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SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 13, 2014

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JAN 13 2014

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
PO Box 11330
Columbia, SC 29211

S.C. Supreme Court

Re: Jerry McGriff v. State of South Carolina

Dear Mr. Shearouse:

Enclosed are an original and six copies of the Motion for Appointment of Outside Counsel in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/lcd

Enclosure

cc: Suzanne H. White, Esquire
Mr. Jerry McGriff

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lancaster County

Honorable J. Ernest Kinard, Jr., Circuit Court Judge

JERRY MCGRUFF,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-001886

MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

The undersigned respectfully shows the Court:

1. On May 7, 2008, Petitioner was convicted, following a jury trial, of murder, unlawful carrying of a pistol, and the possession of a weapon during the commission of a crime of violence. Attorney William P. Frick was Petitioner's trial counsel. Petitioner was sentenced by the Honorable Brooks P. Goldsmith to forty years in prison for the murder, five years for the possession of a weapon during a crime of violence, and one year for the unlawful carrying of a pistol. The sentences were concurrent.

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S.C. Supreme Court

2. Chief Appellate Defender Robert M. Dudek, represented Petitioner on appeal. Petitioner's convictions were affirmed by the Court of Appeals in State v. McGriff, Op. No. 2010-UP-538 (Ct. App. filed December 16, 2010).

3. Based on the Opinion of the Court of Appeals, Chief Appellate Defender Robert M. Dudek did not seek a rehearing.

4. Petitioner filed an application for post conviction relief (PCR) on December 15, 2011, and subsequently filed two amended PCR applications. Petitioner alleged ineffective assistance of trial counsel and appellate counsel.

5. An evidentiary hearing was held before the Honorable J. Ernest Kinard on February 5, 2013. Chief Appellate Defender Robert Dudek did not testify at the PCR hearing.

6. PCR counsel did present brief testimony about appellate counsel not seeking a rehearing and not filing a writ of certiorari to this Court. See PCR Transcript p. 20, ll. 11 – p. 21, ll. 7. Exhibit A.

7. An Order of Dismissal was filed by Judge Kinard on August 21, 2013. In his order, Judge Kinard made a finding that Chief Appellate Defender was not ineffective.

8. Petitioner's PCR appeal was received by the South Carolina Commission on Indigent Defense, the Division of Appellate Defense in September 2013. The case was assigned to Appellate Defender LaNelle C. DuRant, and has never been extended.

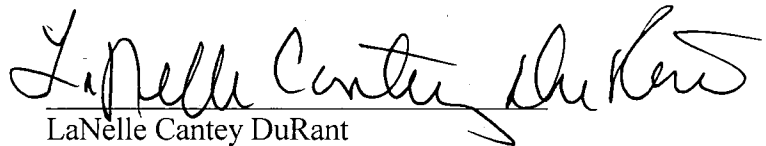
9. Because Chief Appellate Defender Robert M. Dudek is currently serving as the Chief Appellate Defender, Attorney DuRant talked with Petitioner McGriff on January 9, 2013 to ascertain his opinion about our representation of him on appeal. Petitioner McGriff indicated that he wishes for his PCR appeal to be conflicted out of the Division of Appellate Defense due to the potential conflict. He prefers to have outside counsel appointed by this Court although he

understands the decision whether or not to appoint outside counsel rests in the discretion of this Court.

10. For the above reasons, this motion is made to request outside counsel due to the potential conflict with the Division of Appellate Defense.

WHEREFORE, counsel respectfully requests that counsel outside of the Division of Appellate Defense be appointed to represent Petitioner, and that the time limits for filing the petition for a writ of certiorari be held in abeyance pending a ruling on this motion.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

Attorney for Petitioner,

This 13th day of January, 2014

Exhibit A

1 Q How come?

2 A Because I know I didn't know what it was. He didn't
3 explain it to me.

4 Q Okay. What about -- did you think it's inappropriate
5 that malice should be applied because of a use of a
6 weapon?

7 A Yes.

8 Q How come?

9 A Because they -- that's what they charged me with, a
10 weapon.

11 Q Did you file an appeal in this case?

12 A Yes, ma'am.

13 Q Or did you ask your attorney to file an appeal?

14 A Yes, ma'am.

15 Q And did he file that appeal?

16 A Yes, ma'am, he did.

17 Q Did you ever meet with and discuss your appeal with
18 your appellate attorney?

19 A Yes, I didn't meet him but I -- I talked to him
20 through paperwork.

21 Q And what happened with that appeal?

22 A He didn't raise the hand of one hand of all in my
23 paper where they turned me down, they denied my paperwork.

24 Q Did he appeal it further to the Supreme Court?

25 A No, he didn't.

1 Q Did you want him to?

2 A Yes, ma'am.

3 Q Did you ask him to?

4 A Yes, I did.

5 MS. GOLDBERG - Nothing further at this time. Mr.
6 McGriff, please answer any questions she has for you,
7 please.

8 CROSS EXAMINATION

9 BY MS. WHITE -

10 Q Mr. McGriff, this was a case where there were lot of
11 witnesses that told a lot of different things. Is that
12 right?

13 A Yes, ma'am.

14 Q And so the State called at least six or seven
15 witnesses on their side, did they not?

16 A Called five.

17 Q Okay. A couple of policemen and then several of the
18 people that were at the location of the incident.

19 A And probably seven with all them, probably was truly
20 about seven.

21 Q Okay. And your attorney called some folks on your
22 behalf, didn't he?

23 A Yes, ma'am.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lancaster County
Honorable J. Ernest Kinard, Jr., Circuit Court Judge

JERRY MCGRIFF,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Motion for Appointment of Outside Counsel in the above referenced case has been served upon opposing counsel, Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Jerry McGriff, #178234 at McCormick Correctional Institution this 13th day of January, 2014.



LaNelle Cantey DuRant
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 13th day of January, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.