

THE SOUTH CAROLINA COURT OF APPEALS

Appeal from Richland County
The Honorable Robert E. Hood, Circuit Court Judge

Nakia Jones, Appellant,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000602

RECEIVED

JUL 23 2014

SC Court of Appeals

**PETITION TO REINSTATE
AND FOR CLARIFICATION**

The undersigned counsel timely petitions to reinstate the appeal of Nakia Jones, which was dismissed on July 9, 2014. In support of this petition, counsel would respectfully show the Court that:

I. AS TO REINSTATEMENT

1. This matter was originally filed by the Appellant *pro se* with the Richland County Clerk of Court on May 25, 2012 as a pleading captioned "*Complaint: Uniform Declaratory Judgment Act.*" The Complaint sought both a Declaratory Judgment that his 1996 Youthful Offender Act sentence was invalid as a matter of law and also sought *habeas corpus* relief.
2. The Chief Administrative Judge for Common Pleas in Richland County, the Honorable L. Casey Manning, determined that Appellant's action should be

handled as a Post-Conviction Relief matter and appointed undersigned counsel to represent Appellant. The matter was scheduled for an evidentiary hearing during a PCR term of Common Pleas Non-Jury court and the State was represented by Megan E. Harrigan, Esquire, Assistant Attorney General, who handles all Richland County PCR cases.

3. Following the evidentiary hearing, Circuit Judge Robert E. Hood issued an *Order Denying and Dismissing Petition for Writ of Habeas Corpus* dated March 4, 2014. In the *Order*, Judge Hood reviewed the claims and relief being sought and concluded "...in an effort to fully consider the merits of the pleading, this Court has construed the current action as a petition for writ of habeas corpus."
4. Upon receipt of the *Order*, undersigned counsel prepared and filed a *Notice of Appeal* and delivered same to the Clerk's Office at the South Carolina Supreme Court, the required procedure in all PCR cases. While it was in the process of being filed, the clerk noticed that the *Order* mentioned "*habeas corpus*" and directed undersigned counsel to deliver the appeal to the S.C. Court of Appeals. Immediately after filing with this Court, undersigned counsel delivered his file, including the filed appeal documents, to the S.C. Office of Appellate Defense.
5. Undersigned counsel received a letter from the Clerk of the Court of Appeals dated March 25, 2014, requesting an explanation of Appellant's position as to why the Circuit Court was improper in its determination that the requested

habeas corpus relief should have been raised in a post-conviction action.

Undersigned counsel responded on April 2, 2014.

6. Undersigned counsel has always turned the criminal and PCR cases to which he was appointed over to the S.C. Office of Appellate Defense after filing a notice of appeal. Undersigned counsel has never been appointed to represent an indigent person before the appellate courts of South Carolina.
7. Unbeknownst to undersigned counsel, the S.C. Office of Appellate Defense did not recognize this appeal as falling within its area of responsibility. This was not communicated to undersigned counsel.
8. On July 9, 2014, this Court dismissed this appeal for failure to provide proof of ordering the transcript or serving and filing an initial brief and designation of matter. After receiving a copy in the mail, undersigned counsel contacted the S.C. Office of Appellate Defense and learned that the case had not been entered into their system and the file delivered to them could not be located.
9. Undersigned counsel has also been informed by the S.C. Office of Indigent Defense that he is not eligible to be appointed to represent Appellant in this appeal under the Rule 608 Contract Attorney program approved by the S.C. Supreme Court.
10. Undersigned counsel respectfully requests this Court to recognize the unusual nature of this appeal and the confusion it generated; excuse the delay in making required filings; and reinstate the appeal so Appellant may have judicial review of his case.

II. AS TO CLARIFICATION

Undersigned counsel has consulted with the S.C. Office of Appellate Defense as to the responsibility for representing the Appellant in this appeal and has with no clear answer. The case was filed as a Declaratory Judgment action, handled as a Post-Conviction case, and then determined to be a *Writ of Habeas Corpus*. The S.C. Office of Appellate Defense believes it does not have authority to handle appeals in either Declaratory Judgment or *Habeas Corpus* cases.

Undersigned counsel respectfully requests this Court to clarify and determine the nature of the case on appeal and, further, to order who should undertake the representation of Appellant.

Respectfully submitted,

BY: 
David E. Belding (S.C. Bar #00623)

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Columbia, South Carolina 29211

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ATTORNEY FOR APPELLANT

Columbia, South Carolina

July 23, 2014

THE SOUTH CAROLINA COURT OF APPEALS

Appeal from Richland County
The Honorable Robert E. Hood, Circuit Court Judge

Nakia Jones, Appellant,

v.

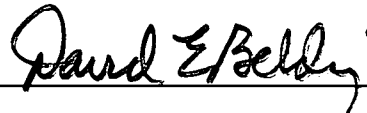
State of South Carolina, Respondent.

Appellate Case No. 2014-000602

PROOF OF SERVICE

I certify that I have served the *Petition to Reinstate and for Clarification* on Megan E. Harrigan, Esquire, Counsel for Respondent, by depositing a copy of same in the United States Mail, postage prepaid, on July 23, 2014, addressed to her as counsel of record at Post Office Box 11549, Columbia, South Carolina, 29211-1549.

Additionally, I certify that a courtesy copy of this *Petition* was served on Robert M. Dudek, Esquire, Counsel for the S.C. Office of Appellate Defense by depositing a copy of same in the United States Mail, postage prepaid, on July 23, 2014, addressed to him at 1330 Lady Street, Suite 401, Columbia, South Carolina, 29201.



David E. Belding

ATTORNEY FOR APPELLANT

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July 23, 2014

HAND DELIVERED

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED

JUL 23 2014

SC Court of Appeals

Re: Nakia Jones, #231592, vs. State of South Carolina
Appellate Case No.: 2014-000602

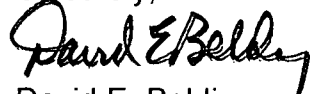
Dear Ms. Kitchings:

Enclosed for filing is a *Petition to Reinstate and for Clarification* in the above-referenced case.

By copy of this letter, I am serving copies of this petition on counsel for the Respondent, and courtesy copies upon the persons noted below.

Thank you very much for your assistance.

Sincerely,



David E. Belding
Attorney for Appellant

DEB/ym

cc: Megan E. Harrigan, Esq., Attorney for Respondent
Robert M. Dudek, Esq., General Counsel, SC Office of App. Defense
Mr. Nakia Jones