

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Sumter County
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No: 2026-000115
CAPITAL PCR APPEAL

RECEIVED

Feb 03 2026

S.C. SUPREME COURT

Bobby Wayne Stone,

Respondent,

v.

State of South Carolina,

Petitioner.

STATE'S RETURN TO MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

The State has appealed the grant of post-conviction relief in the captioned matter. On January 23, 2026, Rosalind S.D. Major, Esq., one of the attorneys who represented Petitioner at the evidentiary hearing, moved to be appointed as Mr. Stone's counsel for the appeal. The State makes this return to the motion, and would respectfully show the Court:

The State generally takes no position on who should be appointed to represent a death-sentenced inmate absent some indication of conflict or other limitation which may affect the litigation. In this case, the State follows that course and takes no position on Ms. Major's request for appointment. However, the motion addresses only the appointment of one attorney for the appeal. On this point, the State objects.

“[T]he Legislature intended for an indigent capital defendant to be appointed counsel” under the provisions of S.C. Code § 17-27-160. *Robertson v. State*, 418 S.C. 505, 518, 795 S.E.2d 29, 35 (2016). Those provisions include that two attorneys must be appointed if counsel is requested. The statute is silent as to appeal. Yet, the State PCR process necessarily includes an appeal or appeal opportunity. *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755–56 (1999) (“Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple,’” which “includes an applicant’s right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal.” (quoting *Aice v. State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991)); *Gibson v. State*, 329 S.C. 37, 42, 495 S.E.2d 426, 428 (1998) (explaining “all available PCR remedies,” as the “filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review”). Consequently, with the clear expression that two attorneys must be appointed for a death-sentenced PCR applicant (at least one with heightened qualifications), the State submits that the Court should provide for the appointment of two attorneys for the appeal which would follow the intent of the Legislature to afford adequate assistance during the PCR process. *Robertson*, 418 S.C. at 518, 795 S.E.2d at 35 (“the Legislature included section 17-27-160 to provide, in part, for ‘the appointment and compensation of counsel’ in capital PCR proceedings”). See generally *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.”) (citing *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)).

THEREFORE, based on the foregoing, the State takes no position on Ms. Major’s request for appointment, but respectfully submits two attorneys should be appointed for the appeal.

Respectfully submitted,

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