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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO LAURENS COUNTY
Court of Common Pleas
The Honorable S. Bryan Doby, Circuit Court Judge

Appellate Case No. 2025-001620

Hakeem Evans,

Petitioner,

v.

State of South Carolina,

Respondent.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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PETITIONER'S STATEMENT OF THE ISSUE PRESENTED

Whether the PCR court erred as a matter of law in feeling bound by the decision of Judge Cole from an earlier proceeding to deny petitioner's request to relieve PCR counsel, who had not prepared for the evidentiary hearing, and appoint new counsel?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE PRESENTED

The PCR court properly denied Petitioner's motion to relieve PCR counsel and appoint new counsel, where the motion had already been denied by a prior PCR judge in the same action.

STATEMENT OF THE CASE

In the early morning hours of January 23, 2020, Petitioner shot and killed the victim, Rasham Walker, inside Walker's home in Clinton. Facebook records showed that Walker had contacted Petitioner's co-defendant, part-time prostitute Brandy Standridge, and had agreed to meet with her at his home around midnight. Standridge went to Walker's residence with Petitioner in the backseat of her car. Standridge and Walker went inside and had a sexual encounter. Petitioner then came in the front door with a gun and fired multiple times at Walker, hitting him five times including a fatal shot to the head. Petitioner and Standridge then stole a bookbag full of money and marijuana from Walker's residence and fled to Anderson County. Investigators identified Standridge as a suspect based on Facebook records, and she ultimately confessed to her part of the crime and identified Petitioner as the shooter. Petitioner was caught weeks later after stealing a car in Greenville County, leading officers on a high-speed chase until he went off the road and wrecked the car, exiting the car with a gun in his hand and threatening to kill himself, before ultimately complying with the arrest. (App. pp. 8–11).

During its May 2021 term, the Laurens County Grand Jury indicted Petitioner for murder (2021-GS-30-00497), possession of a weapon duiring the commission of a violent crime (2021-GS-30-00498), and armed robbery (2021-GS-30-00499). Petitioner was represented by Michael S. Gambrell, Esquire ("Counsel"). Eighth Circuit Solicitor David M. Stumbo prosecuted the case.

On August 4, 2021, Petitioner appeared before the Honorable Frank R. Addy, Jr., circuit court judge, and pled guilty to the armed robbery charge and to voluntary manslaughter as a lesser-included offense of the murder charge. As part of the plea agreement, the State agreed to dismiss the weapon charge and not to oppose a concurrent sentence. Following a thorough plea colloquy, Judge Addy sentenced Petitioner to twenty-three years' imprisonment on both charges, to run

concurrently.

Petitioner filed a *pro se* "Notice of Request for Appeal in the South Carolina Court of Appeals" on September 1, 2021. The document is dated August 27, 2021, and purports to have been prepared on Petitioner's behalf by someone identified only as "DR #364574." On September 14, 2021, the court of appeals informed Counsel that Petitioner had filed a notice of appeal and identified multiple deficiencies, including the failure to prove that the notice of appeal had been served upon all necessary parties. On September 24, 2021, Counsel responded by filing a notice of appeal, accompanied by proof of service, dated September 22, 2021. The court of appeals then dismissed the appeal for failure to serve and file the notice of appeal within ten days of Petitioner's August 4, 2021, conviction and sentence as required by Rule 203(b)(2), SCACR. The remittitur was sent on November 9, 2021.

On July 21, 2022, Petitioner filed an application for post-conviction relief ("PCR") challenging his conviction on the grounds that his counsel was ineffective and he was incompetent at the time of his guilty plea. Ashley A. McMahan, Esquire, was appointed to represent Petitioner.

Petitioner subsequently filed a motion for Ms. McMahan to be relieved as his attorney. (App.p.52). On August 22, 2024, Petitioner appeared before the Honorable J. Derham Cole, circuit court judge, for a hearing on his motion. Petitioner claimed Ms. McMahan exhibited a "lack of effort" and appeared not to be taking his PCR action seriously. (App.p.57, lines 2–8). Judge Cole asked if Petitioner had any plans to hire an attorney to replace Ms. McMahan, and Petitioner replied that he would need a continuance "so I could try to find a lawyer to help me or hoping the Court would find another lawyer to try to help me." (App.p.57, line 25–p.58, line 4). Petitioner explained that his family was trying to save money in order to hire an attorney. (App.p.58, lines 14–20). Judge Cole urged Petitioner to be realistic about the likelihood of hiring another attorney: "You

say you want to get rid of [Ms. McMahan] because you're going to hire somebody. If that's realistic, that's a good course of action. If that's not realistic, then you don't need to be firing your lawyer. That's like quitting your job before you have another one." (App.p.59, lines 10–14).

Petitioner responded, "I was thinking that the Court was going to appoint me another lawyer." (App.p.59, lines 15–16). Judge Cole replied, "So you thought I would just make somebody else represent you until you find somebody you're satisfied with?" (App.p.59, lines 17–19). Petitioner answered, "No, just hoping I could take my chances with somebody else, with another person." (App.p.59, lines 20–21). Judge Cole explained that "you don't get to pick and choose. Ms. McMahan has been appointed to represent you, she's your lawyer now. If you fire her, you won't get another court appointed lawyer." (App.p.59, line 24–p.60, line 2).

Petitioner complained that it "[l]ooks like I have no choice." (App.p.60, line 6). Judge Cole responded that Petitioner could choose one of three options: he could either continue with Ms. McMahan, hire another lawyer, or represent himself. (App.p.60, lines 7–15). Petitioner replied, "I'm sticking with the one I got." (App.p.60, line 16). Judge Cole noted that Petitioner had chosen to "[s]tick with Ms. McMahan," and the hearing was concluded. (App.p.60, line 17).

An evidentiary hearing was held before the Honorable S. Bryan Doby, circuit court judge, on April 1, 2025. At the outset of that hearing, Petitioner again moved to have Ms. McMahan relieved. Judge Doby noted that, "from looking at the materials, Mr. Evans, I believe that that was a request that was made to Judge Cole, who ruled on that. . . . And so, that's already been ruled on by a judge previously. I can't behind that judge and now say, I'm going to give you a new lawyer, because Judge Cole has already considered that and given you your options." (App.p.70, line 6–p.71, line 15). The hearing proceeded on the merits of Petitioner's PCR application. Ultimately, Judge Doby issued an order on July 14, 2025, denying the application.

Petitioner subsequently filed a notice of appeal and petition for a writ of certiorari in this Court. This Return follows.

STANDARD OF REVIEW

"[A] motion to relieve counsel is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *State v. Cottrell*, 421 S.C. 622, 634, 809 S.E.2d 423, 430 (2017).

ARGUMENT

The PCR court properly denied Petitioner's motion to relieve PCR counsel and appoint new counsel, where the motion had already been denied by a prior PCR judge in the same action.

Petitioner argues Judge Doby erred in refusing to relieve Ms. McMahan as his PCR attorney and to appoint new counsel. Petitioner claims Judge Doby was not bound by Judge Cole's earlier ruling and erred as a matter of law in refusing to "go behind" Judge Cole's ruling.

This argument is manifestly without merit. "If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." Rule 43(l), SCRCP. The South Carolina Rules of Civil Procedure apply to PCR actions. Rule 71.1(a), SCRCP.

In this case, the motion to relieve Ms. McMahan and appoint new counsel was first made to Judge Cole in August of 2024. Judge Cole denied the motion.

At the April 2025 hearing, Petitioner made the *same* motion again before Judge Doby. Rule 43(l), SCRCP, provides that a party whose motion was denied by a prior judge is prohibited from making a subsequent motion upon the same state of facts to another judge in the same action. That was exactly what Petitioner attempted to do in this case.

Judge Doby correctly noted that Judge Cole had already ruled on the motion and had denied Petitioner's request to appoint new counsel. Petitioner alleged no new facts in his motion before Judge Doby; rather, he merely repeated his earlier complaints about Ms. McMahan's alleged failure to devote more effort to preparing his case. Accordingly, Judge Doby correctly refused to "go behind" Judge Cole's order.

Petitioner cites *Hines v. State*, 443 S.C. 32, 902 S.E.2d 377 (2024), for the proposition that a judge has the inherent authority to appoint new counsel "even if a prior circuit court judge has

denied an earlier request to appoint new counsel." (Pet.pp.6–7). *Hines*, however, does not support that proposition; the issue in that case had nothing to do with the purported "inherent authority" of circuit courts to depart from an earlier judge's ruling denying appointment of counsel in the same action. The Court in *Hines* was merely concerned with the question of whether the defendant in that case adequately understood the right to counsel prior to waiving that right and pleading guilty *pro se*. *See Hines*, 443 S.C. at 40, 902 S.E.2d at 381 ("[T]he only issue . . . is whether [Hines'] understanding of 'his right to be counseled regarding his plea' rose to the level the Sixth Amendment demands.") (quoting *Iowa v. Tovar*, 541 U.S. 77, 81 (2004)). The dissent argued Hines "may have been confused about whether he could be appointed yet another lawyer" because, after one judge told him he would not receive another court-appointed lawyer, the judge who subsequently presided over his guilty plea told Hines he *would* appoint another lawyer if requested. *Id.* at 43, 902 S.E.2d at 382. The majority acknowledged the conflict between the two judges' statements but determined that it did not meaningfully impair Hines' understanding of the right to counsel because "Hines could have . . . taken [the plea judge] up on the offer to appoint him counsel; at the very least, he could have sought clarification." *Id.* The Court did not purport to address whether the plea judge *actually* had the authority to reverse the earlier judge's ruling. In addition, since Hines did not request that the plea court appoint new counsel, there is no way of knowing whether a different "state of facts" might have warranted departing from the prior ruling in that case.[1]

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[1] Criminal cases are governed by the Rules of Criminal Procedure, rather than the Rules of Civil Procedure. However, Rule 4(b), SCRCrimP, provides that "[i]f any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same set of facts shall be made to any other judge in that action." This language is identical to the language of Rule 43(l), SCRCP.

Petitioner also argues that Judge Doby should have appointed new counsel anyway because Ms. McMahan failed to prepare for the PCR hearing or to conduct an adequate investigation. The only parts of the record Petitioner cites to support this accusation are his own statements at the PCR hearing complaining about Ms. McMahan's supposed deficiencies. (Pet.p.7) (citing App.p.70, lines 6–17; p.72, lines 17–20). Judge Doby, however, had no obligation to accept Petitioner's accusations against Ms. McMahan at face value. Criminal defendants and PCR applicants frequently misinterpret their attorneys' reasonable advice and strategic choices as evidence of indifference or hostility to their cause. In addition, last-minute complaints about the purported misconduct of appointed counsel are common dilatory tactics in PCR and criminal cases. It is likely that neither Judge Cole nor Judge Doby found Petitioner's complaints about Ms. McMahan credible, although neither judge cared to say so explicitly. This Court has no more reason to take Petitioner at his word than those judges did.

For all these reasons, Judge Doby's decision was proper and should not be disturbed on appeal. Therefore, Respondent asks this Court to deny the Petition for a Writ of Certiorari.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari and should leave undisturbed the correct decision of the PCR court. Should this Court decide to grant the petition, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

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