

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN 22 2012

Appeal from Cherokee County
Honorable J. Michael Baxley, Circuit Court Judge

S.C. SUPREME COURT

JONATHAN KYLE BINNEY,

RESPONDENT/PETITIONER,

V.

STATE OF SOUTH CAROLINA,

PETITIONER/RESPONDENT.

MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

The undersigned respectfully moves this Court for the appointment of outside counsel for petitioner, Jonathan Binney, based on a conflict of interest. In support of this motion, the undersigned would show this Court:

- (1) Petitioner was indicted by the Cherokee County grand jury for the offenses of murder and burglary.
- (2) The State sought the death penalty on the murder charge. Mr. Binney was represented at trial by Mitchell Slade and Trent Pruett. He was found guilty of murder and burglary.

Following a penalty hearing, the jury recommended that Mr. Binney be sentenced to death, a death sentence was imposed by the Honorable Joseph Derham Cole on November 14, 2002.

(3) Mr. Binney appealed his convictions and sentences. He was represented on direct appeal by Joseph Savitz of the South Carolina Office of Appellate Defense. This Court affirmed Mr. Binney's convictions and death sentence. *State v. Binney*, 362 S.C. 353, 608 S.E.2d 418 (2005). Rehearing was denied on February 19, 2009.

(4) Mr. Binney filed a timely application for post-conviction relief in the Cherokee County Court of Common Pleas. John H. Blume and Sheri L. Johnson were initially appointed by the Honorable Michael Baxley to represent the Applicant. Emily C. Paavola was also subsequently appointed and participated as counsel at the PCR hearing. In the final amended application for post-conviction relief, Mr. Binney raised issues of ineffectiveness of appellate counsel in addition to ineffective assistance of trial counsel. Appellate counsel Joseph Savitz testified at the PCR hearing. The order of dismissal makes specific lengthy findings regarding the issue of ineffective assistance of appellate counsel and denies relief on that basis on pages 56-69. Those pages of the order are attached as exhibit "A." However, Judge Baxley did grant post-conviction relief on another claim and ordered that a new sentencing phase be conducted. Both Mr. Binney and the State have filed notices of intent to appeal.

(5) Undersigned counsel requests that Emily C. Paavola be appointed to represent Mr. Binney in connection with this appeal.¹ Outside counsel should be appointed because: (a) the Office of Appellate Defense has a conflict of interest given that the former Chief Attorney of the Office was appellate counsel; (b) issues regarding the competency of his representation will be

¹ Mr. Blume and Ms. Johnson will assist Ms. Paavola in a *pro bono* capacity if Ms. Paavola is appointed.

raised in the instant appeal; and, (c) Ms. Paavola is familiar with the trial and PCR record, and thus, even aside from the conflict of interest is better situated to provide the best representation on appeal.

(6) Finally, there are several transcripts that must be ordered to prepare the appendix for the appeal. Mr. Binney requests that the time to order the transcripts and prepare the appendix be tolled while this motion is pending in this Court.

Respectfully, for the above reasons, undersigned counsel requests that this Court appoint outside counsel, specifically Emily C. Paavola, to represent Mr. Binney on appeal. Furthermore, counsel requests that time limits governing assembling the appendix be tolled during the pendency of this motion.

Respectfully submitted,



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Counsel for Respondent/Petitioner

This 20th day of June, 2012

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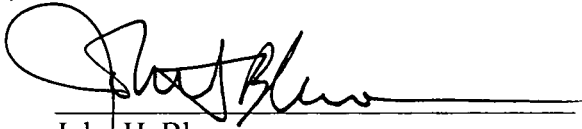
V.

STATE OF SOUTH CAROLINA,

PETITIONER/RESPONDENT.


CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion for Appointment of Outside Counsel in the above referenced case has been served upon opposing counsel, William Edgar Salter, Esquire this 20th day of June, 2012.



John H. Blume
Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 20th day of June, 2012.



Notary Public for South Carolina
My Commission Expires: 6/19/16

BLUME WEYBLE & NORRIS, LLC

ATTORNEYS AT LAW

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June 20, 2012

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The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

S.C. Supreme Court

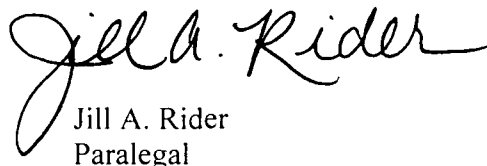
Re: *Binney v. State*

Dear Mr Shearhouse:

Please find enclosed for filing, with proof of service, the original and seven copies of the Applicant's Motion for Appointment of Outside Counsel in the above-referenced case. Please clock in the extra copy and return it to me in the enclosed self-addressed stamped envelope.

If you should have any questions, please do not hesitate to contact me.

Sincerely,


Jill A. Rider
Paralegal

cc: William Edgar Salter, III