

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Appeal from Barnwell County

NOV 13 2014

Doyet A. Early, Circuit Court Judge

S.C. Supreme Court

TUNZY A. SANDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2014-001970

MOTION FOR APPOINTMENT OF OUTSIDE COUNSEL

Undersigned counsel respectfully moves this Court, in its discretion, to appoint outside counsel to represent petitioner in his post-conviction relief appeal. Representation of petitioner presents a possible conflict of interest for undersigned counsel for the following reasons:

1. Petitioner was convicted of murder, attempted armed robbery, and conspiracy after a jury trial before the Honorable Gary E. Clary, Jr. He was represented on appeal by then Deputy Chief Attorney Joseph L. Savitz, III. This Court reversed petitioner's convictions in State v. Sanders, 341 S.C. 386, 534 S.E.2d 696 (2000) on the grounds that the trial judge improperly removed petitioner's sister as counsel on the day before trial, after she had already been admitted *pro hac vice*.
2. This Court later held that co-defendant, Michael Paul Buckmon, was entitled to a directed verdict of acquittal on the murder and armed robbery cases, but that the evidence was sufficient to

submit the criminal conspiracy count to the jury. Then Deputy Chief Attorney Savitz, and Assistant Appellate Defender Eleanor Duffy Cleary were listed on the opinion as co-counsel for co-defendant Buckmon on appeal. See State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001). Deputy Chief Attorney Savitz later testified that Counsel Cleary represented Buckmon on appeal even though his name was also included on the opinion as co-counsel. See Order of Dismissal at 11.

3. Petitioner Sanders was again convicted of the same charges after a bench trial before the Honorable James R. Barber, Jr. Petitioner was represented by his sister, Brenda Sanders. On appeal petitioner was again represented by then Deputy Chief Attorney Joseph L. Savitz, III. The Court of Appeals affirmed petitioner's convictions in State v. Sanders, 356 S.C. 214, 588 S.E.2d 142 (Ct.App. 2004). This Court denied certiorari on May 18, 2005).

4. On August 20, 2013, Petitioner's second post-conviction relief hearing was heard before the Honorable Doyet A. Early in Barnwell County. Upon information and belief this was the second PCR hearing held in this case after the Honorable J. Michael Baxley ruled the record of the first PCR hearing could not be adequately reconstructed where prior PCR counsel apparently failed to perfect an appeal following the evidentiary hearing before Judge Baxley.

5. Petitioner was represented at the second PCR hearings by retained counsel Tara D. Shurling.

6. Judge Early's Order of Dismissal was signed on August 18, 2014, and Ms. Shurling filed the Notice of Appeal to this Court.

7. The indigency status of Petitioner Sanders is unknown since an Affidavit of Indigency has not been provided to this office for a determination of his indigency status.

8. Ms. Shurling has advised undersigned counsel that one issue at the PCR hearing, and potentially on appeal is the allegation of ineffective assistance of appellate counsel. See Order of dismissal at 9-11.

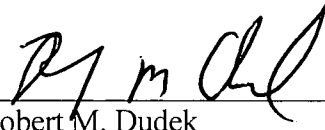
9. One of those grounds involves an alleged conflict of interest in then Deputy Attorney Savitz representing both petitioner and his co-defendant Buckmon wherein Attorney Savitz and Attorney Cleary secured a directed verdict on appeal on the murder and attempted armed robbery charges for Buckmon where the directed verdict issue was not raised for petitioner on appeal. As stated above, Appellate Counsel Savitz stated at the PCR hearing that he did not represent co-defendant Buckmon on appeal, and he also stated that Petitioner and Buckmon were not similarly situated regarding the evidence against them. However, upon information and belief provided by PCR counsel Shurling, petitioner and his family think it was a conflict of interest for Deputy Attorney Savitz to represent petitioner and co-defendant Buckmon particularly where Buckmon largely secured a directed verdict on appeal.

10. PCR counsel Shurling has also informed the undersigned counsel that she intends to petition the appellate court, if appointed, to remand petitioner's case for another evidentiary hearing based on after-discovered evidence involving petitioner's sister and attorney, Brenda Sanders. Counsel Shurling has informed counsel that her involvement in this PCR case for years renders her uniquely qualified to handle the delicate after-discovered evidence issues pertaining to petitioner's sister who is now a Judge in Michigan.

11. Based on information provided by PCR counsel Shurling noted above, and the fact that the order of dismissal addresses issues of ineffective assistance of appellate counsel against former Chief Attorney Savitz, who testified in the matter and was not found ineffective, undersigned counsel moves this Court to appoint outside counsel, in its discretion.

WHEREFORE undersigned counsel submits this matter to the discretion of this Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R M Dudek", written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of November, 2014

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Appeal from Barnwell County
Doyet A. Early, Circuit Court Judge

TUNZY A. SANDERS,

PETITIONER,

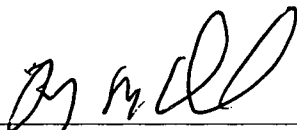
V.

STATE OF SOUTH CAROLINA,

RESPONDENT..

CERTIFICATE OF SERVICE

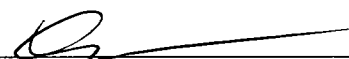
The undersigned attorney hereby certifies that a true copy of the Motion for Appointment of Outside Counsel in the above referenced case has been served upon opposing counsel, Daniel Gourley, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, Tara D. Shurling, Esquire, 3614 Landmark Drive, Suite A, Columbia, SC 29204 and Tunzy A. Sanders, at Allendale Correctional Institution, P O Box 1151, Fairfax, SC 29827, this 13th day of November, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 13th day of November, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: August 21, 2023 .