

RECEIVED

Jun 16 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE ERNEST MORGAN,

APPELLANT

APPELLATE CASE NO. 2025-000834

RETURN TO MOTION TO BE RELIEVED

The undersigned counsel files this Return in response to trial counsel's motion to be relieved as counsel. Undersigned counsel would respectfully show the Court that:

1. Trial counsel, Ivan Toney, filed a motion to be relieved as counsel and this Court requested a return to that motion from undersigned counsel on June 4, 2025. Trial counsel asserted he was not "[r]etained for the appeal and does not believe the appeal is meritorious." See Motion to be relieved on file with this Court.

2. The Division of Appellate Defense operates within the Office of Indigent Defense to, inter alia, represent indigent convicted defendants on direct appeal. Appellate Defense therefore must screen a person such as Appellant Morgan for indigency to determine if it is able to represent him on appeal. Trial counsel is therefore obligated to file a notice of intent to appeal as required by

Rule 203, SCACR, and if counsel was retained, request a determination of indigency from Appellate Defense if counsel wishes to be relieved. If Appellate Defense determines the client is indigent, then trial counsel is automatically relieved as counsel but subject to the Supreme Court's administrative order dated December 12, 1997. See Rule 602 (e)(4), SCACR; In the Matter of an Anonymous Member of the Bar, 303 S.C. 306, 400 S.E.2d 483 (1991). That 1997 Supreme Court administrative order, which is attached to this return as Exhibit A, mandates that trial counsel is obligated to provide Appellate Defense with the trial and hearing dates in the case, the county in which the hearing was held, the name of the presiding judge, the name of the court reporter and a brief description of the hearing. The Supreme Court order mandates, "In no case shall counsel be relieved from representing the indigent until the list is provided." See, also, Rule 602 (e)(3) & (4), SCACR.

3. Undersigned counsel respectfully submits that trial counsel's motion to be relieved is premature because Appellate Defense, to date, has not received the returned completed affidavit of indigency that was emailed by this office to trial counsel for completion by his client, Appellant Morgan, on June 4, 2025.

4. Once that affidavit of indigency is received, undersigned counsel will review appellant's affidavit of indigency, and notify trial counsel, appellant, this Court, and opposing counsel whether appellant is indigent. Appellate Defense will assume representation of appellant's appeal if he is determined to be indigent, the appeal is otherwise approved by this Court to proceed, and trial counsel provides this office with the list of necessary trial and hearing dates as provided in the Supreme Court's 1997 administrative order referenced above.

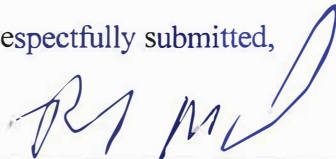
5. If appellant is determined to be indigent, and eligible for representation by this office as outlined in paragraph four (4) above, undersigned counsel understands that trial counsel is

“[a]utomatically relieved as appellate counsel for the accused, without obtaining leave to withdraw as provided in Rule 264, SCACR.” See Rule 602 (e)(3), SCACR. If this office determines that appellant is not indigent upon receipt and review of his affidavit of indigency, undersigned counsel understands that “[r]etained counsel shall continue representation of the accused during the appeal, unless granted leave to withdraw under Rule 264, SCACR.” See Rule 602 (e)(4), SCACR.

6. Consequently, undersigned counsel submits that trial counsel’s motion to be relieved is premature because Appellate Defense has not received appellant’s affidavit of indigency to determine whether appellant is indigent. Further, this office will need a list of all hearing dates from trial counsel if appellant is determined to be indigent before trial counsel may be relieved as counsel as mandated by the Supreme Court’s 1997 administrative order.

WHEREFORE, undersigned counsel, having made the return to the motion to be relieved as requested by this Court, submits trial counsel’s motion to be relieved is premature.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

This 16th day of June, 2025.

EXHIBIT A

The Supreme Court of South Carolina

ORDER

Once the Office of Appellate Defense assumes responsibility for representing an indigent seeking appellate review, one of its first actions is to order any necessary transcripts of the proceedings before the lower court. A recurring problem is that the Office of Appellate Defense fails to order all of the transcripts because it is unaware of all the hearings held in the matter. Often this is not discovered until the transcript of the trial or merits hearing is received from the court reporter, resulting in a delay in the processing of the appeal since the additional transcript must be ordered and prepared.

To help prevent this from happening, counsel representing an indigent eligible for representation by the Office of Appellate Defense shall provide the Office of Appellate Defense with a list of all trials and hearings held in the matter. For each trial or hearing, the list shall indicate the date or dates of the hearing or trial; the county in which the trial or hearing was held; the name of the presiding judge; the name of

the court reporter; and a brief description of the nature of the trial or hearing. This list shall be provided to the Office of Appellate Defense no later than ten (10) days after the service of the notice of appeal. If counsel does not provide this list, the Office of Appellate Defense shall promptly contact counsel and inform counsel of the requirement to provide this list. In no case shall counsel be relieved from representing the indigent until the list is provided.

IT IS SO ORDERED.


ERNEST A. FUNNEY, JR.
CHIEF JUSTICE

Columbia, South Carolina

December 12, 1997

RECEIVED

Jun 16 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE ERNEST MORGAN,

APPELLANT

APPELLATE CASE NO. 2025-000834

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Return to the Motion to Be Relieved in the above-referenced case has been served upon Ivan Toney, Esquire and Mark R. Farthing, Esquire, at their primary e-mail addresses listed in the Attorney Information System (AIS), and George Ernest Morgan at 4344 Broad River Road Columbia, South Carolina 29210, this 16th day of June, 2025.



Robert M. Dudek
Chief Appellate Defender

Warren, Kaylynn

From: Warren, Kaylynn
Sent: Monday, June 16, 2025 8:19 AM
To: Mark Farthing
Cc: ivantoney.it@gmail.com; Dudek, Robert; Caroline Collins
Subject: 2025-000834 The State v. George Ernest Morgan
Attachments: 2025-000834 The State v. George Ernest Morgan Return to Motion to Be Relieved.pdf

Good Morning,

Attached for service in the above-referenced case is the Return to Motion to Be Relieved which will be filed today, June 16, 2025, with the Court of Appeals via email filing.

Respectfully,

Kaylynn

Kaylynn Warren

Administrative Assistant

South Carolina Commission on Indigent Defense

Division of Appellate Defense

(803) 734-1330