

State Of South Carolina

In The Court Of Appeals
Case No. 2023-001563

The State,
Respondent,

v.

Raekwon Malik
Ellerbe,
Appellant

Motion For Stay
And To Hold Appeal
In Abeyance To Allow
Appellant To File
Pro se Anders Brief

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Appellant, Raekwon Malik Ellerbe, appearing ^{SC Court of Appeals} pro se, respectfully moves this Honorable Court for an Order to Stay and hold his direct appeal in abeyance, and in support thereof states:

1. Appellants direct appeal is currently pending before this Honorable Court under Case No. 2023-001563
2. Appellant was previously represented by appointed Appellant Counsel, Joanna Delany who recently filed an Anders Brief in this matter, stating that, in her professional judgement, there are no non-frivolous

issues to raise on appeal and requesting permission to withdraw.

3. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and its progeny, when counsel files an Anders Brief, the indigent appellant is afforded the opportunity to file a pro se brief raising any issues the appellant deems appropriate. This is a critical component of ensuring the appellants Sixth Amendment right to counsel at a direct appeal and his Fourteenth Amendment right to due process.
4. Appellants Appellant Counsel, at no point explained to Appellant his right to file his own pro se brief in response to her filing.
5. Appellant, through diligently studying the law in the law library at Kershaw Correctional Institution where he is currently incarcerated only recently learned of this fundamental right from a law clerk. This recent discovery

was critical, as it informed Appellant not only of his right to submit his own brief but also of the meritorious nature of an issue that Appellant Counsel deemed frivolous.

6. The meritorious issue Appellant intends to raise in his pro se Anders brief. "The Court erred in failing to direct a verdict of acquittal for murder, where murder required proof of malice aforethought, but the judge recognized that at the time of the shooting Appellant was 'clearly overcome with grief and emotion at the time....' 'It's clear from the video it's not what you intended....' 'You didn't mean to kill her.' Since a defendant is entitled to a directed verdict where the state has failed to present evidence of the offense charged. Appellant contends that this issue is non-frivolous and should have been raised by Appellant Counsel in a merits brief, especially given Appellant Counsel's own admission in her Anders brief, stating: 'Although defense counsel did not specifically mention

malice during her directed Verdict motion, the Court had a duty Under Rule 19, SCCRim P, to Consider the existence or Non-existence of malice, an element of the Offense." See Ander brief, Bottom of Page 5.

7. Appellant Needs a temporary stay of his direct appeal to properly prepare and present his pro se Anders brief to this Honorable Court, ensuring that his Constitutionally Protected right to a meaningful appellate review is not prejudiced by his lack of prior knowledge regarding the proper procedural response to an Anders Brief.

8. Granting this stay will allow Appellant the necessary time to articulate the meritorious issue for the Courts independent review, thereby protecting his Sixth Amendment right to Counsel at a Critical Stage and his Fourteenth Amendment right to due process, ensuring that his claim of "actual innocence" due to lack of proof of an essential element is adjudicated on its merit.

Wherefore, Appellant respectfully request that this Honorable Court:

- a. Grant this Motion for Stay and hold Appellants direct appeal in abeyance
- b. Provide Appellant with reasonable amount of time (e.g., 30-60 days) from the date of this Order to prepare and file his pro se Anders brief.
- c. Grant any other relief this Court deems just and proper.

Respectfully Submitted,
S, PUM ~~NAME~~
Raekwon Malik Ellerbe ↑
(392059)

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SC Court of Appeals

Certificate of Service

RE: The State v. Raekwon Malik Ellerbe; Case No.
2023-001563

I Raekwon Malik Ellerbe Certify that on this 29th day of July 2025 filed a Motion For Stay And To Hold Appeal In Abeyance To Allow Appellant To File Pro se Anders Brief" by placing in U.S. Mail postage pre-paid sent address below:

South Carolina Court of Appeals

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S, Peun gme

Raekwon Malik

Attorney General

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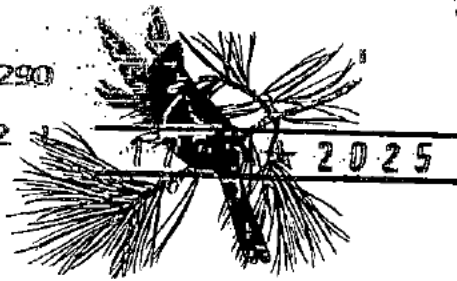
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