

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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OCT 14 2013

Appeal from Sumter County

S.C. Supreme Court

Michael Nettles, Circuit Court Judge

BOBBY WAYNE STONE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-001968

RETURN TO MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

1) Undersigned Counsel agrees with petitioner's procedural history of the case. Petitioner was represented on both appeals of his murder conviction and death sentence by Appellate Defender Joseph L. Savitz, III. See State v. Stone, 567 S.E.2d 244 (S.C. 2002); State v. Stone, 655 S.E.2d 487 (S.C. 2007).

2) Petitioner was represented during his subsequent post-conviction relief action by Emily C. Paavola and John H. Blume. Petitioner raised the issues of ineffective assistance of appellate counsel in that PCR proceeding, as well as ineffective assistance of trial counsel. Counsel for

petitioner, John Blume, stated in his motion for appointment of outside counsel that former Chief Appellate Defender Savitz testified at the post-conviction hearing regarding petitioner's allegations of ineffective assistance of counsel. A review of the order of dismissal of the Honorable Michael Nettles dated August 12, 2013 did address the issue of ineffective assistance of appellate counsel Savitz at pp. 26-28.

3) Counsel Paavola, therefore asserted that the Office of Appellate Defense "has a conflict of interest given that the former Chief Attorney of the office was appellate counsel." See Motion for the Appointment of Outside Counsel at 2. Joseph L. Savitz was in fact the Chief Appellate Defender at the time he represented petitioner Owens on his 2007 appeal. See State v. Stone, 567 S.E.2d 244 (S.C. 2002); State v. Stone, 655 S.E.2d 487 (S.C. 2007).

4) In addition to asserting the Office of Appellate Defense has a conflict of interest, Counsel Paavola states she "is familiar with the trial and PCR record, and thus, even aside from the conflict of interest is better situated to provide representation on appeal." Motion at 2.

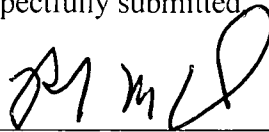
5) Undersigned Counsel has also spoken with Ms. Paavola who stated that petitioner Bobby Wayne Stone himself wants counsel outside of this office.

6) Given the totality of petitioner's assertions, including the fact that (a) petitioner Stone wants outside counsel where allegations of ineffective assistance of counsel were lodged against this office; (b) the former Chief Appellate Defender testified at the PCR hearing; (c) the PCR court made specific findings about the appellate IAC claim, (d) counsel Paavola is very familiar with the PCR and the trial record (e) and given the assurance of counsel Blume that he will serve as second counsel pro-bono if Paavola is appointed, counsel does not oppose the motion for outside counsel

should be appointed in this case.

WHEREFORE, undersigned counsel does not oppose the motion for the appointment of outside counsel for the reasons stated above, and submits the matter of petitioner's representation to the sound discretion of this Court.

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

October 14, 2013

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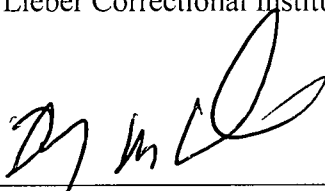
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RESPONDENT

Appellate Case No. 2013-001968


CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the return to the motion for outside counsel in the above-referenced case has been served upon opposing counsel, Alphonso Simon, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and upon Emily C. Paavola, Esquire, at 900 Elmwood Ave., Suite 101, Columbia, SC 29201, and Bobby Wayne Stone, #5051, at Lieber Correctional Institution, this 14th day of October, 2013.



Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 14th day of October, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 21, 2023.