

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable R. Lawton McIntosh, Circuit Court Judge

RECEIVED

AUG 18 2014

S.C. Supreme Court

DAMON JONES
AKA DAMIAN JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2014-001291

RETURN TO MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

The undersigned counsel respectfully shows the Court:

1. I represented Petitioner on direct appeal. The Court of Appeals affirmed Petitioner's conviction in State v. Jones, 2008-UP-424 (July 23, 2008). Undersigned counsel sought certiorari from this Court, which was granted. This Court heard oral argument on June 24, 2010, and affirmed the holding of the Court of Appeals in State v. Jones, 2010-MO-020 (August 23, 2010).
2. While Petitioner's case was pending on direct appeal, a male juror, Mr. Kershner, wrote a letter to counsel stating that a female juror, Ms. McGraw, during deliberations told the

other jurors that her ex-husband had held a gun to her head. She consequently allegedly knew what it felt like to be so terrified, and she urged the jurors to convict Petitioner. Petitioner's case involved the decedent being shot. The essence the accusation of Juror Kershner was that Juror McGraw successfully lobbied for a guilty verdict on the murder charge based on emotion rather than reason. Juror Kershner believed the verdict in Petitioner's case was tainted.

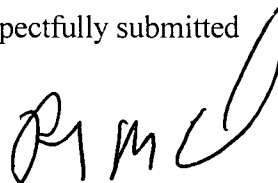
3. Counsel verified that Juror McGraw did not disclose during *voir dire* that she had been the victim of a violent crime when the venire was asked if any potential juror had been the victim of a violent crime.
4. Counsel retained an investigator, Mr. Smith, in Spartanburg to inquire into the nondisclosure of this juror being a victim of a violent crime. Upon information and belief, the juror admitted to Investigator Smith that she did not disclose being a victim of a violent crime during *voir dire* because she did not consider her ex-husband holding a gun to her head a violent crime.
5. When the investigator returned about a week later with an affidavit for the juror to sign, upon information and belief, the juror refused to sign the affidavit or to cooperate any further. The investigator did not attempt to contact the juror again, and undersigned counsel did not file a motion to remand the matter to the lower court for a hearing.
6. In the order of dismissal following the post-conviction relief hearing, the Honorable R. Lawton McIntosh wrote that "Juror McGraw testified [during the PCR hearing] that she did not recall a voir dire question regarding whether or not she had been a victim of a violent crime. However, McGraw testified that she had never said in the jury room that her ex-husband had held a .357 to her head and [she] did not consider herself to have

been a victim of a violent crime.” Order at p. 14. The PCR judge further wrote that he found the juror’s testimony to be credible, and he ruled any further testimony about the matter would be inadmissible hearsay. The judge allowed PCR counsel to proffer the testimony of Juror Kershner, “the juror who allegedly overheard the remark about the .357 being held to McGraw’s head,” and he admitted two affidavits from Investigator Smith about the matter “for appellate purposes.” Order at p. 15.

7. Petitioner Jones has now made a motion before this Court that undersigned counsel recuse himself and his “entire office” from the appeal of this PCR, and he requests that this Court appoint outside counsel. Since the testimony of Juror McGraw, and the proffered testimony Petitioner seemingly desires this Court to consider on appeal concern Petitioner’s apparent allegation that undersigned counsel should have pursued the Juror McGraw matter by way of a motion to remand his case to the circuit court while on direct appeal, counsel does not oppose the Petitioner’s motion, and leaves it to the sound discretion of this Court.

WHEREFORE, undersigned counsel does not oppose the Petitioner’s motion for the appointment of outside counsel, and leaves it to the sound discretion of this Court.

Respectfully submitted



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

This 18th day of August, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable R. Lawton McIntosh, Circuit Court Judge

DAMON JONES
AKA DAMIAN JONES,

PETITIONER,

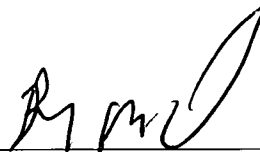
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

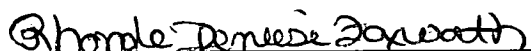
The undersigned attorney hereby certifies that a true copy of the Return to the Motion for Appointment of Outside Counsel in the above referenced case has been served upon opposing counsel, Suzanne White, Assistant Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Damon Jones, #250332 at McCormick Correctional Institution this 18th day of August, 2014.



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 18th day of August, 2014

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021



SCCID

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

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AUG 18 2014

S.C. Supreme Court

August 18, 2014

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

Re: Damon Jones v. State of South Carolina, Appellate Case No. 2014-001291

Dear Mr. Shearouse:

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

Sincerely,

Robert M. Dudek
Chief Appellate Defender

Enclosure

cc: Suzanne White, Assistant Attorney General
Mr. Damon Jones, #250332