

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County

Honorable Michael Nettles, Circuit Court Judge

RECEIVED

CA No. 08-CP-43-00905

OCT 03 2013

S.C. SUPREME COURT

BOBBY WAYNE STONE,

APPELLANT,

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 appellant, Bobby Wayne Stone, based on a conflict of interest. In support of this motion, the undersigned would show this Court:

(1) Appellant was indicted by the Sumter County grand jury for the offenses of murder, burglary in the first degree, and possession of a firearm during to commission of a violent crime.

(2) The State sought the death penalty on the murder charge. Mr. Stone was represented at trial by Cameron B. Littlejohn, Jr. and James H. Babb. He was found guilty on all charges.

Following a penalty hearing, the jury recommended that Mr. Stone be sentenced to death, a death sentence was imposed by the Honorable Markely Dennis on January 29, 1997.

(3) Mr. Stone appealed his convictions and sentences. He was represented on direct appeal by Joseph L. Savitz, III of the South Carolina Office of Appellate Defense. This Court affirmed Mr. Stone's convictions and his death sentence was reversed and remanded. *State v. Stone*, 567 S.E.2d 244 (S.C. 2002). On February 27, 2005, a second jury also imposed a sentence of death on Mr. Stone. This Court affirmed Mr. Stone's second death sentence on direct appeal. 655 S.E.2d 487 (S.C. 2007).

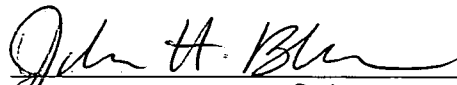
(4) Mr. Stone filed a timely application for post-conviction relief in the Cherokee County Court of Common Pleas. John H. Blume and Robert E. Lominack were initially appointed by the Honorable Michael Nettles to represent the Appellant. Emily C. Paavola was subsequently appointed to replace Mr. Lominack as PCR counsel. In the final amended application for post-conviction relief, Mr. Stone 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 findings regarding the issue of ineffective assistance of appellate counsel and denies relief on that basis. Mr. Stone has filed a notice of intent to appeal.

(5) Undersigned counsel requests that Emily C. Paavola be appointed to represent Mr. Stone 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 at issue 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.

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

Respectfully, for the above reasons, undersigned counsel requests that this Court appoint outside counsel, specifically Emily C. Paavola, to represent Mr. Stone on appeal.

Respectfully submitted,



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Counsel for Appellant

This 2nd day of October, 2013

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Motion for Appointment of Outside Counsel in the above referenced case has been served upon opposing counsel, Alphonso Simon, Esquire this 2nd day of October, 2013.



Jill A. Rider