



State of South Carolina
The Circuit Court of the First Judicial Circuit

Edgar Warren Dickson
Judge

Post Office Box 1949
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June 2, 2014

Chief Justice Jean Hofer Toal
The Supreme Court of South Carolina
P. O. Box 12456
Columbia, S. C. 29211

Re: The State v. William O. Dickerson
Appellate Case No. 2009-133266

Dear Chief Justice Toal:

I am enclosing a copy of my ORDER OF RECUSAL that is being mailed today to the Clerk of Court for Charleston County for filing, Attorneys of record in this case, Court Administration and the Clerk of The Supreme Court.

I regret that I am unable to remain on this case, but I feel my Order will be self-explanatory as to my reasons for recusal.

Sincerely,

Edgar W. Dickson

EWD:pts

Enclosure

cc:

✓ Daniel Shearouse, Clerk
The Supreme Court
P. O. Box 11330
Columbia, S. C. 29211

Rosalyn W. Frierson
State Court Administrator
S. C. Judicial Department
1015 Sumter St. Ste. 200
Columbia, S.C. 29201

RECEIVED

JUN 04 2014

S.C. SUPREME COURT



State of South Carolina
The Circuit Court of the First Judicial Circuit

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June 2, 2014

Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, S. C. 29401-2210

Re: William O. Dickerson, Jr. v. State
Case No. 12-CP-10-3216

Dear Ms. Armstrong:

Enclosed for filing in your office, please find an Order of Recusal regarding the above referenced case and a Certificate of Service by Mail. Also enclosed is a copy of the Order and a self-addressed envelope to return a clocked copy to me.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Edgar W. Dickson".

Edgar W. Dickson
Presiding Judge

EWD:pts

Enclosures

cc: E. Charles Grose, Jr. (via U.S. mail)
Melody J. Brown (via U.S. mail)
Brendan McDonald (via U.S. mail)
Elizabeth A. Franklin-Best (via U.S. mail)

RECEIVED

JUN 04 2014

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-10-03216

William O. Dickerson, Jr.)
)
Applicant)

v.)

ORDER OF RECUSAL

State of South Carolina)
)
Defendant)

This matter came to be heard before the Court on November 21, 2013, in Orangeburg County, South Carolina, on Applicant's motion for the Court to recuse itself from hearing this application for post-conviction relief. At the hearing, the State was represented by Melody Brown and Brendan McDonald of the South Carolina Attorney General's Office. Applicant was represented by Charles Grose of the Greenwood County Bar and Elizabeth Franklin-Best of the Richland County Bar.

As part of the record for this hearing, this Court has before it the following documents:

- (1) Letter from Mr. Grose dated April 17, 2013 (6 pp);
- (2) Applicant's motion for the court to withdraw (11 pp.) with Appendix (79 pp.) dated April 26, 2013;
- (3) Letter from Assistant Attorney General Brown dated April 29, 2013 (1 pp);
- (4) Attorney General's response to Applicant's motion for the court to withdraw (5 pp.) dated April 30, 2013;
- (5) Letter and Documents from Mr. Grose dated April 29, 2013 (23 pp.);
- (6) Attorney General's letter and response dated April 30, 2013 (4 pp.);

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[Handwritten signature]

- (7) Letter from Mr. Grose dated May 1, 2013 (1 pp.);
- (8) Applicant's reply to Attorney General's response dated May 6, 2013 (38 pp.) with documentation (70 pp.);
- (9) Petition for Supreme Court to review assignment of the case dated May 17, 2013, (52 pp.) with Appendix (169 pp.);
- (10) Attorney General's return to petition dated May 22, 2013 (10 pp.);
- (11) Applicant's letter to the Supreme Court dated May 23, 2013;
- (12) Justice Toal's Order of May 28, 2013;
- (13) Applicant's motion to compel the Attorney General to respond to subpoena dated May 30, 2013;
- (14) Applicant's letter to the Court dated May 30, 2013;
- (15) Applicant's motion to reconsider the Order dated June 4, 2013; and
- (16) Applicant's motion to reconsider the Order dated June 14, 2013.

After due deliberation, review of the memoranda, case law, exhibits and arguments of counsel, the Court rules as follows:

FACTS

On April 30, 2009, Applicant was found guilty of murder, first degree criminal sexual conduct, and kidnapping after a jury trial in Charleston County. The Honorable R. Markley Dennis sentenced Applicant to death for murder, thirty years imprisonment for criminal sexual conduct, and thirty years imprisonment for kidnapping. The convictions were affirmed on appeal. Applicant filed a *pro se* application for post-conviction relief on May 16, 2012. Chief Justice Toal granted Applicant's petition for stay of execution to allow him to pursue his PCR application. Chief Justice Toal's order assigned this Court exclusive jurisdiction over the case.

Upon request by Mr. Dickerson, the Court appointed Mr. Grose as PCR counsel along with Ms. Franklin-Best. On October 16, 2012, Applicant filed his first amended application for post-conviction relief. On August 30, 2012, the Court issued a scheduling order setting an evidentiary hearing for June 17, 2013. This date was chosen after the parties could not agree to a date, with the Attorney General's Office requesting a date in February of 2013 and Applicant requesting a date in August of 2013. After Applicant's numerous objections to the Court's scheduling decisions (including a memorandum of more than 150 pages including appendix) and after the Court denied Applicant's request for public funding to pay for a private investigator, Applicant's attorney wrote the Court a letter suggesting that the Court should recuse itself. After being advised by the Court that filing a formal motion was the appropriate manner to make such a request, Applicant filed a motion for the Court to withdraw. Due to the motion for the Court to withdraw, the evidentiary hearing was postponed. A hearing on the recusal motion was held on November 21, 2013 in Orangeburg.

ANALYSIS

The Code of Judicial Conduct requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. Canon 3.E of the Code of Judicial Conduct, Rule 501, SCACR. When disqualification is not required, however, the Code states, "A judge shall hear and decide matters assigned to the judge[.]" Canon 3.B(1) of the Code of Judicial Conduct, Rule 501, SCACR. Simpson v. Simpson, 377 S.C. 519, 523, 660 S.E.2d 274, 277 (S.C. Ct. App. 2008).

At the hearing, Applicant made numerous arguments and allegations in support of his request that the Court recuse itself. The Court finds it appropriate to summarize Applicant's presentation at that proceeding.

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Charles Grose presented the Applicant's case. Initially, Mr. Grose asked to have Applicant's shackles loosened, citing that Applicant was prejudiced by not being allowed to move his hands freely during the hearing. The Court declined to loosen his restraints out of concern for the safety of those in the courtroom. Applicant has been convicted of extremely violent offenses. Applicant was allowed to converse freely with his attorneys, and all present were advised that the hearing could be stopped at any time to allow them more time to confer. The Court at one point offered to stop the proceeding to give Applicant more time, and counsel responded that he did not need extra time. Nonetheless, Mr. Grose twice took time to note for the record that Applicant's hands were shackled and that he could not write as freely as if his hands had not been restrained. Despite these theatrics, the Court finds that Applicant was not prejudiced in any way.

Applicant then proceeded to make his argument in support of recusal. Applicant's counsel stated that because of the Court's inflexible schedule and adverse rulings early on in the case, he became suspicious that there was some ulterior reason for the Court's rulings. The Court finds nothing suspicious about its prior rulings or scheduling decisions. While Applicant may disagree with the rulings, these decisions are in line with statutory and case law, and were made in the regular course of judicial deliberation. As stated in Langford, "The contention that a judge was biased solely because he ruled against a defendant is untenable and insulting towards the Court, and it would set a dangerous precedent were we to sanction it." State v. Langford, 400 S.C. 421, 439, 735 S.E.2d 471, 480 (2012). Mr. Grose explained that because of these suspicions, he began to investigate whether the Court may have any personal bias against the Applicant.


Applicant's arguments then took a turn towards the bizarre. Mr. Grose stated that his suspicions became stronger when he learned that Judge Dickson and Solicitor Scarlett Wilson, whose office prosecuted Mr. Dickerson at trial, both grew up in Williamsburg County. Applicant alleges that because of Ms. Wilson's upcoming bid for reelection, affirmation of the trial verdict is especially important to her career. Applicant suggested that the Court had a personal interest in supporting Ms. Wilson's re-election by insuring that his PCR application would be denied.

The Court does not believe that the fact that Judge Dickson and Scarlett Wilson both grew up in Williamsburg County is reasonable cause for suspicion of bias. This Court has no personal relationship with Solicitor Wilson, and its decisions in this case have been in no way affected by a desire to boost or affect Ms. Wilson's reelection prospects in any way whatsoever.

Applicant further explained that his suspicions became greatly intensified after a search led him to an online employment profile of the Court's (now former) law clerk, Andrew Evans. From this profile, Applicant's counsel learned that Mr. Evans had clerked for the Ninth Circuit Solicitor's Office one summer, and that his clerkship overlapped with Mr. Dickerson's prosecution. Although Mr. Evans was not involved in Mr. Dickerson's trial, Applicant argued that because of his loyalty to the Ninth Circuit Solicitor's Office, and his hopes to work there or at another solicitor's office, there existed an appearance of impropriety and actual bias by Mr. Evans, Judge Dickson, or both. According to Mr. Grose, the Court immediately should have disclosed Mr. Evans' aspirations as a criminal lawyer and shielded him from the case in August 2012, when this Court was assigned to the case and when Mr. Evans began his clerkship with this Court. Counsel apparently argues that a judge should shield his law clerk from all criminal cases when the law clerk has a professional interest in either prosecution or criminal defense,

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because a law clerk will use his position to favor one side or the other. This assertion is as impracticable as it is unreasonable. Alternatively, counsel may be arguing that because of Mr. Evans' past summer employment with the Ninth Circuit Solicitor's Office, the Court should have not allowed Mr. Evans to work on this case at all, including scheduling matters before the Court. This Court did not, and does not, believe that Mr. Evans' summer employment with the Ninth Circuit Solicitor's Office could cause the Court's impartiality reasonably to be questioned. The Court did not feel compelled to bring this to counsel's attention due to the fact that Mr. Evans was not involved in prosecuting this case in any way, and was not even employed at the Solicitor's Office during the Applicant's trial. See S.C. App. Ct. R. 506, Canon 3.E ("A staff attorney or law clerk shall disqualify himself in a matter in which his impartiality might reasonably be questioned, including but not limited to instances where: (2) he served as a lawyer in the matter in controversy; or a lawyer with whom he previously was associated in private practice, either as lawyer or law clerk, served during such association as a lawyer concerning the matter...."). Additionally, the Ninth Circuit Solicitor's Office is not a direct party in this Post-Conviction Relief action. While the Applicant has raised grounds of prosecutorial misconduct and Batson claims, the Court, while declining to prematurely rule on these matters, has expressed concerns that these claims are not cognizable in a Post-Conviction Relief action and more properly the subject of direct appeal and therefore potentially waived if not raised therein. See Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993). Therefore, the Court has viewed this Application primarily as one raising ineffective assistance of Applicant's trial counsel and thus, due to Mr. Evans's lack of prior knowledge of this matter and his non-involvement with Applicant's trial counsel, again, did not feel compelled to disclose Mr. Evans's prior professional associations. The Court is of the opinion that the Applicant's expansive view of a conflict of

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interest would disqualify a Circuit Court Judge from hearing a matter from any firm or office with which his or her law clerk had a professional relationship, or seeks to have a professional relationship following their clerkship, regardless of their involvement in the matter immediately before the Court. This breadth of recusal is impractical and not required.

Applicant further alleged that the Court acted inappropriately when it delegated authority to Mr. Evans to schedule matters before the Court and to draft orders. Counsel's assertion that the Court delegated an "extraordinary" amount of authority to Mr. Evans is simply wrong. Drafting orders and scheduling matters before the Court are two of the most basic responsibilities of a law clerk. The assertion that this would be an excessive delegation of authority is out of touch with reality. In any case, the Court took an active role in scheduling the proceedings in this case and all scheduling decisions were made by the Court and only the Court.

Applicant also alleges that the court delayed the hearing so that Mr. Evans could interview with Ms. Wilson. This assertion is equally misguided. Counsel simultaneously accuses the Court of unfairly "pushing along" the case while also arguing that the Court improperly delayed the case. The Court can only say that it scheduled the case as it thought best, considering Applicant's request for additional time and S.C. Code § 17-27-160(c)'s mandate that in capital PCR cases, "the hearing must be scheduled within one hundred eighty days from the date of the status conference, unless good cause is shown to justify a continuance." A reasonable person could not in good faith suggest that the Court's scheduling the matter three months after the statutorily mandated time period was evidence of bias against the Applicant. This assertion is especially hollow considering the fact that the Court ultimately continued the case.

Apparently, this did not satisfy counsel, as he now complains that the Court has improperly delayed the present motion. After Applicant's counsel filed a motion for judicial recusal, the

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Court felt the only appropriate action was to postpone the evidentiary hearing. It appears to the Court that Applicant will not be satisfied unless the Court rules favorably to him on every contested matter in this case.

Counsel next argued that the Court inappropriately protected Mr. Evans from subpoena. This argument was based on the Court's order that the attorneys not have any further contact with Mr. Evans after Mr. Evans was hired by the Ninth Circuit Solicitor's Office. To clarify: the June 4, 2013, Order shielding Mr. Evans from the case was meant to do just that: to prevent Mr. Evans from having any further contact with the attorneys about the case. The Court's order was made while Applicant's motion for the Court to withdraw was pending. Given the circumstances, the Court believed it best to shield Mr. Evans from any further involvement in the case. This was not, as counsel suggests, an attempt to protect Mr. Evans from subpoena at the expense of Mr. Dickerson, and the Court still believes this was a prudent measure.


The Applicant's arguments then turned from bizarre to slanderous. Applicant's attorney claimed that the Court "telegraphed its rulings" when it cancelled the evidentiary hearing originally scheduled for June. According to Applicant, this cancellation, along with the Court's prior rulings, showed the Court's intention to deny his PCR regardless of the evidence presented. Applicant went so far as to accuse the Attorney General's Office, without supporting evidence, of engaging in ex parte communications with Mr. Evans in an attempt to coach Mr. Evans on how to draft orders advantageously to the State. Applicant's baseless accusations that the Attorney General's office did or would coach Mr. Evans on how to draft orders, or that Mr. Evans would do such a thing, are not only unsupported by any evidence, they are offensive to the Court and to the legal profession. To allege corruption and misconduct by both the South Carolina Judiciary and Attorney General's Office without evidence is grossly inappropriate, and has no place in a

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[Signature]

South Carolina courtroom. Despite counsel's continuing assertions that the Court and its former law clerk were conspiring with the South Carolina Attorney General's Office and the Ninth Circuit Solicitor's Office to sabotage Mr. Dickerson's application for post-conviction relief, this Court continues to devote itself to its oath to "sit impartially," "uphold the independence of the judiciary," and "seek justice and justice alone" in each and every matter that comes before it. See Appellate Rule 502.1, "Judge's Oath."

The Court does not believe recusal is justified based on Applicant's arguments, or that the Court's impartiality could reasonably be questioned by an impartial observer prior to the recusal hearing. Accordingly, this Court finds and concludes that all the allegations of the Applicant are without merit and his Motion for Recusal is Denied.

However, due to the Applicant's attorney's inappropriate conduct during the course of this case, the Court has come to doubt whether it can rely upon any statements of the Applicant's attorney, and whether this may impact the Court's ability to impartially judge the merits of Applicant's case. See Appellate Court Rule 3.3: Candor Towards the Tribunal. Additionally before every jury trial, Judges as part of the standard preliminary charge state that "the attorneys...are officers of the Court, sworn to uphold the integrity and fairness of our judicial system." Mr. Grose has accused this Court of grievable and inappropriate conduct which, if true, would violate the Code of Judicial Conduct. Additionally, if any of the allegations had merit, the S.C. Rules of Professional Conduct mandates that inappropriate conduct be reported to the appropriate authority. A lawyer is required to report grievable conduct and not use it in an attempt to intimidate or unduly and improperly influence the judiciary. Mr. Grose made false, misleading and slanderous accusations of this Court without any regard for truth or accuracy. See Appellate Court Rule 8.2(a); Rule 3.3(a). An Attorney who willingly advances his cause using

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such methods cannot be trusted. *See* Appellate Court Rule 3.5(a). Accordingly, this Court believes the Applicant's attorney's conduct in this case has been unprofessional, uncalled-for and antagonistic. In the wake of the November 21, 2013, hearing, during which counsel's combative and disrespectful presentation mirrored the inappropriateness of his arguments, the Court has come to doubt whether it can be truly impartial to the Applicant's attorney and consequently to the Applicant himself. *See* S.C. Appellate Court Rule 501: (5) "A judge shall perform judicial duties without bias or prejudice." While the Court regrets that this matter will now have to be taken up by a brother or sister on the bench, the sour taste left by counsel's conduct at the hearing has shaken the Court's confidence that his impartiality toward the Applicant will not be affected by his distrust of Applicant's counsel. Due to the actions of Applicant's attorney, the Court believes that the best course of action is recusal.

CONCLUSION


This Court reiterates that the Applicant's arguments for recusal are without merit. However, the Court finds and concludes that it cannot in good conscience believe the statements of Mr. Grose, the Applicant's attorney, and that this may affect its ability to impartially judge the merits of this case.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this Court be and hereby is recused from further hearings in this matter.

AND IT IS SO ORDERED.

June 2, 2014
Orangeburg, SC



Edgar W. Dickson
Assigned Judge
by Order of The Supreme Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

William O. Dickerson, #6030)
)
v.)
)
State of South Carolina)
)
Defendant.)

Case No: 2012-CP-10-03216

Certificate of Service by Mail

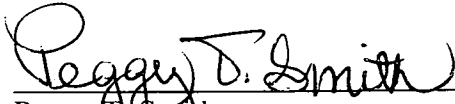
I, the undersigned, Peggy T. Smith, as Administrative Assistant to Judge Edgar W. Dickson, do hereby certify that I have caused the foregoing ORDER OF RECUSAL to be served via U.S. Mail, postage prepaid, to all parties of record at the addresses shown below.

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, S. C. 29646

Melody J. Brown
Office of the Attorney General
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Peggy T. Smith

DATED: 6/2/14