touch-DNA expert to explain to the Post-Relief court that Touch-DNA evidence is not conclusive evidence of guilt when there is a reasonable explanation for its presence as well as the complicated concepts of Touch-DNA.

Counsel Memahan did not hire a Touch-DNA expert, pursuant to Weldon v. State, 436 S.C. 69, 870 S.E.2d 183 (2021), whereas, the South Carolina Court of Appeals held, "further, we find the presence of petitioner's DNA on a single piece of duct tape recovered from victim does not constitute overwhelming evidence such that it precludes a finding of prejudice.

Touch-DNA evidence is not DNA evidence demonstrating guilt such as blood, saliva, or semen and that testimony from a DNA expert on Petitioner's behalf was never relayed to the jury or the PCR Court. Counsel Memahan prohibited petitioner from having a fair bite at the apple at Petitioner's Post-Conviction-Relief hearing by failing to present a Touch-DNA expert on Petitioner's behalf.

Secondly, Petitioner requested PCR Counsel Ashley Memahan to allow petitioner to listen to the victim's unredacted recorded interview with Investigator Thomas Griffin at the hospital to see if there was exculpatory evidence on the recording; unfortunately Counsel Memahan refused to let petitioner hear the recording and that violated petitioner's Fourteenth Amendment right to Due Process.

Petitioner wrote Counsel Memahan letters requesting that she amend his Post-Conviction-Relief application, however, she did not add all of the issues that Petitioner requested her to amend to his Post-Conviction-Relief application, whereas the issues were viable claims.

Some of the issues were completely reworded and not supported by facts in the record, see Amended PCR application page 1 section i and ii. However, she did raise a frivolous claim that Petitioner did not request her to raise which was Petitioner's trial counsel failure to object to the trial court's inferred malice instruction, see amended PCR application page 3, sect. P.

The case law that Counsel Memahan cited was State v. Belcher, 385 S.C. 599 (2009) and State v. Burdette, 427 S.C. 490-- which clearly states that inferred malice cannot be challenged on Post-Conviction - Relief, furthermore, the State v. Burdette, case was published after my trial was concluded.

Two of the issues that Petitioner requested Counsel Memahan to amend to his PCR application pertained to prosecutorial misconduct and Counsel Memahan did not amend those issues to Petitioner's PCR application.

Counsel Memahan told me that I cannot raise prosecutorial misconduct on Post-Conviction - Relief, I did some research on my own and discovered that information from Counsel Memahan was false.

I did not have ample time to go over my amended PCR application with Counsel Memahan to correct any of the issues based upon the fact that I did not receive my amended Post-Conviction - Relief application until the morning of the evidentiary hearing which severely prejudiced me.

All of the problems previously mentioned in this motion forced me to Request a continuance from the Post-conviction - Relief court which was denied and I was forced to go forward with the evidentiary hearing which was a direct violation of my fifth amendment Right to a fair Trial / Proceeding and my Fourteenth amendment Right to Due Process. After my Request for a continuance was denied I requested that counsel memahan be Relieved as my counsel due to a numerous amount of conflicts between us and all of the problems that arised prior to my Post-conviction - Relief hearing taking place.

Counsel memahan informed the PCR court that she would be happy to be Relieved as my counsel due to the conflict that arised between her and I. However, the PCR court denied my request for counsel memahan to be Relieved as my counsel which deprived me of having a fair bite at the apple in my Post-conviction - Relief proceedings.

When the hearing concluded, I verbally Requested Counsel memahan to do a proposed order as well as a Rule 59(E) motion to amend if all of the issues that were raised were not ruled upon. I wrote Counsel memahan letters Requesting that she do a proposed order and she wrote me back stating, "I'm not going to make the judge angry by preparing a proposed order if she doesn't ask me to do one."

PLEASE find that letter enclosed in the envelope accompanying this letter. I also wrote letters respectfully requesting her to do a Rule 59(E) motion to amend if all of the issues that were raised were not ruled upon in which they were not.

PLEASE find enclosed that letter as well accompanying this letter. Counsel memmahon assured me that she would file a Rule 59(E) motion to amend, but unfortunately she did not and four issues that were presented in my memorandum of law in support of my application for Post-conviction-Relief were not ruled upon pursuant to... Fishburne v. State, 427 S.C. 505 (2019), section 17-27-80 of the South Carolina Code and Rule 52 (4) of the South Carolina Rules of Civil Procedure. The issues that were not ruled upon in my memorandum of law were Issue #3, 4, Issue 6, and 5, Section (2) Prosecutor failed to disclose Exculpatory material.

To ensure that my Fifth Amendment Constitutional Right to a Fair Trial / Proceeding and my Fourteenth Amendment Right to Due Process are protected I am requesting that the Supreme Court of South Carolina appoints Petitioner NEW Counsel due to Petitioner's previous conflict with Petitioner's former PER Counsel Ashley McMahon. I beg the Courts indulgence and may it please the Court that Petitioner's Request for the appointment of NEW Counsel be granted:

Note: Although Petitioner does not have a constitutional right to effective assistance of counsel in state post-conviction proceedings pursuant to Coleman v. Thompson, 501 U.S. 722 (1991), Petitioner does have a constitutional right to adequate representation pursuant to the Strickland v. Washington standard 466 U.S. 668 (1984). Petitioner's and Counsel Memahan's attorney-client relationship is totally irreconcilable and it will be inappropriate for Petitioner to proceed with Ashley Memahan as his counsel for his writ of certiorari appeal.

cc: Ashley A. Memahan, Esquire.