

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Maite Murphy, Circuit Court Judge

Appellate Case No: 2013-002090

THE STATE,

Respondent,

vs.

STANLEY WRIGHT,

Appellant.

**RETURN TO MOTION FOR LEAVE TO AMEND COMPLAINT AND BRIEF IN
SUPPORT THEREOF**

Respondent, by and through undersigned counsel and making Return to the Motion submitted by attorneys who have been admitted *pro hac vice* for Appellant's appeal and who submitted "Defendant's Motion for Leave to Amend Complaint and Brief in Support Thereof," would respectfully show unto this Court:

1. Appellant was charged with possession with intent to distribute marijuana, trafficking in cocaine, and possession of a weapon. On September 16 – 18, 2013, Appellant proceeded to trial before the Honorable Maite Murphy, and a jury. He was convicted and sentenced to five (5) years, twenty-five (25) years and five (5) year, consecutive.

2. Appellant filed and served notice of appeal and is currently represented by the South Carolina Office of Appellate Defense. This Court also issued orders filed July 15, 2014 admitting

two attorneys “*pro hac vice* for the appellant in this appeal.” Respondent has not received an order substituting or relieving any of appellant’s attorneys.

3. On April 17, 2014, Appellate Defender Robert M. Pachak submitted an Anders Brief of Appellant presenting the issue whether the trial court erred in failing to suppress evidence seized by police from appellant’s residence in response to a criminal domestic violence call. This Court notified Appellant by letter dated April 21, 2014, that counsel submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967), and that appellant could submit a *pro se* brief addressing any issues he believed the Court should consider. Respondent did not receive a *pro se* brief. This Court notified that parties on July 15, 2014, that the case has been docketed for review pursuant to the Anders procedure and that no further filings will be accepted absent a motion requesting such.

4. Respondent thereafter received orders from this Court also filed July 15, 2014, admitting attorneys Valerie V. Vie and Sonya Chachere-Compton *pro hac vice* as counsel for Appellant in this appeal. Respondent was never served with or given notice of motion of either attorney to be admitted *pro hac vice* in this appeal. Respondent also has not received anything from the *pro hac vice* attorneys moving to be substituted as counsel for Appellant or from Appellant asking that Appellate Defender Pachak be relieved. Respondent notified this Court by letter dated July 22, 2014 that it never received motions for admission *pro hac vice*, and indicated it would oppose requests for further filings because the time for doing so had expired. Respondent has no knowledge of the identity of in-state counsel associated with the *pro hac vice* attorneys.

5. Respondent received an Amended Brief from Attorneys Vie and Chachere-Compton on October 14, 2014. This Court notified counsel that it would not accept the Amended Brief unless a motion is filed requesting the Court to accept further filings in the case. On October 28, 2014, Respondent received “Defendant’s Motion for Leave to Amend Complaint and Brief in Support Thereof.” In the motion, appellant indicates he found attorneys Vie and Chachere-Compton after

receiving the request to be relieved as counsel from Appellate Defender Pachak as is routine procedure for the Anders review process. The *pro hac vice* attorneys indicate they have reviewed the transcripts and discovery and interviewed witnesses. They ask this Court to accept their Amended Brief.

6. Respondent notes that the Amended Brief basically presents the same issues respecting the trial court's failure to suppress evidence as is argued in the Anders Brief of Appellant already docketed in this appeal. The Amended Brief also presents an ineffective assistance of counsel claim that could not have been preserved at trial for appellate review because appellant attaches an affidavit to the Amended Brief to support the claim. Appellant also attached other documents to the Amended Brief and forwarded an envelope of photographs. The affidavit and documents were not before the trial court and cannot properly be presented to this Court on appeal. Also, unless the photographs were among the photographs presented at trial, they cannot properly be presented to this Court on appeal.

7. Respondent opposes the request to accept Appellant's Amended Brief at this late stage in the appellate process. The motion submitted by *pro hac vice* counsel appears to reflect confusion about the Anders process and the status of Appellate Defender Pachak. Appellant seems to assume that the mere fact that Appellate Defender Pachak has opined that Anders procedure is appropriate means that he is automatically relieved by this Court from the appeal and justifies Appellate Defender Pachak's replacement and new briefing.

8. Respondent submits that the procedure provided by Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991) should be allowed to run its procedural course. Appellant's motion reveals a lack of understanding of the Anders procedure established by the Court and Robert M. Pachak's professional responsibilities pursuant to that

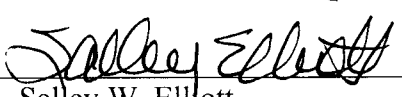
procedure. In State v. Williams, in accordance with Anders, our court properly established that it will **not** rule upon appointed appellate counsel's request to be relieved as counsel (1) until the final briefs are filed; (2) the appellant is given 45 days to file a *pro se* brief raising any arguable issues; and (3) the appellate court has independently reviewed the record to determine the existence of any arguable issue, whether or not it was raised in counsel's Anders brief or the *pro se* brief. Only if this Court has satisfied itself that no issue of arguable merit is discovered, will appointed appellate counsel's petition to be relieved as counsel be granted. Should this Court find arguable merit to the claim presented or suggested by the record, thereafter appellate counsel will be professionally able to brief the matter as directed by the court. Here, Appellate Defender Robert M. Pachak is properly performing his professional and constitutional obligation. The procedure required by Anders should be allowed to run its course and the request for additional briefing should be denied. Otherwise, the briefing process in this and similar cases could be repeated for the same appeal causing delay and unnecessary expenditure of duplicate effort.

7. Respondent submits that Appellant's request to submit a new brief must also be soundly rejected because a "re-do" is simply not provided by the Appellate Court Rules and would clearly turn the appellate court's Anders procedure on its ear and only delay the handling of appeals by creating a revolving door of attorneys seeking to meet their professional obligation under Anders only to be replaced with new appellate counsel and new appellate briefs who must perform the same obligation.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

BY: 
Salley W. Elliott
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

October 30, 2014

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 30 2014

SC Court of Appeals

Appeal from Beaufort County
The Honorable Maite Murphy, Circuit Court Judge

Appellate Case No: 2013-002090

THE STATE,

Respondent,

vs.

STANLEY WRIGHT,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion for Leave to Amend Complaint and Brief in Support Thereof on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney Valerie V. Vie, Esquire and Sonya Chachere-Compton, Esquire, 5682 Palazzo Way, Suite 102 Douglasville GA 30134 and Robert M. Dudek, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 30th day of October, 2014.


ANGELA BENNETT
Administrative Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

October 30, 2014

RECEIVED

OCT 30 2014

SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: The State v. Stanley L. Wright
Appellate Case N: 2013-002090

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Return to Motion for Leave to Amend Complaint and Brief in Support Thereof along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab
Enclosures

cc: Valerie V. Vie, Esquire
Sonya Chachere-Compton, Esquire
Robert M. Dudek, Esquire
Ms. Trisha Allen