

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County

Steven H. John, Circuit Court Judge

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OCT 11 2013

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

STEPHEN CHRISTOPHER STANKO,

APPELLANT

Appellate Case No. 2010-154746

MOTION FOR A STAY OF EXECUTION AND
FOR THE APPOINTMENT OF A
POST-CONVICTION RELIEF JUDGE

Counsel for Stephen Christopher Stanko moves this Court for a stay of execution and to appoint a post-conviction relief judge so that post-conviction counsel can be appointed by that judge.

I.

This Court affirmed petitioner's convictions and death sentence in State v. Stephen Christopher Stanko, 402 S.C. 252, 741 S.E.2d 708 (filed February 27, 2013). This Court denied rehearing on April 3, 2013.

II.

A petition for rehearing was filed on March 14, 2013. As stated, this Court denied rehearing on April 3, 2013.

III.

A petition for writ of certiorari to the United States Supreme Court, Stephen Christopher Stanko v. South Carolina, No. 13-5200, was then filed on July 2, 2013. The Court denied certiorari in its order dated October 7, 2013. A copy of that order is attached to this motion as Exhibit A.

IV.

Petitioner now can and will raise numerous grounds of ineffective assistance of counsel in an application for post-conviction relief. See In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996). In his application for post-conviction relief, while reserving the right to amend once counsel is appointed, petitioner intends to assert, at a minimum, the following grounds:

V.

1.

Was defense counsel ineffective, in derogation of petitioner's rights under the Sixth Amendment to the United States Constitution, for presenting a nearly identical insanity defense during petitioner's second capital trial since that defense was ineffectual during petitioner's first capital trial and counsel should have sought outside legal assistance to revise his trial strategy?

2.

Was defense counsel ineffective, in derogation of petitioner's rights under the Sixth Amendment to the United States Constitution, for failing to strongly advise petitioner against waiving a conflict of interest claim where counsel was the subject of petitioner's pending post-conviction grounds from the first trial, and any waiver of a conflict was not in petitioner's best interests?

3.

Was defense counsel ineffective, in derogation of petitioner's rights under the Sixth Amendment to the United States Constitution, for failing to impress upon the judge at the waiver of the conflict of interest hearing, or for failing to revisit the conflict matter prior to the start of the trial, where it was apparent, or became apparent, the ineffectiveness allegations involving the first trial were serious and not just *pro forma* PCR allegations as they had been presented to the waiver judge?

4.

Was defense counsel ineffective, in derogation of petitioner's rights under the Sixth Amendment to the United States Constitution, for failing to present evidence demonstrating actual juror prejudice in support of his motion for a change of venue since it was highly unlikely petitioner could get a fair trial in Horry County after he had been the subject of tremendous publicity regarding the two murders committed closely together, and it was therefore critical for this motion to be granted?

5.

Was defense counsel ineffective, in derogation of petitioner's rights under the Sixth Amendment to the United States Constitution, for failing to present any statistical evidence in support of his motion to bar the voluntary excusal of jurors sixty-five years old or older, since service by senior jurors with their mature judgment was critical given that this was a double homicide case with unusual mitigating evidence?

This list is not exhaustive, and will likely expand, once appointed post-conviction counsel has had the opportunity to investigate. The above grounds are merely offered to show that numerous issues of ineffective assistance of counsel exist that petitioner intends to raise in this case.

VI.

Present counsel cannot take a position on possible issues of ineffective assistance of appellate counsel. That is a matter for post-conviction counsel and the post-conviction court to determine.

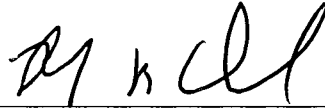
VII.

Based on the above, petitioner requests that this Court issue a stay of execution and appoint a post-conviction relief judge so that the appointed post-conviction relief judge can hold a hearing to appoint post-conviction counsel. This will allow petitioner to pursue his state court post-conviction relief action in the Horry County Court of Common Pleas.

WHEREFORE, counsel for Stephen Christopher Stanko requests that this Court issue a stay of execution and appoint a post-conviction relief judge so that the appointed post-conviction relief

judge can hold a hearing to appoint post-conviction counsel so that petitioner can pursue post-conviction relief with the assistance of counsel in the Horry County Court of Common Pleas upon the grounds of ineffective assistance of counsel, and any other grounds that may arise from post-conviction counsel's investigation of this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

Attorney for Appellant

October 11, 2013

Exhibit

A

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 7, 2013

Mr. Robert M. Dudek
Division of Appellate Defense
1330 Lady Street
Suite 401
Columbia, SC 29201-3332

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SC OFFICE OF
CLERK OF THE COURT

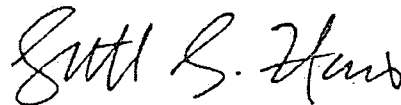
Re: Stephen Christopher Stanko
v. South Carolina
No. 13-5200

Dear Mr. Dudek:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County
Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

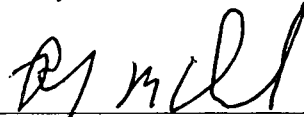
STEPHEN CHRISTOPHER STANKO,

APPELLANT

Appellate Case No. 2010-154746

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the motion for a stay of execution and to appoint a post-conviction relief judge in the above-referenced case has been served upon opposing counsel, J. Anthony Mabry, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of October, 2013.



Robert M. Dudek
Chief Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 11th day of October, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 21, 2023.