

STATE OF SOUTH CAROLINA
In the Court of Appeals

Ex Parte: Tara Dawn Shurling, Attorney, Appellant,

In Re:
State of South Carolina, Respondent,

v.

Anthony Hackshaw, Defendant

Appellate Case No. 2012-208848

The Honorable James R. Barber
Richland County
Court of General Sessions
Trial Court Case No. 2009GS4006690, 2009GS4006691,
2009GS4006696, 2009GS4006689

FINAL REPLY BRIEF OF APPELLANT

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CONSTITUTIONAL PROVISIONS

U.S.C.A. Const. Amends, 6, 14.7

STATUTES

S.C. Code Ann. § 17-3-504,5

Reply to Respondent's Argument I.

Counsel has explained that in the Order she drafted for Judge Childs she included the language in question with the desire to obtain approval to submit an interim bill for fees in an amount of \$15,000.00 without further advance approval of the Court. The Order submitted to Judge Childs also expressly provided for the total fees claimed by Counsel to be approved by the presiding Judge at the conclusion of the case. Respondent claims that the statutory interpretation urged by Counsel is somehow improper because it only references the last line of §17-3-50 (C) in isolation. That position is not only incorrect, it is inconsistent with the prior rulings of our Supreme Court on this issue. It is true that the last line of §17-3-50(C) is where we find the statutory language which states that payment of fees in excess of the statutory caps and rates must be based upon a certified finding by the Court that the payment is necessary *because "the services provided were reasonably and necessarily incurred."* In addition however, our Supreme Court has expressly found that requests for payment of fees in excess of the rates and limits set by statute are addressed to the discretion of the trial judge. *See, Ex Parte Brown, 393 S.C. 214, 220, 711 S.E. 2d 899, 902 (June 11, 2011),* citing, *Bailey v. State, 309 S. C. 455, 464, 424 S.E.2d 503, 508 (1992).* Subsection C of §17-3-50 is the portion of the section which expressly addresses payment of bill in excess of the caps set forth in subsections A and B. Therefore, notwithstanding the language Counsel put in her proposed order submitted to Judge Childs, and ultimately signed by Her Honor, raising the fee rate and the fee cap, the trial judge retained the authority to ultimately decide the amount of fees reasonably and necessarily incurred in this case.

Counsel is mindful that SCCID has successfully gotten a budget *proviso* attached to §17-3-50(C) for budge year 2012- 2013 which requires advance approval of all fee rate or cap increases. Said *proviso* was not in place at the time Counsel represented this court-appointed client or at the time the case was billed.¹ The Respondent notes that Judge Barber said he had never had a court-appointed attorney come to him after the fact and ask for payment in excess of a statutory fee cap. While Counsel is aware that this statement was made, she has submitted that SCCID has in fact, until fairly recently, routinely paid fees in excess of caps at the conclusion of cases, as long as they were approved by the presiding judge, for many years.

Argument II.

Counsel has not suggested that she should be able to force any judge to communicate with another judge concerning the intent behind a previous ruling. In this case, Counsel submitted that she had reason to believe that Judge Childs understood the intent behind the disputed language in the Order in question and that, if asked, she would be willing to clarify that point for he Court. Where the interpretation of this portion of the order was so critical to Counsel's billing request, she submitted that it was reasonable to ask just Childs to clarify her intent *if she was willing to do so*. Counsel submits that the lower court's refusal to allow Counsel to seek clarification of that Order, or to do so himself, constituted an abuse of discretion on the facts of this case.

¹ Counsel would assert that this *proviso* is ultimately ill advised inasmuch as it requires Counsel to seek and increase in caps before the attorney really knows if the case will justify such an increase. Ultimately however, the point will soon be moot in light of the new contract system for court-appointed lawyers recently put into place by SCCID.

Argument IV

The Brief of Respondent significantly misstates Counsel's argument. Counsel never suggested that the question of what a reasonable fee would be controlled by an attorney's overhead. Counsel did note that the fees limitation imposed by the presiding judge in this matter would amount to a taking where, in light of the time expended in this matter by her and her associate who was approved by Judge Childs as second seat in this murder case, the fees billed would barely even pay her overhead and her associate's salary while working on this case, much less compensate her in any way for her work on this case. Counsel admittedly did not submit records to establish her average overhead costs during the hearings held in this matter below. She did establish however, that she spent a total of 335.7 hours on this case which involved a trial that lasted 7 days. Dividing her total hours by an average 40 hour work week, that comes to 7.9 weeks or approximately two months. Even without specific records, this court can readily conclude that average office rent, utility bills, Westlaw service, office equipment, paralegals and other support staff, an associate's salary, insurance bills, postage, office supplies and other ordinary expenses could barely be covered by the fees billed in this case much less the \$15,000.00 approved by the Court in this matter.

Counsel apologizes for not fully captioning each of her arguments in her Initial Brief of Appellant and asks that the Court consider the merits of her arguments notwithstanding this oversight. She would ask the Court to note that she does not get to bill for any of the time she has had to expend trying to collect reasonable compensation for her work in this case; nor will she be allowed to bill for her time and expenses having to appeal the ruling of the lower court on her fee requests. More to the point, the

presiding Judge in this matter has not ever ruled on the reasonableness of Counsel's total fees requested for the work she and second seat counsel did in this case. Had he exercised his discretion pursuant to §17-3-50 (C) and done so, Counsel would have been in the position to argue that the total fees actually approved *by him* were so unreasonable as to constitute an unconstitutional taking. Where he refused to exercise his discretion in this billing matter, Counsel has made the claim that his refusal to do so is resulting in an obvious unconstitutional taking. U.S.C.A. Const. Amends,6,14.

Counsel does take issue with the lower court's characterization of Counsel's fee requests as asking for some sort of stimulus package for her law firm. As more fully explained in Counsel's Initial Brief, this was an unusual case of great complexity. The time expended in this case was admittedly outside the norm. The fees requested in this case are not typical of Counsel's fee requests in even other murder cases however, Counsel submits that they were they were reasonable in light of the demanding nature of the case and the time expended in providing this client reasonable professional assistance of counsel. One can rest assured that even our chief circuit public defenders could not afford to work for their salaries if they had to pay all their office overhead out of that compensation. As argued by Counsel below, while this was not a death penalty case, it demanded as much or more of Counsel's time and attention. Counsel has asserted that this client, who steadfastly maintained actual innocence and had no prior criminal record, deserved no lesser legal representation because the State was seeking to lock him up for thirty years to life rather than to kill him.

CONCLUSION

For all the reason set forth herein, as well as those addressed in Counsel's initial brief, Counsel seeks a reversal of the lower court order limiting her fees in this matter.

Alternatively, she seeks this Court's ruling that she should be allowed to seek clarification of Judge Child's Order concerning fees in this case.

Respectfully submitted,


TARA DAWN SHURLING
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SC Bar No. 5099

This 1st day of August, 2013.

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CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that certificate that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR. The undersigned also certifies that this Final Brief is in compliance with the August 13, 2007 Order of the Supreme Court of South Carolina relating to the inclusion of personal data identifiers and other sensitive information in documents.


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This 1st day of August, 2013.