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OCT 11 2013

S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

October 11, 2013

HAND DELIVERED

The Honorable Jeanette McBride
Clerk of Court, Richland County
Richland County Courthouse
1701 Main Street
Columbia, South Carolina 29201

Re: Quincy Jovan Allen v. State ;
2010-CP-40-3644 (Capital PCR action).

Dear Ms. McBride:

Enclosed is the *Response in Opposition to Motion to Quash Competency Evaluation Scheduled October 14, 2013*, dated October 11, 2013, which we are submitting for filing in the above referenced action.

Sincerely,

Melody J. Brown
Senior Assistant Attorney General

/MJB

cc: ~~The~~ Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina (w/enclosure)
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge (w/enclosure)
Christopher W. Adams, Esq. (w/enclosure)
Michael A. Siem, Esq. (w/enclosure)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

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Quincy Jovan Allen, # 6019,)

C/A No. 2010-CP-40-03644

OCT 11 2013

Applicant,)

(Capital PCR)

S.C. Supreme Court

vs.)

RESPONSE IN OPPOSITION

State of South Carolina,)

TO MOTION TO QUASH

COMPETENCY EVALUATION

Respondent.)

SCHEDULED OCTOBER 14, 2013

On June 18, 2013, the Supreme Court directed the Honorable R. Ferrell Cothran, Jr., Circuit Court Judge, "to conduct a hearing to determine whether petitioner is competent and his decision to waive his right to PCR is knowing and voluntary." The Order, as of this writing, has neither been rescinded nor modified.

The Order was issued based upon a request from Applicant, Quincy Jovan Allen, to the Supreme Court of South Carolina dated June 13, 2013, received June 14, 2013, requesting to waive his appeals and be executed. (Attachment 1). Applicant sent a letter to the Office of the Attorney General dated June 16, 2014, received June 20, 2013, alerting the Office to the fact that he sent a letter to the Supreme Court of South Carolina to waive his appeals and be executed by lethal injection. (Attachment 2). By letter dated August 5, 2013, received August 7, 2013, Applicant again contacted the Supreme Court to affirm his desire to waive his appeals and be executed, and further inquired as to "what the problem" was in receiving a hearing on the matter.

(Attachment 3).

In order to accomplish the hearing requested by Applicant and authorized by the June 18, 2013 Order of the Supreme Court of South Carolina, this Court issued an Order on August 19, 2013, for an independent evaluation of competency to waive his appeals and be executed. The South Carolina Department of Mental Health has been conducting review of medical records, transcripts and other records in order to complete the opinion. An interview with Applicant is scheduled for Monday, October 14, 2013.¹

By letter dated October 4, 2013, PCR counsel for Applicant submitted two additional statements from Applicant to the Supreme Court of South Carolina, and requested the Court either “vacate or rescind” the June 18, 2013 Order. By letter dated October 8, 2013, Respondent noted that Applicant’s most recent statement was not an unequivocal retraction, but conditioned on terms not yet met. Specifically, the statement dated October 4, 2013 purports to conditionally withdraw the request to waive if another attorney is appointed for his PCR action. Mr. Allen asserts he will continue his “PCR if Elizabeth Franklin-Best is [his] attorney.” (Allen Statement dated October 4, 2013, Attached to Adams Letter of October 4, 2013). In short, the most recent statement from Mr. Allen does not clearly and unequivocally seek to withdraw his request to waive his appeals and be executed. Therefore, Respondent submitted the request to vacate or rescind should be denied. Again, Respondent has no notice at this time that the Supreme Court of South Carolina has acted upon the request.

The competency evaluation has been ordered specifically to determine, from a medical perspective, if Applicant is competent to waive his appeals and be executed. PCR counsel’s assertions in the Motion to Quash blends the ordered evaluation with an order to evaluate for

¹ Dr. Frierson has advised that this is the first scheduled interview. He has further advised that at least one other interview will be required.

competency for the PCR action (or perhaps even competency at trial, it is unclear).² At any rate, the arguments lack persuasion as they lack relevance. In short, Applicant has initiated this action by repeatedly requesting to waive his appeals. The present evaluation simply determines whether he is able to give a knowing and voluntary waiver.³ Applicant's request to waive his appeals in total and be executed can be heard independent of the PCR representation. *Hill v. State*, 377 S.C. 462, 472, 661 S.E.2d 92, 97 (2008) ("counsel for Hill very eloquently elaborated on Hill's decision, advising that although he and co-counsel did not agree with Mr. Hill's decision to

² The reliance on *Basham v. United States*, 2013 WL 2446104 (D.S.C. 2013), is particularly illustrative. *Basham* is a federal death penalty case where the Court ordered Basham to submit to evaluation based on Basham's request to drop his appeals. PACER entries reflect an evaluation was ordered. See ECF # 1397, 1401, 1407, 1424, 1425. Further, the docket reflects a "psychiatric report" was received on January 19, 2012, (ECF# 1433). Further still, and of particular note given the conditional retraction here, the docket reflects an entry that the District Court decline to "bargain" with the inmate for conditions requested. (ECF #1448). It appears *Basham* supports Respondent's position more than PCR counsel's position.

³ As stated, the present evaluation is for the limited purpose of determining competency for waiver purposes. PCR counsel's assertions that the evaluation "would merely allow the State an improper opportunity to have a state psychologist interview Mr. Allen, against his and his attorneys' wishes, without any legitimate basis," in the absence of a suggestion of questionable mental status, and in violation of due process and the right against self-incrimination is incorrect for a number of reasons. (Motion, pp. 1-3). First, it can hardly be said to be against Mr. Allen's wishes as Mr. Allen has requested waiver and a hearing. Second, the evaluation goes to present competency. Third, if the PCR continues and mental status is raised in the PCR action, the State will likely seek evaluation which does not violate either due process or the right against self-incrimination. See generally *State v. Bixby*, 388 S.C. 528, 558-559, 698 S.E.2d 572, 588 (2010) ("we must address whether a court can order a criminal defendant to submit to a mental health evaluation where that defendant indicates his intent to introduce evidence concerning his mental health during the sentencing phase of his trial. This is a novel issue in South Carolina. We answer the question in the affirmative." Further, the Court found "the trial court's order compelling Appellant to submit to a mental evaluation did not violate his Fifth Amendment right to self-crimination" and safeguards were used to protect the information for the appropriate phase); *State v. Locklair*, 341 S.C. 352, 535 S.E.2d 420 (2000) (regarding mental evaluation for competency). At bottom, the State did not initiate the waiver process, and the evaluation is part of the waiver process. PCR counsel's assertions of "improper opportunity" and concerns of constitutional error are without merit.

forego any further appeals, there was no basis upon which to challenge his competency, and the decision had been contemplated by Hill for nearly eight years, and was clearly made knowingly, voluntarily, and intelligently.”) If, indeed, PCR counsel’s assertion is correct that PCR counsel does not contest Applicant’s competency, (Motion to Quash, p. 1), then PCR counsel should not be allowed to thwart Applicant’s request.

Further, the Supreme Court of South Carolina has clearly stated that the Court will review both prior mental health history and present mental health status:

In deciding the issue of a capital defendant’s competency, this Court carefully and thoroughly reviews the following: the defendant’s history of mental competency; the existence and present status of mental illness or disease suffered by the defendant, if any, as shown in the record of previous proceedings and in the competency hearing; the testimony and opinions of mental health experts who have examined the defendant; the findings of the circuit court that conducted a competency hearing; the arguments of counsel; and the capital defendant’s demeanor and personal responses to the Court’s questions at oral argument regarding the waiver of appellate or PCR rights.

State v. Motts, 391 S.C. 635, 645-646, 707 S.E.2d 804, 809 (2011) (citing *Reed v. Ozmint*, 374 S.C. 19, 24, 647 S.E.2d 209, 211-12 (2007)). See also *Motts*, 391 S.C. at 647, 707 S.E.2d at 810 (referencing further psychiatric interview “*the day of the hearing*”) (emphasis added). The evaluation pursuant to *Singleton v. State*, 313 S.C. 75, 437 S.E.2d 53 (1993) is not only authorized, but expected under state court precedent.

WHEREFORE, having made the response in opposition, Respondent submits PCR counsel’s Motion to Quash should be denied.

Respectfully submitted,

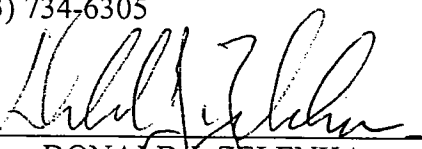
ALAN WILSON
Attorney General

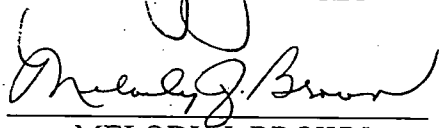
JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General

P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By: 
DONALD J. ZELENKA

By: 
MELODY J. BROWN
ATTORNEYS FOR RESPONDENT

October 11, 2013.
Columbia, South Carolina.

**ATTACHMENTS TO RESPONSE IN OPPOSITION TO MOTION TO QUASH
COMPETENCY EVALUATION**

ATTACHMENT 1

South Carolina Supreme Court,

6/13/13

I would like to waive my appeals. I would like to be executed by way of lethal injection.

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JUN 14 2013

S.C. SUPREME COURT

Sincerely,

Quincy Allen

**ATTACHMENTS TO RESPONSE IN OPPOSITION TO MOTION TO QUASH
COMPETENCY EVALUATION**

ATTACHMENT 2

Attorney Generals

6/16/13

I sent a letter to the SC Supreme Court on 6/13/13 requesting that I be allowed to waive my remaining appeal(s) and be executed by way of lethal injection. I'm alerting you that I wish to waive my appeal(s).

Quincy Allen

Quincy Allen 6019
MSU A-1
4344 Broad River Road
Columbia, SC 29210

Legal

Donald Zelenka/Warren Ganjehsani
Office Of The Attorney General
The State Of South Carolina
P.O. Box 11549
Columbia, SC 29211
2921131549

Debit Form

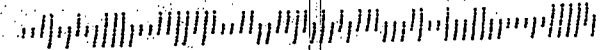


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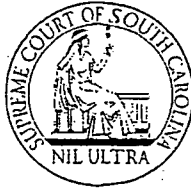
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**ATTACHMENTS TO RESPONSE IN OPPOSITION TO MOTION TO QUASH
COMPETENCY EVALUATION**

ATTACHMENT 3



ATTORNEY GENERAL'S OFFICE

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www.sccourts.org

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

August-13, 2013

Mr. Quincy Jovan Allen, #6019
MSU A-1
4344 Broad River Road
Columbia, South Carolina 29210

Re: The State v. Quincy Jovan Allen
Appellate Case No. 2005-031796

Dear Mr. Allen:

This is in response to your letter dated August 5, 2013 in the above entitled matter.

Pursuant to this Court's order dated June 18, 2013, Judge Cothran has been directed to conduct a full hearing in this matter and provide a full record for this Court's evaluation. I have enclosed another copy of this order for your review.

Please be advised all future inquiries concerning this matter should be addressed to your attorney.

Very truly yours,

CHIEF DEPUTY CLERK

cc:

Robert Michael Dudek, Esquire

Donald J. Zelenka, Esquire

Christopher Wayne Adams, Esquire

South Carolina Supreme Court,

01/2/13

I have made a decision to waive my appeal(s) and be executed. I've yet to have a hearing on this matter and I would like to know what the problem is.

Quincy Allen

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AUG 07 2013

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Quincy Jovan Allen, # 6019,)
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C/A No. 2010-CP-40-03644
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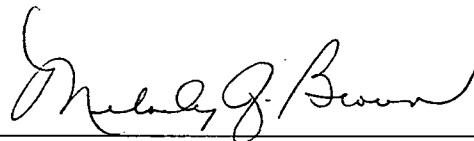
PROOF OF SERVICE

I, Melody J. Brown, certify that I have served Respondent's *Response in Opposition to Applicant's Motion to Quash Competency Evaluation Scheduled October 14, 2013* on Applicant by depositing one copy to his counsel of record, postage prepaid, addressed as follows:

Christopher W. Adams, Esq.
Law Offices of Christopher W. Adams
P.O. Box 561
Charleston, SC 29402-0561

Michael A. Siem, Esq.
Farney Daniels, P.C.
159 20th Street, #2B-41
Brooklyn, NY 11232

This 11th day of October, 2013.



MELODY J. BROWN

Office of Attorney General
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(803) 734-6305

ATTORNEY FOR RESPONDENT