

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Thomas W. McGee, III, Circuit Court Judge

BRIAN DAUGHERTY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2026-001491

PETITION FOR APPOINTMENT OF OUTSIDE COUNSEL

Pursuant to Rule 240, SCACR, the undersigned counsel respectfully moves for this Court to appoint outside counsel to represent petitioner Brian Daugherty in his appeal from the denial of his post-conviction relief (PCR) action.

1. During the September 2015 term of the Charleston County Grand Jury, petitioner was indicted for three counts of first-degree criminal sexual conduct with a minor (2015-GS-10-04916, 2015-GS-10-04917, 2015-GS-10-05005), three counts of second-degree criminal sexual conduct with a minor (2015-GS-10-04922, 2015-GS-10-04924, 2015-GS-10-04925), and two counts of lewd act upon a minor (2015-GS-10-05010 and 2015-GS-10-05010), and criminal sexual

conduct with a minor (2017-GS-10-2001) at the March 2017 term of the Charleston County Grand Jury.

2. Petitioner's case was called to trial before Judge Roger Couch and a jury during March 13-15, 2017. Debbie Herring Lash prosecuted the case, and Attorneys Jessica Birt and Charles Cochran represented petitioner at trial. Petitioner was found guilty as indicted on March 15, 2017, and Judge Couch sentenced petitioner to an aggregate twenty-five-year prison term.

3. Petitioner's trial counsels filed a timely notice of appeal. Senior Assistant Appellate Defender Lara M. Caudy perfected petitioner's direct appeal. On June 5, 2019, the South Carolina Court of Appeals affirmed petitioner's convictions and sentences. See *State v. Brian Christopher Daugherty*, Op. No. 2019-UP-203 (Ct. App. filed June 5, 2019). The remittitur was issued on June 21, 2019.

4. Petitioner timely filed an application for PCR on July 2, 2019. Respondent filed a return on October 16, 2019. Petitioner's allegations included ineffective assistance from trial counsels and appellate counsel Lara M. Caudy. Petitioner filed an amended PCR application on June 30, 2020.

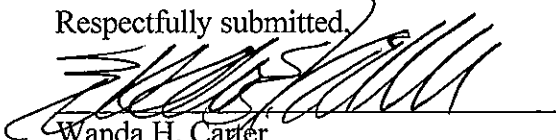
5. Evidentiary hearings were held on October 17, 2025, and April 15, 2026, at the Charleston County Courthouse before Judge Thomas W. McGee, III. Attorney Dayne Phillips represented petitioner at the PCR hearing, and Assistant Attorney General Kylee Kanealey represented the state. Counsel Caudy testified at the PCR evidentiary hearing.

6. Judge McGee signed an Order of Dismissal denying PCR relief on June 23, 2026. Petitioner submitted an affidavit of indigency to the Division of Appellate Defense and has been determined to be indigent. Since petitioner is indigent, the South Carolina Commission on Indigent Defense Division of Appellate Defense would assume representation of petitioner.

7. However, the undersigned counsel concludes that this case presents a conflict with our office; inasmuch as any staff attorney assigned to the case would be placed in the position of having to evaluate the effectiveness of another office attorney, which would give rise to dual representation and divided loyalties. Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984), *citing* Cuyler v. Sullivan, 446 U.S. 335 (1990), and Zuck v. State of Alabama, 588 F.2d (5th Cir. 1979). A Staff Attorney at Appellate Defense assigned to petitioner's case would have to pass judgement on the performance of fellow Office Attorney Lara Caudy. Therefore, in order to avoid actual impropriety or the appearance of impropriety, *see* Rule 407, SCACR, the undersigned requests an Order Appointing Outside Counsel, and that this appeal be held in abeyance pending a ruling on this petition.

WHEREFORE, the undersigned counsel respectfully requests the appointment of outside counsel to represent petitioner in his PCR appeal before this Court, and that the appeal be held in abeyance pending a decision made therein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Chief Appellate Defender

This 22nd day of July, 2026.