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THE STATE OF SOUTH CAROLINA
In The Supreme Court

OCT 22 2014

CERTIORARI TO YORK COUNTY

S.C. SUPREME COURT

Honorable Lee S. Alford, Circuit Court Judge

Appellate Case No. 2012-001968

JAMES D. ROBERTSON, SK5067. *Petitioner,*

v.

STATE OF SOUTH CAROLINA *Respondent.*

**NOTICE OF APPEARANCE AND MOTION
FOR SUBSTITUTION OF *PRO BONO* COUNSEL**

EMILY C. PAAVOLA

SC Bar No. 77855
Death Penalty Resource & Defense Center
900 Elmwood Avenue, Suite 101
Columbia, South Carolina 29201
(803)765-1044

KEIR M. WEYBLE

SC Bar No. 12075
Cornell Law School
Myron Taylor Hall
Ithaca, New York 14853
(607) 255-3805

Counsel for Petitioner

James D. Robertson, the petitioner in this matter, moves by the undersigned counsel for an order substituting his post-conviction relief and federal habeas counsel to serve as *pro bono* counsel on appeal in this Court. In support of this motion, he would respectfully show:

This is a capital case. Petitioner was sentenced to death in York County in March, 1999. Following the dismissal of his direct appeal, Petitioner unsuccessfully sought post-conviction relief. Attorneys Keir Weyble and Emily Paavola were appointed by the United States District Court for the District of South Carolina to represent Petitioner in his federal habeas corpus proceedings on November 8, 2010. Upon review of the record below, habeas counsel determined that: (1) Petitioner's state PCR counsel were not qualified to handle a capital PCR case under the plain language of S.C. Code § 17-27-160(B); (2) PCR counsel conducted no investigation, sought no assistance from any investigators or expert witnesses, and, consequently; (3) PCR counsel overlooked a number of colorable claims for relief that were apparent from the record. With the assistance of habeas counsel, Petitioner filed a second PCR application raising a number of claims that could – and should – have been raised on Petitioner's behalf.¹ The second-in-time PCR application was summarily dismissed, and that dismissal forms the basis of the present appeal in which the Question Presented is:

[w]hether, in light of Martinez v. Ryan, ___ U.S. ___, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012), and the past treatment of similarly situated South Carolina prisoners, Robertson should be permitted to proceed with a second-in-time application for post-conviction relief asserting colorable claims of ineffective assistance of trial counsel that prior PCR counsel ineffectively failed to investigate or present?

¹ The circuit court's order appointing undersigned counsel as Robertson's PCR counsel on July 5, 2011, is attached here as Exhibit A.

Attorneys Weyble and Paavola remain Petitioner's counsel in his federal habeas corpus proceedings since their appointment in 2010. Moreover, Weyble and Paavola served as Petitioner's counsel of record throughout the second PCR proceedings until the notice of appeal was filed in this Court on January 6, 2012, and have continued to assist heavily in this appeal, including drafting substantial portions of the Petition for Writ of Certiorari and the Petitioner's Reply. Further, the outcome of this appeal will directly affect future litigation in Petitioner's case, either in state court or in federal habeas, where he will again be represented by Attorneys Weyble and Paavola. Thus, it is the most logical course to continue with the same representation Petitioner has had for the past four years and will likely have in the future. Weyble and Paavola are willing to continue as *pro bono* counsel for Petitioner in this appeal.

Additionally, Mr. Robertson has specifically communicated his desire that undersigned counsel be substituted to serve as *pro bono* counsel in this matter.²

WHEREFORE, the undersigned counsel, on behalf of James Robertson, hereby enter an appearance as *pro bono* counsel and request that they be substituted as counsel for all further proceedings in this Court respecting the denial of Robertson's application for post-conviction relief.

Respectfully Submitted,

EMILY C. PAAVOLA
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² Petitioner's Affidavit is attached here as Exhibit B.

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(607)255-3805

BY: Emily C. Paavola

October 20, 2014

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
James D. Robertson, #5067,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE 16TH JUDICIAL CIRCUIT

C.A. No. 2011-CP-46-0072

FILED-RECEIVED
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DAVID HAMILTON
C.C.P. & S.S.
YORK COUNTY, SC

This matter is before the Court regarding the appointment of counsel for the Applicant in this Death Penalty Post Conviction Relief Action. In addition, the Respondent moves to dismiss the application on the basis that it was not verified by Applicant.

A hearing was conducted on July 5, 2011 at the Moss Justice Center in York, S. C. Present were Applicant, James D. Robertson, Attorney Keir M. Weyble and Emily C. Paavola, asked to appear by the Court, and William E. Salter, III, Senior Assistant Attorney General, appearing on behalf of Respondent.

Applicant expressed his desire to have Emily C. Paavola and Keir M. Weyble appointed to represent him in this matter. The Court finds that these two attorneys are qualified to handle a Death Penalty Post Conviction Relief Action and herewith appoints them to represent James D. Robertson in this action.

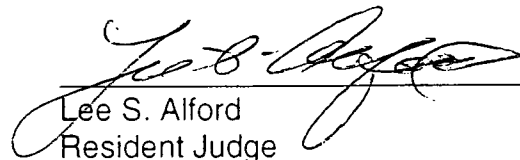
Counsel for Applicant then moved to allow them to file an amended application and to allow the applicant to verify the application or to allow them to do so on his behalf.

The Court finds that there would be no prejudice to the State if an amended application was allowed or by dismissing the application and requiring that it be refiled.

The Court therefore denies the Respondent's motion to dismiss and grants Applicant's motion to allow an amended application, which must be verified by Applicant in order for him to proceed in this action.

Applicant is given twenty (20) days from July 5, 2011 to file an amended, verified application.

ALL OF WHICH IS DULY ORDERED.



Lee S. Alford
Resident Judge
of the Sixteenth Judicial Circuit Court

July 5, 2011

York, South Carolina

EXHIBIT B

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO YORK COUNTY

Honorable Lee S. Alford, Circuit Court Judge

Appellate Case No. 2012-001968

JAMES D. ROBERTSON, SK5067. *Petitioner,*

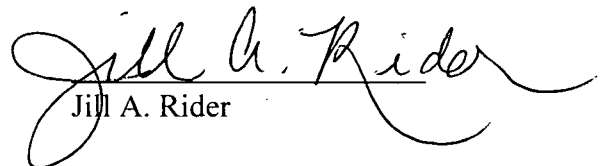
v.

STATE OF SOUTH CAROLINA *Respondent.*

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Petitioner's Notice of Appearance and Motion for Substitution of *Pro Bono* Counsel was served by first class United States mail, postage prepaid, this 20th day of October, 2014, upon the following:

William Edgar Salter
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211


Jill A. Rider

