

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
CERTIORARI THE COURT OF APPEALS

APPELLATE COURT CASE #2013-002735

THE STATE, , RESPONDENT,

Vs.

KEVIN CHOICE, , PETITIONER.

PETITION FOR CERTIORARI

KEVIN CHOICE, 257223
LEE C.I.
990 WISACKY HWY.
BISHOPVILLE, S.C 29010

cc: SALLEY W. ELLIOTT, Esq.
ASSIST ATTY. GENREAL COUNSEL
PO BOX 11549
COLUMBIA, S.C 29211-1549
RESPONDENT

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AUG 04 2013

SC Court of Appeals

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STATEMENT OF CASE

PETITIONER KEVIN CHOICE, #257223, IS CURRENTLY CONFINED IN THE S.C. DEPT. OF CORRECTIONS AT THE LEE C.I., PETITIONER CHOICE IS SERVING A SENTENCE FOR MURDER THAT WAS IMPOSED BY THE GENERAL SESSIONS COURT OF THE THIRD JUDICIAL CIRCUIT, SUMTER COUNTY, PETITIONER CHOICE WAS WITH COUNSEL AND THE STATE WAS REPRESENTED BY THE THIRD JUDICIAL CIRCUIT SOLICITOR OFFICE COUNSEL, PETITIONER CHOICE DID APPEAL HIS CONVICTION TO THE APPELLATE COURT. SOMETIME LATER THE PETITIONER HAD MADE AN AFTER TRIAL DISCOVERY OF EVIDENCE IN HIS CASE AND THEREFORE, PETITIONER FILED A MOTION FOR A NEW TRIAL BASED UPON AFTER TRIAL DISCOVERY OF EVIDENCE IN HIS CASE MATTERS. THE PETITIONER'S MOTION WAS REVIEWED BY THE LOWER COURT BY WAY OF A HELD HEARING THAT WAS CONDUCTED BY THE TRIAL COURT, THIS MOTION WAS DENIED AND THE PETITIONER FILED A NOTICE OF AN APPEAL TO THE APPELLATE COURT. THE PETITIONER WAS REPRESENTED BY COUNSEL APPOINTED TO HIM BY THE LOWER COURT AND PURSUANT TO THE PETITIONER'S CONSTITUTIONAL RIGHTS HE WAS ENTITLED TO THE REPRESENTATION BY COUNSEL AS HE IS STILL ENTITLED TO THIS CURRENT TIME AND STAGE OF HIS APPEAL FILED TO THE APPELLATE COURT.

PETITIONER CHOICE FILED HIS NOTICE OF APPEAL TO THE S.C. COURT OF APPEALS AND AFTERWARDS THE COURT OF APPEALS DENIED HIM APPELLATE COUNSEL TO ASSIST HIM WITH APPEAL, SEE APPEND. PAGE 1., 2. AND 3., AND FOR THE SAKE OF THE RECORD AND THE PETITIONER'S ARGUMENTS THE ATTENTIONS IS NEEDED TO SEE THE MANDATES OF THE STATE'S CASE: STATE V. CLINKSCALES, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995), WHEREAS, THE STATE AND THE COURT MISAPPLIED THIS CASE LAW DUE TO THE FACTS THAT THE PETITIONER HAD COUNSEL REPRESENTATION DURING EVERY STAGES OF HIS CASE IN THE COURTS AND AT NO TIME DID THE PETITIONER BEEN SEEN WITHOUT COUNSEL REPRESENTING HIM IN HIS CASE, AND THIS IS A FACT ESTABLISHED BY THE COURTS VERY OWN RECORDS ACCUMULATED IN HIS CASE MATTERS.

THEREFORE, PETITION FOR WRIT OF CERTIORARI FOLLOWS:

QUESTION PRESENTED

DID THE COURT OF S.C. APPEALS ERRED WHEN IT DENIED PETITIONER HIS RIGHTS TO COUNSEL WHEN IT APPLIED STATE V. CLINKSCALE, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995), AND DENIED THE PETITIONER HIS REQUEST FOR AN EXTENSION TO ATTEMPT TO FIND REPRESENTATION, WITH THE COURT OVERLOOKING THE FACT THAT THE PETITIONER IS INDIGENT STATUS, etc.

ARGUMENTS

PETITIONER PETITION THE COURT FOR WRIT OF CERTIORARI TO THE S.C. COURT OF APPEALS TO THE S.C. SUPREME COURT DUE TO THE ORDER OF DISMISSAL TO THE PETITIONER'S MOTION FOR EXTENSION AND FOR AN APPOINTMENT OF COUNSEL TO PERFECT HIS APPEAL FROM THE TRIAL COURT DENIAL TO GRANT HIM A NEW TRIAL FROM THE RULE 29(B), SCRIM.P., MOTION FILED TO THE LOWER COURT, etc., PETITIONER CONTENDS THAT THE REQUEST FOR EXTENSION OF TIME WAS TO GENERATE FUNDS FROM HIS FAMILY MEMBERS TO RETAIN AN ATTORNEY. HOWEVER, PETITIONER HAS NOT HAD ENOUGH TIME TO DO SO AND THIS HAS CREATED A GREAT BURDEN UPON THE PETITIONER WHERE THE S.C. COURT OF APPEALS REFUSES TO ASSIGN AND OR APPOINT COUNSEL TO ASSIST TO PERFECT THE APPEAL, NOWAS, DUE TO THE PETITIONER CASE BEING DENIED BASED UPON THE MANDATES STATE V. CLINKSCALES, supra., UNLIKE CLINKSCALES, CASE PETITIONER WAS IN FACT REPRESENTED BY AN ATTORNEY AT EVERY STAGES OF HIS MOTION FILED TO THE LOWER COURT/TRIAL COURT, etc., IN FACT THE LOWER COURT APPOINTED COUNSEL TO REPRESENT THE PETITIONER. PETITIONER PROVIDED THE RECORDS OF THE PROCEDURAL HISTORY OF THE CASE AS PROFFERING EVIDENCE THAT SUPPORTED THE CONTENTIONS STATED TO THE COURT OF APPEALS FOR IT TO GRANT THE MOTION FOR AN TIME EXTENSION AND OR APPOINTMENT OF COUNSEL TO PERFECT APPEAL. PETITIONER NOW MAKE THE COURT AWARE THAT THE STATE V. CLINKSCALES 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995) IS NOT APPLICABLE TO THE PETITIONER'S CASE MATTERS AND THE COURT OVERLOOKED THIS FACTS AND THEREFORE, THE COURT OF APPEALS SHOULD HAVE APPOINTED A COUNSEL TO PERFECT HIS APPEAL ACCORDINGLY TO THE PETITIONER'S RIGHTS OF THE U.S. CONST. AND S.C. CONST., etc.

PETITIONER CHOICE FURTHER BRINGS THE ATTENTION OF THE COURT TO APPEND. PAGE 5. THAT STATES THAT THE COURT DISMISSING PETITIONER'S MOTION DID NOT DISMISSED OR FINALLY DECIDED THE PETITIONER'S APPEAL THAT IS PENDING IN THE APPEAL COURT, HOWEVER, THE DEPUTY CLERK OF COURT ALLEN MUST NOT OVERLOOK THE FACT THAT THE PETITIONER CAN NOT BE PENALIZED FOR SEEKING THE REMEDY TO RESERVE THE RIGHTS TO HAVE THE APPEAL FILED TO THE APPELLATE COURT TO BE REVIEWED BASED ON THE MERITS OF HIS CASE ISSUES SUBMITTED TO THE COURT IN HIS APPEAL FILED TO THE COURT. THE PETITIONER RESPECTFULLY REQUEST THAT THE COURT GRANT HIS WRIT OF CERTIORAIR ON THIS 31 DAY OF July 2014.

CONCLUSION

THEREFORE, THE PETITIONER KEVIN CHOICE, 257223, RESPECTFULLY REQUEST FOR THE COURT TO GRANT CERTIORARI AND FIND THAT HE IS ENTITLED TO HAVE COUNSEL APPOINTED TO HIS CASE AND PERFECT HIS APPEAL AND ALSO FIND THAT THE ~~903~~ STATE CASE: STATE V. CLINKSCALE IS NOT APPLICABLE TO HIS CASE MATTERS AND TO REVERSE THE COURT OF APPEALS FINDINGS AND REMAND BACK TO THE COURT OF FOR COUNSEL TO BE APPOINTED AND PERFECT PETITIONER'S APPEAL CASE.

IT IS RESPECTFULLY SUBMITTED, ON THIS 31 DAY OF July 2014.

July 31, 2014

RESPECTFULLY SUBMITTED,

S/ Kevin Choice
KEVIN CHOICE, 257223
990 WISACKY HWY.
BISHOPVILLE, S.C 29010
pro se PETITIONER

SWORN AND SUBSCRIBED BEFORE ME
ON THIS 31 DAY OF July 2014
IN THE STATE OF SOUTH CAROLINA.

Debra Jones
S.C. NOTARY PUBLIC
COMMISSION EXPIRES: 11/4/2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
CERTIORARI THE COURT OF APPEALS

APPELLATE COURT CASE #2013-002735

THE STATE,....., RESPONDENT,

VS.

KEVIN CHOICE,....., PETITIONER.

APPENDIX

Mr. K. L. Choice

KEVIN CHOICE, 257223
LEE C.I.
990 WISACKY HWY.
BISHOPVILLE, S.C 29010

cc: SALLEY W. ELLIOTT, Esq.
ASSIST ATTY. GENREAL COUNSEL
PO BOX 11549
COLUMBIA, S.C 29211-1549
RESPONDENT

APPENDIX

COURT OF APPEALS ORDER DATED 2/24/14.....1.
COURT OF APPEALS ORDER DATED 5/16/14.....2.
COURT OF APPEALS ORDER DATED 7/2/14.....3.
PETITIONER'S PET. FOR REHEAR. RELATED TO ORDER 7/2/14.....4.
COURT OF APPEALS CLERK LETTER DATED 7/23/14.....5.
CERTIFICATE OF SERVICE.....6.

The South Carolina Court of Appeals

COPY The State, Respondent,

v.

RECEIVED
2/25/14

Kevin Choice, Appellant.

Appellate Case No. 2013-002735

ORDER

This is an appeal from the trial court's denial of Appellant's motion for a new trial on the basis of newly discovered evidence pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure. Appellant's counsel has filed a motion to be relieved, explaining he was not retained to represent Appellant on appeal. Appellant has filed a pro se motion to appoint counsel.

Counsel's motion to relieve counsel is granted. If Appellant does not obtain new counsel within thirty days, this court will presume Appellant is proceeding pro se. Appellant's motion to appoint counsel is denied. *See State v. Clinkscales*, 318 S.C. 513, 515, 458 S.E.2d 548, 549 (1995) (holding the defendant's motion for a new trial on the ground of after-discovered evidence was not heard and decided at a critical stage of his criminal prosecution; therefore, the defendant's constitutional right to counsel did not extend to his motion for a new trial).


FOR THE COURT

Columbia, South Carolina

cc:

Salley W. Elliott, Esquire

Alan McCrory Wilson, Esquire

Ernest Adolphus Finney, III, Esquire

Jeremy Adam Thompson, Esquire

FILED
2/24/14

The South Carolina Court of Appeals

The State, Respondent,


v.

Kevin Choice, Appellant.

Appellate Case No. 2013-002735

ORDER

Appellant has filed a motion for an extension of time to retain counsel. Appellant's request is granted. Appellant has until June 2, 2014 to retain counsel; if Appellant does not notify this court of the new counsel by June 2, this court will presume Appellant is proceeding pro se and the appeal will move forward. Any further extension requests must be made based on a showing of good cause.


FOR THE COURT

Columbia, South Carolina

cc:
Kevin Choice, 257223
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire

FILED
5/16/14

The South Carolina Court of Appeals

The State, Respondent,

v.

Kevin Choice, Appellant.

Appellate Case No. 2013-002735

ORDER

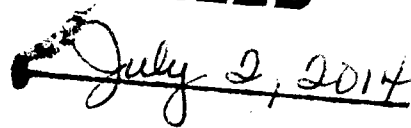
Appellant has filed for an extension of time to retain counsel. On June 2, 2014, this Court granted Appellant a thirty day extension to retain counsel and further ordered that any further extension requests must be based on a showing of good cause. Because Appellant has failed to show good cause, his request for an extension is denied. Within thirty days, Appellant shall file and serve his initial brief and designation of matter.


FOR THE COURT

Columbia, South Carolina

cc:
Kevin Choice, 257223
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire

FILED


July 2, 2014

The South Carolina Court Of Appeals

The State, **Respondant**,

V.

Kevin Choice, Appellant,

Appellant Case No.2013-002735

Motion For Rehearing En Banc

Comes, Now the Appellant motions this court for rehearing en banc of the most recent order issued denying extension of time to retain counsel, filed July 2, 2014. Appellant contends that the reason for the extension was to generate funds to retain counsel. However, Appellant has not had enough time to do so and this has created a great burden upon the Appellant where this court refuses to appoint counsel, due to the inapplicable citing of State v. Clinkscales,. Unlike Clinkscales, Appellant was in fact represented by counsel at every stage of his motion for new trial. In fact counsel was appointed by the lower court. Also Appellant's record will reflect evidence that will support a new trial. Based upon these facts, Clinkscales is not applicable to the Appellant's case, and therefore, should be appointed counsel due to the fact that this court has not allow him the time in which to retain counsel.

Respectfully Submitted:



Kevin L. Choice, Appellant.

cc:

Clerk S.C. Court of Appeals

Donald J. Zelenka, Esq.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 23, 2014

Kevin Choice, 257223
Lee Correctional Inst.
1204 East Church St.
Bishopville SC 29010

Re: The State v. Kevin Choice
Appellate Case No. 2013-002735

Dear Mr. Choice:

This office has received your Motion for Rehearing En Banc relating to the order dated July 2, 2014. That order denied a motion for an extension of time. Pursuant to Rule 240(i), SCACR, no action will be taken on your motion because the motion did not dismiss or finally decide the appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire

CERTIFICATE OF SERVICE BY U.S. MAIL

I, CERTIFY THAT I DID SERVED TO THE RESPONDENT A TRUE COPY OF THE PETITION FOR CERTIORARI TO THE COURT IF APPEALS AND THE APPENDIX AS IS REQUIRED BY THE RULES OF THE APPELLATE COURT BY WAY OF THE U.S. MAIL, PREPAID POSTAGE, ADDRESSED TO THE RESPONDENT'S OFFICE AT PO BOX 11549, COLUMBIA, S.C. 29211-1549, ON THIS 31 DAY OF July 2014, ALL VERIFIED BY THE PRISON MAIL ROOM DIRECTOR. THIS IS THE PROPER WAY TO COMMUNICATE WITH THE RESPONDENT AND IS THE REGULAR WAY TO SEND MAIL TO THE RESPONDENT.

July 31, 2014

s/ Mr. K. L. Cho
KEVIN CHOICE, 257223
LEE C.I.
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
PETITIONER

SALLEY W. ELLIOTT, Esq.
ATTORNEY GENERAL OFFICE
PO OBOX 11549
COLUMBIA, S.C. 29211-1549
RESPONDENT

KEVIN CHOICE, 257223
LEE C.I./DARL. N
990 WISACKY HWY.
BISHOPVILLE, S.C 29010

JULY 31, 2014

HON. DANIEL E. SHEAROUSE
CLERK OF SUPREME COURT
PO BOX 11330
COLUMBIA, S.C 29211

RE: STATE V. KEVIN CHOICE, 2013-002735, ENCLOSURES: AS;
WRIT OF CERTIORARI, PETITION AND CERTIFICATE OF SERVICE, etc.

DEAR MR. SHEAROUSE:

PLEASE SEE ENCLOSED MY PETITION FOR WRIT OF CERTIORARI AND THE ORIGINAL CERTIFICATE OF SERVICE FILED TO YOUR RESPECTFUL OFFICE AND IT IS SHOWN THAT THE RESPONDENT IS SERVED WITH THE SAME AS IS REQUIRED BY THE COURT RULES, etc.

I HAVE PROVIDED TO YOUR OFFICE MY EXTRA COPY FOR IT TO BE RETURNED BACK TO ME WITH YOUR OFFICE SEALS AND DATE STAMPS ON THEM SOON AS PRACTICAL.

I AM THANKING YOU IN THE ADVANCE FOR YOUR TIME AND HELP GIVEN TO ME IN THIS CRUX MATTER AND I LOOK FORWARD IN HEARING FROM YOU IN THIS VERY NEAR FUTURE.

RESPECTFULLY SUBMITTED,

JULY 31, 2014
ENCLOSURES:

KC/cm

S/ Kevin Choice
KEVIN CHOICE, 257223
990 WISACKY HWY.
BISHOPVILLE, S.C 29010

cc: S.W. ELLIOTT, Esq.
FILES/KC

RECORDED

AUG 04 2014

SC Court of Appeals

Hevin L. Choice 201225
e Correctional Inst.
rlington Unit - N-2132]
0 Wiscaky HWY
shopville, SC 29010



South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS, CLERK
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

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SC Court of Appeals