

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Sumter County

Honorable William P. Keesley, Circuit Court Judge

Lower Court Case Number: 2018-CP-43-001025
Appellate Case Number: 2026-000115

BOBBY WAYNE STONE #5051,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER.

MOTION FOR APPOINTMENT OF OUTSIDE COUNSEL

The undersigned respectfully moves this Court for the appointment of outside counsel for Respondent, Bobby Wayne Stone, in order to promote efficiency and conservation of resources and allow for continuity of counsel. In support of this motion, the undersigned would show this Court:

- (1) Respondent was convicted of murder and sentenced to death by a Sumter County jury on September 1, 1998. This Court reversed the death sentence and remanded for resentencing on July 15, 2002. *State v. Stone*, 350 S.C. 442, 567 S.E.2d 244 (2002). Respondent was resentenced to death on February 27, 2005, and this Court affirmed the sentence on direct appeal on December 20, 2007. *State v. Stone*, 376 S.C. 32, 655 S.E.2d 487 (2007).

- (2) Respondent timely sought post-conviction relief (“PCR”), which was denied by the circuit court on April 30, 2013. Respondent appealed and this Court affirmed the circuit court’s denial of PCR on February 8, 2017. *Stone v. State*, 419 S.C. 370, 798 S.E.2d 561 (2017).
- (3) Respondent then sought appointment of counsel to pursue federal habeas relief. Respondent’s PCR appellate counsel was appointed to represent him in his federal habeas proceedings alongside “*Martinez*” counsel, who was appointed to investigate whether or not initial PCR counsel provided ineffective assistance by failing to raise any substantial ground for PCR.
- (4) In the course of his federal habeas investigation, Respondent’s *Martinez* counsel identified claims that had not been presented to the state courts, including a claim that Petitioner is a person with intellectual disability for whom the death penalty is barred pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002). Because Respondent’s claims had not previously been considered by the state courts, counsel filed a successive PCR application raising the *Atkins*, and other, claims. The federal court stayed Respondent’s federal habeas proceedings pending the resolution of the state PCR proceedings.
- (5) The state circuit court proceeded to a hearing on the *Atkins* claim¹ at which Respondent was represented by undersigned counsel and Charles Grose as appointed counsel. Undersigned counsel has represented Respondent since 2023.²

¹ The PCR court dismissed the non-*Atkins* claims finding they were procedurally barred as untimely and successive. Order Granting In Part and Denying In Part Respondent’s Motion to Dismiss, *Stone v. State*, 2018-CP-43-001025 (S.C. Ct. Comm. Pleas Feb. 20, 2019).

² Respondent was initially represented in his *Atkins* proceedings by Charles Grose and Emily Paavola. Hannah L. Freedman was substituted for Ms. Paavola in 2019. When Ms. Freedman moved out of state in 2023, undersigned counsel was appointed in her place.

(6) At the conclusion of the evidentiary hearing on Respondent's *Atkins* claim, the parties requested the opportunity to submit post-hearing briefing. Respondent filed his post-hearing briefing on February 4, 2025. Petitioner's return was filed on April 17, 2025, and Respondent's reply briefing was filed on May 2, 2025. By written order dated November 17, 2025, Judge Keesley found Respondent is a person with intellectual disability and therefore cannot be sentenced to death pursuant to *Atkins v. Virginia*, (2002). Judge Keesley denied Petitioner's motion to alter, amend, or reconsider on December 22, 2025.

(7) Petitioner now appeals the grant of *Atkins* relief in this case. A determination of whether an individual is a person with intellectual disability is fact-intensive and requires consideration of multiple diagnostic criteria. Undersigned counsel is intimately familiar with the facts and diagnostic issues in this case. She was responsible for preparing and presenting the evidence at an evidentiary hearing and was responsible for preparing briefing in the court below. Appointment of undersigned counsel, therefore, would create judicial efficiencies because undersigned counsel would not require additional time to become familiar with the record and legal issues.³

(8) Additionally, though he understands he does not have a right to counsel of his choice, Respondent has indicated that he desires undersigned counsel to continue to represent him in this appeal.

Respectfully, for the above reasons, undersigned counsel requests that this Court appoint her to represent Respondent on appeal.

³ Attorney Grose has indicated to undersigned counsel that because of his current case load, he is unable to handle this appeal but submits that he would be available to assist Attorney Major in a *pro bono* capacity.

Respectfully submitted,

s/ Rosalind S.D. Major

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