

May 27 2025

S.C. SUPREME COURT  
 STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF HORRY )  
 )  
 Jerome Jenkins, Jr., SCDC #6034, ) C/A No: 2022-CP-26-08071  
 ) (Capital PCR Action)  
 Applicant, )  
 v. ) MOTION TO PROHIBIT *EX PARTE* FUNDING  
 ) REQUESTS AND ORDERS  
 State of South Carolina, )  
 Respondent. )

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FILED  
 HORRY COUNTY  
 2023 JUN 10 9 15 1  
 RENE E. N. ELVIS  
 CLERK OF COURTS  
 HORRY COUNTY, SC

The captioned case is a capital post-conviction relief (PCR) action. At the initial hearing held June 21, 2023, in the Clarendon County Courthouse, Respondent requested the opportunity to make a formal motion to prohibit *ex parte* funding requests in this collateral action. This Court granted Respondent’s request to allow 30 days in which to file the motion, and also its request not to receive any *ex parte* funding request until the motion could be considered and ruled upon.<sup>1</sup> Respondent now moves to prohibit *ex parte* funding for the following reasons:

1. Matters may not be heard *ex parte* unless the communication falls within one of the limited exceptions provided in the relevant judicial canon, which includes an exception for those matters “authorized by law” to be considered *ex parte*. Rule 501, SCACR, Canon 3(B)(7). Respondent submits *ex parte* communications, motions and orders are not “authorized by law” in

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<sup>1</sup> Opposing counsel did not agree that *ex parte* motions were improper and, having given notice of the intent of filing, Respondent has not further consulted before the filing of this motion as that “would serve no useful purpose.” See Rule 11(a), SCRCR. Further, while opposing counsel did not specifically object to Respondent’s request for 30 days in which to file, opposing counsel argued that litigating this point would likely delay the hearing presently scheduled within the 180 days as required by statute. See 17-27-160(C). Respondent has filed the motion early and will work to expedite any reply; however, the Supreme Court has repeatedly found an *ex parte* process is not allowed, as will be seen *infra*, both in capital and non-capital PCR matters. As such, intense litigation of this point is unlikely.

this collateral, civil action instituted by Applicant under the PCR statute. Thus, *ex parte* funding requests and orders are prohibited.

2. The first case to expressly discuss and explain the distinction between the authorization for *ex parte* submissions on behalf of a criminal defendant as provided in S.C Code § 16-3-26, and the absence of such authorization in the separate, collateral PCR process appears to be *Thames v. State*, 325 S.C. 9, 478 S.E.2d 682 (1996). (Attachment 1). In *Thames*, our Supreme Court considered, and rejected, the concept that the *ex parte* provisions in § 16-3-26 were applicable to post-conviction relief proceedings:

When a defendant requests expert services for a criminal trial, the request is determined by the judge in *ex parte* proceedings. S.C.Code Ann. § 16-3-26(C) and § 17-3-50(B) (Supp.1995); *Ex parte Lexington County*, 314 S.C. 220, 442 S.E.2d 589 (1994). These statutory provisions are, however, inapplicable to post-conviction relief proceedings.

Section 16-3-26(C), which is limited to capital cases, applies to “the representation of the defendant whether in connection with issues relating to guilt or sentence.” Therefore, this provision applies only to the capital trial itself and not to post-conviction relief proceedings. While § 17-3-50(A) mentions that the same hourly rates for appointed counsel shall apply to post-conviction proceedings, the use of the word “defendant” throughout § 17-3-50(B) indicates that it applies only to the criminal trial itself and not to post-conviction relief actions. Accordingly, the post-conviction relief judge in this case properly conducted a hearing on the motion at which counsel for the State was allowed to fully participate.

*Thames*, 325 S.C. at 11, 478 S.E.2d at 682 n. 1. Critically, each time the Supreme Court has considered whether such *ex parte* proceedings in collateral actions are allowed, it has continued to adhere to its resolution in *Thames*, including in capital PCR actions.

3. In *State v. Stanko*, Appellate Case No. 2015-000212, a capital post-conviction relief action from Horry County, the State made a similar request under *Thames*. Counsel for the applicant sought intervention and “oversight” by our Supreme Court. By Order dated February

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HORRY COUNTY, S.C.

25, 2015, the Court denied the petition, reasoning that the circuit court could “ably address[]” the matter. (Attachment 2, Order, Appellate Case No. 2015-000212 (filed February 25, 2015)). Notably, though, the Court added that “the issue of *ex parte* proceedings in PCR matters, which is at the heart of the petition currently before this Court, was addressed in *Thames v. State*, 325 S.C. 9, 478 S.E.2d 682 (1986) [scrivener’s error (1996)], and **such proceedings were found to be improper.**” (Attachment 2 at n. 2) (emphasis added). The Court has been clear – both in *Thames* and in *Stanko* – that funding requests filed *ex parte* are, without exception, improper in a collateral, PCR action. Further, the distinction shown in *Thames* and embraced in *Stanko*, has been recently affirmed again.

4. In *Sanders v. State*, Appellate Case Number 2022-000351, the petitioner, as part of an original jurisdiction action, requested *ex parte* for our Supreme Court to authorize services of a legal expert and payment of fees. Again, the Court relied on *Thames* and its reasoning to find:

... the motion was improperly filed *ex parte* in this collateral action. See *Thames v. State*, 325 S.C. 9, 11 n.1, 478 S.E.2d 682, 682 n.1 (1996) (holding the statutes providing for *ex parte* determinations of requests for expert services apply only in criminal trials and not in post-conviction relief proceedings); S.C. Code Ann. § 16-3-26(C) (2015) (providing for an *ex parte* determination of the necessity of payment for expert services in capital cases that are “reasonably necessary for the representation of *the defendant* whether in connection with issues relating to guilt or sentence” (emphasis added)); S.C. Code Ann. § 17-3-50(B) (2014) (although § 17-3-50(A) requires the same hourly rates for appointed counsel to apply in post-conviction relief proceedings, paragraph (B) authorizes an *ex parte* determination that expert services are “reasonably necessary for the representation of *the defendant*” and uses the term “defendant” throughout the section, thereby indicating *ex parte* determinations are not required in post-conviction relief proceedings (emphasis added)).

(Attachment 3, Order, Appellate Case No. 2022-000351 (filed June 8, 2022), at p. 2). Though it ultimately denied the State’s motion to strike the improperly filed *ex parte* motion simply because

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HOLLY COUNTY

it became moot upon denial of the funding request, the Court's finding the motion was improperly filed *ex parte* is plainly set out.

5. In light of the statute and our Supreme Court's consistent treatment of *ex parte* motions in collateral proceedings as improper, there is little left to be said. However, Respondent notes that two circuit court orders in other capital PCR matters reflect the acknowledgment of that same bar to *ex parte* requests, *Stanko v. State*, Case Number 2014-CP-26-035 (Harry County) (dated February 27, 2014) (motion to unseal granted without argument) (Attachment 4), *Stanko v. State*, Case Number 2008-CP-22-1446 (Georgetown County) (dated March 14, 2018) (consent order to unseal citing *Thames*) (Attachment 5); and, Respondent is aware of another consent order to unseal in a non-capital PCR action where the parties recognized that *ex parte* orders are improper, *Simpson v. Brown*, Case Number 2020-CP-39-0617 (consent order unsealing citing *Sanders*) (Attachment 6). Respondent acknowledges that there have been circuit court judges that have allowed the practice, sometimes with simple notice to the Respondent; however, these are not consistent with the statute or, critically, our Supreme Court's decision and its continued application and acknowledgement of the prohibition. Consequently, other circuit court orders that are in contrast to the Supreme Court's decision are not controlling nor could they be persuasive in light of those decisions. The authority from our Supreme Court, necessarily, is controlling.

THEREFORE, based on the foregoing, Respondent submits it is entitled to an Order prohibiting all *ex parte* funding requests, motions, or orders, and allowing participation by the State as anticipated in *Thames*. Consequently, Respondent moves this Court for an order reflecting the prohibition of *ex parte* funding requests, by motion or otherwise, and *ex parte* orders.

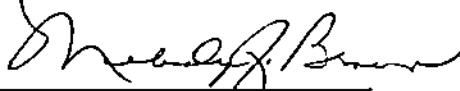
RESPONDENT SO MOVES.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 14244

By:   
MELODY J. BROWN

Office of the Attorney General  
P.O. Box 11549  
Columbia, South Carolina 29211-1549  
(803) 734-6305

July 5, 2023

**ATTORNEYS FOR RESPONDENT**

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CLERK OF COURT  
HORRY COUNTY, SC

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*Attachments to Motion*

1. *Thames v. State*, 325 S.C. 9, 478 S.E.2d 682 (1996);
2. *State v. Stanko*, Order, Appellate Case No. 2015-000212 (filed February 25, 2015);
3. *Sanders v. State*, Order, Appellate Case Number 2022-000351 (filed June 8, 2022);
4. *Stanko v. State*, Case Number 2014-CP-26-035 (Horry County) (dated February 27, 2014) (motion to unseal granted without argument);
5. *Stanko v. State*, Case Number 2008-CP-22-1446 (Georgetown County) (dated March 14, 2018)(consent order to unseal citing *Thames*);
6. *Simpson v. Brown*, Case Number 2020-CP-39-0617 (consent order unsealing citing *Sanders*).

325 S.C. 9  
Supreme Court of South Carolina.

Ruth Ann THAMES, Petitioner,  
v.  
STATE of South Carolina, Respondent.

No. 24535.

Submitted May 15, 1996.

Decided Dec. 2, 1996.

**Synopsis**

Postconviction relief petitioner filed motion seeking authorization for payment of psychiatrist fees to be used in support of her claim of mental incompetency at time of her guilty plea. The Circuit Court, Oconee County, Gerald C. Smoak, J., denied motion. On writ of certiorari, the Supreme Court held that postconviction relief judge acted within his discretion in denying petitioner's motion, given that petitioner had already been examined by two experts at time of her guilty plea.

Affirmed.

**West Headnotes (3)**

[1] **Costs, Fees, and Sanctions** ⇐ Medical or psychiatric witnesses or assistance

Trial court acted within its discretion in denying postconviction relief petitioner's motion for payment of psychiatrist fees, which were to be used in support of petitioner's claim that she was mentally incompetent at time of her guilty plea, given that petitioner had already been examined by two experts at time of her plea; mere possibility that petitioner could find expert somewhere to support her claim of incompetency was insufficient to warrant authorization of funds to pay expert.

1 Cases that cite this headnote

[2] **Costs, Fees, and Sanctions** ⇐ Expert witnesses or assistance in general

Postconviction relief judge properly conducted hearing on petitioner's motion for payment of expert witness fees at which counsel for state was allowed to fully participate, rather than holding ex parte hearing. Code 1976, §§ 16-3-26(C), 17-3-50(B).

[3] **Costs, Fees, and Sanctions** ⇐ Expert witnesses or assistance in general

When defendant requests expert services for criminal trial, request is determined by judge in ex parte proceedings. Code 1976, §§ 16-3-26(C), 17-3-50(B).

**Attorneys and Law Firms**

\*\*682 \*10 Assistant Appellate Defender Robert M. Dudek, of S.C. Office of Appellate Defense, Columbia, for petitioner.

Attorney General Charles Molony Condon, Deputy Attorney General John W. McInosh, Assistant Deputy Attorney General Teresa Nesbitt Cosby, and Assistant Attorney General Allen Buillard, Columbia, for respondent.

**Opinion**

**PER CURIAM:**

This matter is pending before the Court on a petition for a writ of certiorari seeking review of an order denying petitioner's application for post-conviction relief. We deny the petition as to Question 2, grant the petition as to Question 1, dispense with further briefing, and affirm the order of the post-conviction \*11 relief judge.

[1] Petitioner filed a motion seeking authorization for the payment of expert witness fees in connection with her post-conviction relief action. She asserts that the post-conviction relief judge erred in denying her motion. We disagree.

[2] [3] Petitioner had been examined by two psychiatrists prior to her guilty plea, one of whom was retained by trial counsel. Both had opined that she was competent both at the time the crime was committed and at the time of

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her plea. At the post-conviction relief hearing, counsel for petitioner stated that petitioner sought to be examined by a third psychiatrist to support her claim of mental incompetency at the time of her guilty plea. Petitioner contended that the two psychiatrists who examined her prior to her plea had not spent sufficient time with her to adequately evaluate her mental state. The post-conviction relief judge ruled that since petitioner had been examined by two experts at the time of her guilty plea there was no need to have a third examination.<sup>1</sup>

**\*\*683** In our opinion, the post-conviction relief judge did not abuse his discretion in denying petitioner's motion. Cf. *State v. Matthews*, 291 S.C. 339, 353 S.E.2d 444 (1986). Petitioner had been examined by two experts prior to trial and the mere possibility that petitioner could find an expert

somewhere to support her claim of incompetency at the time of her plea is insufficient to warrant the authorization of funds to pay an expert. See *Primeaux v. Leapley*, 502 N.W.2d 265 (S.D.1993) (in habeas proceeding, no error in failing to appoint expert who would testify that pretrial psychiatric examination was inadequate).

\*12 Accordingly, the order of the post-conviction relief judge is affirmed.

AFFIRMED.

All Citations

325 S.C. 9, 478 S.E.2d 682

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HORRY COUNTY, SC

Footnotes

1 When a defendant requests expert services for a criminal trial, the request is determined by the judge in *ex parte* proceedings. S.C.Code Ann. § 16-3-26(C) and § 17-3-50(B) (Supp.1995); *Ex parte Lexington County*, 314 S.C. 220, 442 S.E.2d 589 (1994). These statutory provisions are, however, inapplicable to post-conviction relief proceedings.

Section 16-3-26(C), which is limited to capital cases, applies to "the representation of the defendant whether in connection with issues relating to guilt or sentence." Therefore, this provision applies only to the capital trial itself and not to post-conviction relief proceedings. While § 17-3-50(A) mentions that the same hourly rates for appointed counsel shall apply to post-conviction proceedings, the use of the word "defendant" throughout § 17-3-50(B) indicates that it applies only to the criminal trial itself and not to post-conviction relief actions. Accordingly, the post-conviction relief judge in this case properly conducted a hearing on the motion at which counsel for the State was allowed to fully participate.

# The Supreme Court of South Carolina

Stephen C. Stanko, SK 6022, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-000212






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RENEEN N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

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## ORDER

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Counsel for petitioner have filed a "Petition for Court Oversight of Capital PCR Action" in which they essentially ask this Court to review the circuit court's rulings on *ex parte* motions regarding funding for experts filed in this matter. The State has filed a return in which it requests this Court issue an order unsealing the *ex parte* funding requests and orders so that it may properly respond to the merits of the petition before this Court.<sup>1</sup> The petition and the State's request are denied.<sup>2</sup>

 C.J.  
 J.  
 J.  
 J.  
 J.

<sup>1</sup> The State currently has such a motion pending before the circuit court, where it can be ably addressed.

<sup>2</sup> We note, however, that the issue of *ex parte* proceedings in PCR matters, which is at the heart of the petition currently before this Court, was addressed in *Thames v. State*, 325 S.C. 9, 478 S.E.2d 682 (1986) and such proceedings were found to be improper.

**Columbia, South Carolina**

**February 25, -2015**

**cc:**

**Emily C. Paavola, Esquire  
Lindsey Sterling Vann, Esquire  
J. Anthony Mabry, Esquire  
Alan McCrory Wilson, Esquire  
John W. McIntosh, Esquire  
Donald J. Zelenka, Esquire**

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CLERK OF COURT  
HORRY COUNTY, SC**

# The Supreme Court of South Carolina

Tunzy Antwain Sanders, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2022-000351

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ORDER


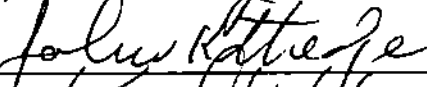

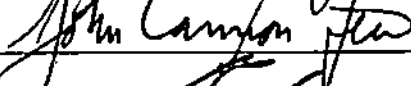
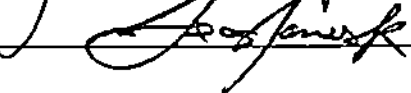
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RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

Petitioner has filed a petition for a writ of habeas corpus in this Court's original jurisdiction. He asks the Court, *ex parte*, to authorize services of a legal expert and payment of the expert's fees for this proceeding pursuant to *Ake v. Oklahoma*, 470 U.S. 68 (1985); S.C. Code Ann. § 17-3-50(B) and (C) (2014); and Rule 602, SCACR. The State moves to strike the *ex parte* motion as improper.

We deny the request for authorization of services and funds. *See State v. Commander*, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011) (holding expert testimony on issues of law is usually inadmissible); *McKnight v. State*, 378 S.C. 33, 57, 661 S.E.2d 354, 366 (2008) (holding the lower court properly excluded the proffered legal expert's opinion because it "amounted to a case-specific application of the *Strickland* test that was not designed to assist the post-conviction relief court to understand certain facts, but rather, was a legal argument as to why the court should rule that McKnight's trial counsel was ineffective); *Dawkins v. Fields*, 354 S.C. 58, 66-67, 580 S.E.2d 433, 437 (2003) (finding the trial court properly declined to consider an expert affidavit that "offered some helpful, factual information" but mainly offered legal arguments concerning the reasons the trial court should deny summary judgment); *Green v. State*, 351 S.C. 184, 198, 569 S.E.2d 318, 325 (2002) (holding the post-conviction relief judge properly refused to admit the testimony of a legal expert when "the testimony was not designed to assist the PCR court to understand certain facts, but, rather, was legal argument why the PCR court should rule, as a matter of law, trial counsel's actions fell below an acceptable legal standard of competence" and was not the type of testimony contemplated by Rule 702, SCRE).

As to the State's motion to strike the motion to authorize services and payment of funds, the motion was improperly filed *ex parte* in this collateral action. See *Thames v. State*, 325 S.C. 9, 11 n.1, 478 S.E.2d 682, 682 n.1 (1996) (holding the statutes providing for *ex parte* determinations of requests for expert services apply only in criminal trials and not in post-conviction relief proceedings); S.C. Code Ann. § 16-3-26(C) (2015) (providing for an *ex parte* determination of the necessity of payment for expert services in capital cases that are "reasonably necessary for the representation of *the defendant* whether in connection with issues relating to guilt or sentence" (emphasis added)); S.C. Code Ann. § 17-3-50(B) (2014) (although § 17-3-50(A) requires the same hourly rates for appointed counsel to apply in post-conviction relief proceedings, paragraph (B) authorizes an *ex parte* determination that expert services are "reasonably necessary for the representation of *the defendant*" and uses the term "defendant" throughout the section, thereby indicating *ex parte* determinations are not required in post-conviction relief proceedings (emphasis added)). However, because we deny the motion to authorize services of a legal expert and payment of the expert's fees, we deny the motion to strike the *ex parte* motion as moot.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina  
 June 8, 2022

cc:  
 Adam Sinclair Ruffin, Esquire  
 Taylor Davis Gilliam, Esquire  
 Alan McCrory Wilson, Esquire  
 David A. Spencer, Esquire

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 Horry County, SC

STATE OF SOUTH CAROLINA  
 COUNTY OF HORRY  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN CIVIL CASE

CASE NO. 2014-CP-26-035

Stephen C. Stanko, #6022  
 PLAINTIFF(S)

State of South Carolina  
 DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court.\*\*\* The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other  
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**Respondent's Motion to Unseal Ex Parte Funding Requests and Orders is GRANTED.**  
 (\*\*\*)This motion is decided without oral arguments.)

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*Benjamin H. Culbertson*  
 Benjamin H. Culbertson, Circuit Court Judge  
 SCRPC Form 4C (03/2013)

2148  
 Judge Code

Feb. 27, 2014  
 Date  
 Page 1



STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

Stephen C. Stanko, #6022,

Applicant,

v.

State of South Carolina,

Respondents.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

C/A No. 2008-CP-22-1446

(On remand from Appellate

Case No. 2017-000211)

Consent Order to Unseal  
Ex Parte Funding Motions and Orders

FILED  
GEORGETOWN COUNTY, S.C.  
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ALMA Y. WHITE  
CLERK OF COURT

This Court held a motions hearing in this capital post-conviction relief (PCR) action on March 2, 2018, in Florence County. Applicant was present at the hearing and represented by Lindsey S. Vann, Esquire. Caroline Scrantom and William Edgar Salter, III, represented Respondent, who moved before this Court to formally unseal any prior funding motions and orders filed *ex parte* by Applicant's initial PCR counsel. Respondent noted that some *ex parte* funding motions and orders appear on the public index in this matter. Applicant's first-chair PCR counsel consented to the request.

This matter is on remand for the purposes of holding a hearing to determine whether Applicant was prejudiced by initial PCR counsel's lack of statutory qualifications for representation. *Stanko v. State*, App. Case No. 2017-000211, S.C. Sup. Ct. Order dated Dec. 14, 2017. Accordingly, this Court finds that any funding requests and orders made by Applicant's initial PCR counsel are relevant to the determination before it and should be available for use by the parties in preparation for the forthcoming hearing in this action. See Rule 41.1, SCRPC (requirements for sealing documents and settlement agreements). Additionally, the statutory provision providing for *ex parte* funding requests in capital trials does not apply in PCR proceedings. *Thames v. State*, 325 S.C. at 11 n.1, 478 S.E.2d at 682 n.1 (1996) (citing S.C. Code

Ann. § 16-3-26(C) and § 17-3-50(B) (Supp. 1995); *Stanko v. State*, App. Case No. 2015-000212, S.C. Sup. Ct. Order dated Feb. 25, 2015 (citing *Thames, supra*) (denying Pet. for Oversight in funding and denying Respondent's Mot. to Unseal *Ex Parte* documents) (Horry County PCR); Cf. S.C. Code Ann. § 16-3-26(C)(1).

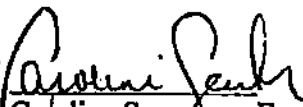
With the parties consenting, it is therefore ORDERED that any *ex parte* funding motions and orders previously filed in this action be unsealed and made available to the parties.

AND IT IS SO ORDERED.


  
D. Craig Brown  
Presiding Judge

March 14, 2018  
Florence, South Carolina

SUBMITTED:

  
Caroline Scramton, Esquire  
Office of the S.C. Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
cscramtom@scag.gov

WITH CONSENT:

  
Lindsey S. Vann, Esquire  
Justice 360  
900 Elmwood Avenue, Suite 200  
Columbia, SC 29201  
lindsey@justice360sc.org

STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

Suzanna Brown Simpson, #368727,

Applicant,

v.

State of South Carolina,

Respondent.

2022 SEP 29 P 12:10

CLERK OF COURT 2020-CP-39-0617  
PICKENS COUNTY  
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL CIRCUIT

CONSENT ORDER UNSEALING  
THE *EX PARTE* ORDER FILED  
UNDER SEAL

This matter comes before the Court by way of an application for post-conviction relief filed by Suzanna Brown Simpson ("Applicant"), through counsel, on June 1, 2020. The State ("Respondent") filed its return to the application on November 2, 2020, moving for the summary dismissal of some of Applicant's claims and requesting that an evidentiary hearing be convened regarding the remaining claims. On April 28, 2022, an order was filed in this matter, and it is described on the Pickens County Public Index as "Order/Ex Parte Order/Under Seal." Respondent learned of the existence of the *ex parte* order under seal on June 16, 2022, after finding it listed on the Public Index during an audit of its case file.

Respondent takes the position that *ex parte* motions and orders are improper in post-conviction relief proceedings. Respondent cites to a South Carolina Supreme Court Order filed on June 8, 2022, in the case of ~~*Sanders v. State*~~, which is a pending case in the original jurisdiction of the Supreme Court. This Order found that the petitioner had improperly filed an *ex parte* motion to authorize services and payment of funds because *ex parte* motions are improper in collateral actions. The Order in *Sanders* gave the following legal citation:

*See Thames v. State*, 325 S.C. 9, 11 n.1, 478 S.E.2d 682, 682 n.1 (1996) (holding the statutes providing for *ex parte* determinations of requests for expert services apply only in criminal trials and not in post-conviction relief proceedings); S.C.

Code Ann. § 16-3-26(C) (2015) (providing for an *ex parte* determination of the necessity of payment for expert services in capital cases that are “reasonably necessary for the representation of the defendant whether in connection with issues relating to guilt or sentence” (emphasis added)); S.C. Code Ann. § 17-3-50(B) (2014) (although § 17-3-50(A) requires the same hourly rates for appointed counsel to apply in post-conviction relief proceedings, paragraph (B) authorizes an *ex parte* determination that expert services are “reasonably necessary for the representation of the defendant” and uses the term “defendant” throughout the section, thereby indicating *ex parte* determinations are not required in post-conviction relief proceedings . . . .

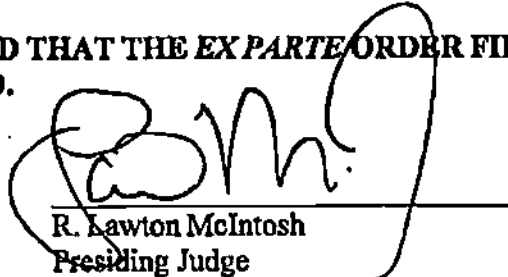
*Sanders*, at 2.

It should be noted that the Applicant filed its *Ex Parte* Motion for Funding prior to the Order in *Sanders* and prior to the Court granting the motion. In light of the *Sanders* Order, the Applicant has consented to unsealing the *Ex Parte* funding order.

To resolve the matter, and with the consent of the parties, the *ex parte* order filed under seal on April 28, 2022, shall be unsealed.

**IT IS THEREFORE ORDERED THAT THE EX PARTE ORDER FILED UNDER SEAL SHALL BE UNSEALED.**

9-26, 2022.  
Anderson, South Carolina

  
R. Lawton McIntosh  
Presiding Judge

I CONSENT:

s/James W. Bannister  
Counsel for Applicant

s/Taylor Zane Smith  
Counsel for Respondent

2022 SEP 29 P 12:10  
CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA



State of South Carolina  
The Circuit Court of the Tenth Judicial Circuit

R. Lawton McIntosh  
Judge

September 26, 2022

Post Office Box 8002  
100 South Main Street  
Anderson, SC 29622-8002  
Phone: (864) 260-4059  
Fax: (864) 224-6320  
r.mcintosh@sccourts.org

Honorable Harold P. Welborn, Jr.  
Pickens County Clerk of Court  
Post Office Box 215  
Pickens, South Carolina 29671-0215

2022 SEP 29 P 12:10  
CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

Dear Mr. Welborn:

Please find enclosed an original Order which has been signed by Judge McIntosh in the following case:

Suzanna Simpson #368727 v. State of SC  
Case No. 2020CP3900617

Please file this in your office and provide certified copies to the attorneys of record pursuant to your customary procedure.

Thank you for your assistance in this matter.

Sincerely,

Tammy Jennings  
Administrative Assistant to  
R. Lawton McIntosh, Judge  
Tenth (10<sup>th</sup>) Judicial Circuit

tj

Enclosure



ALAN WILSON  
ATTORNEY GENERAL

July 5, 2023

The Honorable Renee N. Elvis  
Horry County Clerk of Court  
Post Office Box 677  
Conway, South Carolina 29528


Re: Jerome Jenkins, #6034 v. State of South Carolina  
Case No: 2022-CP-26-8071  
\*Capital PCR Action\*

FILED  
HORRY COUNTY  
2023 JUL 10 P 1:51  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

Dear Ms. Elvis:

Enclosed please find, for filing in your office, Respondent's Motion to Prohibit *Ex Parte* Funding Requests and Orders, along with a Certificate of Service in reference to the above-mentioned case.

Thank you for your assistance in this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,  


Melody J. Brown  
Senior Assistant Deputy Attorney General

MJB/abb

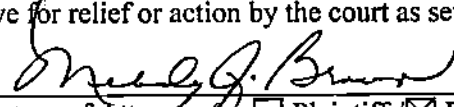
cc: The Honorable R. Kirk Griffin (via email and us mail)  
E. Charles Grose, Jr., Esquire (via email and us mail)  
John L. Warren, III, Esquire (via email and us mail)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
JEROME JENKINS, JR., #6034 )  
 Plaintiff, )  
 vs. )  
STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 15TH JUDICIAL CIRCUIT  
 CASE NO.: 2022-CP-26-08071

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

FILED  
 HORRY COUNTY  
 2023 JUL 10 P 1:57  
 RENEE N. ELVIS  
 CLERK OF COURT  
 HORRY COUNTY, SC

Plaintiff's Attorney: E. Charles Grose, Jr., Esquire, Bar No. 66063 John L. Warren, Esquire, Bar No. 101414 Address: 305 Main Street, Greenwood, SC 29646 2008 Lincoln Street, Columbia SC 29201 Phone: 864-538-4466 Fax _____ E-mail: Charles@groselawfirm.com JW@billnettlelaw.com Other: _____	Defendant's Attorney: Melody J. Brown, Bar No. 14244 Address: PO Box 11549 Columbia, SC 29211 Phone: 803-734-6305 Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">             _____            Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant         </div> <div style="text-align: right;">           July 5, 2023            Date submitted         </div> </div>	
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

MOTION FEE COLLECTED: \$ \_\_\_\_\_

CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

Jerome Jenkins, Jr., #6034 )

2022-CP-26-08071  
\*Capital PCR Action\*

Applicant, )

v. )

AFFIDVAIT OF SERVICE

State of South Carolina, )

Respondent. )

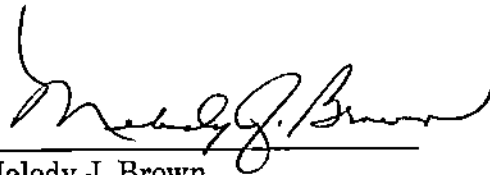
FILED  
HORRY COUNTY  
2023 JUL 10 P 1:58  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

1. I am counsel for Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Respondent's Motion to Prohibit *Ex Parte* Funding Requests and Orders**, in the above-captioned matter on the following attorneys via email and by depositing same in the United States mail, postage prepaid:

E. Charles Grose, Jr., Esquire  
305 Main Street  
Greenwood, South Carolina 29646  
[charles@groselawfirm.com](mailto:charles@groselawfirm.com)

John L. Warren, Esquire  
2008 Lincoln Street  
Columbia, South Carolina 29201  
[jw@billnettlelaw.com](mailto:jw@billnettlelaw.com)

DATED this 5<sup>th</sup> day of July, 2023.



Melody J. Brown  
Senior Assistant Deputy Attorney General