

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Bamberg County

RECEIVED

MAR 10 2014

Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

S.C. Supreme Court

JOHNNIE L. JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2013-001888

PETITION FOR APPOINTMENT
OF OUTSIDE COUNSEL

Pursuant to Rule 224 of the South Carolina Appellate Court Rules, the undersigned counsel, who is presently representing the above named petitioner on PCR appeal, moves for the appointment of independent counsel in the case due to petitioner's PCR allegations regarding her representation of him on direct appeal. Counsel presents the following facts in support of this motion.

1.) Petitioner Johnnie L. Jones was convicted of assault and battery of a high and aggravated nature and attempted kidnapping per jury trial during the April, 2010 term of the Bamberg County

General Sessions Court before Judge Doyet A. Early. Dan Luginbill and Kent Kirkland represented petitioner at trial. Assistant Solicitors Lauren Maurice and Kip McAllister appeared at trial on behalf of the state. Petitioner was sentenced to imprisonment for an aggregate period of eighteen years. Petitioner appealed and the undersigned counsel represented petitioner on direct appeal. The undersigned counsel raised the following issue on direct appeal:

The trial judge erred in allowing accuser's identification testimony into evidence at trial because the highly suggestive out-of-court identification procedure used by police where the one photograph was displayed in the photographic layout and shown to the accuser resulted in an unreliable identification and a misidentification in the case.

2.) On January 25, 2012, the South Carolina Court of Appeals issued an opinion affirming petitioner's convictions and sentences. See State v. Jones, Unpublished Opinion No. 2012-UP-034 (S.C.Ct. App. filed Jan. 25, 2012). Petitioner filed a PCR application dated April 30, 2012, and an amended PCR application dated September 5, 2012, with the Bamberg County Office of the Clerk of Court alleging ineffective assistance of trial and appellate counsels in the case. An evidentiary hearing was convened on July 8, 2013, at the Bamberg County Courthouse before Judge R. Ferrell Cothran. Petitioner was present at the hearing and represented by Charles T. Brooks, and Assistant Attorney General Daniel Gourley appeared on behalf of the state. In his amended PCR application, petitioner listed the following allegations of ineffective assistance of appellate counsel:

1. Appellate counsel failed to argue on appeal the issue of the defective/insufficient custody chain.
2. Appellate counsel failed to argue on appeal the issue of a mistrial on a curative instruction to disregard incompetent witnesses' testimony.

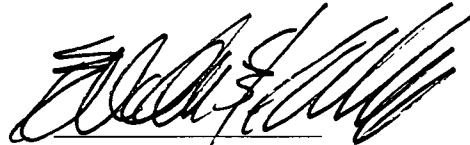
3. Appellate counsel failed to argue a motion for a mistrial due to incompetent expert testimony given in the case.

The undersigned counsel did not testify at petitioner's PCR hearing held in the case. On August 19, 2013, PCR Judge Cothran issued an order of dismissal that denied PCR relief to petitioner and included no findings on petitioner's claim of ineffective assistance of appellate counsel.

3.) Petitioner appealed Judge Cothran's order of dismissal. The undersigned counsel has been assigned to perfect the PCR appeal from Judge Cothran's order dismissing petitioner's PCR action. In response to this assignment, petitioner filed a motion with this Court on December 30, 2013, requesting the removal of the undersigned counsel from representing him on PCR appeal (see attachment) due to his allegations of ineffective assistance of appellate counsel on direct appeal, but this Court denied his motion on February 7, 2014. However, since this PCR appeal concerns the effectiveness of the undersigned's representation of petitioner on direct appeal, the undersigned is presented with a conflict in the case. Counsel in effect has been placed in a position of having to evaluate her own effectiveness in the case, which is an ethical dilemma; and it would be a conflict for the undersigned counsel to pass upon her own performance in petitioner's case in the appeal. See generally, Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989); Poston v. State, 303 S.C. 167, 399 S.E.2d 592 (1989). Compare Carter v. State, 293 S.C. 528, 362 S.E.2d 20 (1987), where this Court cited the impracticality of counsel arguing his own ineffectiveness at a post conviction relief proceeding.

WHEREFORE, the undersigned counsel requests that independent counsel be appointed to represent petitioner in this PCR appeal, and that said appeal be held in abeyance pending the appointment requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written in a cursive style.

WANDA H. CARTER
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER.

This 10th day of March, 2014.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Bamberg County

Honorable Larry R. Patterson, Circuit Court Judge

JOHNNIE L. JONES,

PETITIONER,

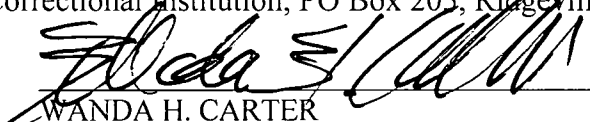
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

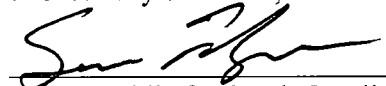
The undersigned attorney hereby certifies that a true copy of the petition for appointment of independent counsel in the above referenced case has been served upon opposing counsel, Daniel Gourley, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Mr. Johnnie L. Jones, at Lieber Correctional Institution, PO Box 205, Ridgeway, SC 29472, this 10th day of March, 2014.



WANDA H. CARTER
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 10th day of March, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022

Exhibit A

2013 - 001888

Johnnie Lee Jones #340271
Lieber Corr. Inst. Stono B-22
P.O. Box 205
Ridgeville, S.C. 29472-0205

RECEIVED

DEC 30 2013

December 23, 2013

Hon. Daniel Shearouse, Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

S.C. Supreme Court

Re: Appointment of Appellate Counsel In The Denial Of PCR
C/A # 2012-CP-05-077

Dear Mr. Shearouse,

I'm writing your Office and the High Court today to request that outside counsel be appointed to represent me on Petition for a Writ of Certiorari in the above referenced case.

Ms. Wanda H. Carter was appointed to represent me on the above petition for a writ of certiorari.

I had brought ineffective assistance of counsel [appellate counsel] against Ms. Carter on PCR due to her leaving trial error issues off my direct appeal.

Ms. Carter and I also had irreconcilable differences/conflict due to her failure to keep me abreast of issues that she was presenting on my behalf as well as her failure to reply to legal questions concerning my appeal [direct].

Please remove Ms. Carter from my case and appoint outside appellate counsel to represent me on petition for writ of certiorari. Thank you for your assistance in this matter.

Sincerely

Johnnie Lee Jones
Johnny Lee Jones

Johnnie Lee Jones #340271
Lieber Corr. Inst. Stone B-22
P.O. Box 205
Ridgeville, S.C. 29472-0205

December 23, 2013

Ms. Wanda H. Carter
Deputy Chief Appellate Defense
S.C. Comm. on Indigent Defense
P.O. Box 11589
Columbia, S.C. 29211-1589

Re: Your Representation of Appellant Johnnie Lee Jones #340271
on Petition For Writ of Certiorari - Dismissal of PCR - Case #2012-CP-05-
077

Dear Ms. Carter,

I am writing the S.C. Supreme Court today concerning your prior representation of me - you did absolutely nothing on my direct appeal. I wrote you numerous times with one reply.

I raised ineffective assistance of counsel against you on this very PCR by prose amendment as my PCR counsel never even read anything nor discussed with me my issues just as you did previously.

I'm asking the S.C. Supreme Court to appoint outside counsel to represent me as I attempted to raise IAC Appellate Counsel against you but Charles Brooks did just as you do - IGNORE APPLICANT - you left trial error off direct appeal. I feel as if you represent me now - I'll have had a third prosecutor rather than an attorney.

I'm notifying the S.C. Supreme Court to appoint outside counsel due to an irreconcilable differences/conflict.

Sincerely

Johnnie L Jones