

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County

G.D. Morgan, Jr., Circuit Court Judge

RECEIVED

Sep 20 2024

S.C. SUPREME COURT

ALEX DAMON ANDERSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-001030

PETITION FOR SUBSTITUTE COUNSEL

Pursuant to Rule 224 of the South Carolina Appellate Court Rules, the undersigned counsel for petitioner, who is employed at SCCID, would petition this Court for an Order to Substitute Counsel in the above-captioned PCR appeal. The reason being that the undersigned counsel, who represents petitioner in his PCR appeal, has noted a conflict where petitioner alleged PCR claims of ineffective assistance of trial counsel Hervery B.O. Young, who is also employed at SCCID. The supportive facts follow.

1.) Petitioner Alex Damon Anderson pled guilty to voluntary manslaughter during the February 2015 term of the Anderson County General Sessions Court before Judge R. Scott Sprouse, and was sentenced to imprisonment for a period of seventeen years. Petitioner was represented at the guilty plea proceeding by trial counsel. The case was prosecuted by Anderson County Deputy Solicitor Catherine T. Huey. At the outset, petitioner was indicted on charges of murder and possession of a weapon during the commission of a violent crime. See 2013-GS-04-01991.

2.) On January 13, 2016, petitioner filed a PCR application with the Anderson County Office of the Clerk of Court therein raising allegations of ineffective assistance of trial counsel. The Respondent filed a Return on September 26, 2016. A PCR hearing was convened on August 24, 2022, at the Anderson County Courthouse before Judge G.D. Morgan. Petitioner was present at the hearing and represented by R. Mills Ariail, Junior, Esquire, and Assistant Attorney General Taylor Zane Smith appeared on behalf of the state at the hearing. In addition, trial counsel appeared at the PCR hearing and testified at that time. On May 30, 2024, Judge Morgan filed an Order of Dismissal wherein all PCR claims of ineffective assistance of trial counsel were denied in the case. After petitioner appealed Judge Morgan's PCR Order, the undersigned counsel was assigned to represent petitioner on PCR appeal.

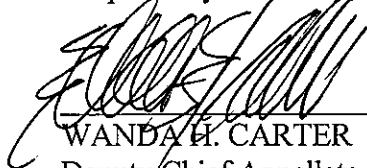
3.) Inasmuch as petitioner's PCR claims were against trial counsel, who is presently employed at SCCID, and because the undersigned counsel, who represents petitioner on his PCR appeal, is also presently employed at SCCID, then an ethical dilemma and a clear and obvious conflict exist with respect to the undersigned counsel's representation of petitioner in the case on appeal. In effect, the undersigned counsel has been placed in the position of having to evaluate the effectiveness or ineffectiveness of another SCCID attorney. Therefore, the undersigned counsel

would seek to avoid actual impropriety or the appearance of impropriety in this PCR appeal assignment due to concurrent and/or dual representation(s). See South Carolina Appellate Court Rule 407, Rules of Professional Conduct, Generally, Sections 1.10, 1.11, and 1.9.

4.) In conflict of interest cases, there must be an examination of divided loyalties and dual representations, particularly where an attorney places himself in a situation inherently conducive to divided loyalties. See Duncan v. State 281 S.C. 435, 315 S.E.2d 809 (1984), citing to Zuck v. State of Alabama, 588 F.2d 436 (5th Cir. 1979) and Castillo v. Estelle, 504 F.2d 1243 (5th Cir. 1974).

WHEREFORE, based on the information submitted above, the undersigned counsel would request an Order for Substitute Counsel in petitioner's PCR appeal, and an Order holding the appeal in abeyance pending a resolution of this matter.

Respectfully submitted,



WANDA H. CARTER
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 20th day of September, 2024.