

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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DEC 29 2014

S.C. SUPREME COURT

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

TUNZY SANDERS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

**MOTION TO STRIKE CORRESPONDENCE
AND FOR THIS COURT TO RETURN CORRESPONDENCE
CONCERNING MATTERS OUTSIDE THE RECORD
SENT BY PETITIONER'S FORMER COUNSEL**

This matter concerns correspondence sent to this Court on December 16, 2014, by Ms. Tara Dawn Shurling, Esquire, who was Petitioner's PCR counsel in circuit court, but who **is not counsel of record** in the instant PCR appeal. Ms. Shurling's highly inappropriate letter details conversations she had with a witness in preparation for a PCR hearing and concerns matters outside the record on appeal. Further, it constitutes an improper ex parte communication to this Court. Respondent is asking that the letter and attached materials be struck from the record and returned to Ms. Shurling (the attached materials include what appears to be an article from a Detroit area news blog). See Rule 210(h), SCACR, facts not appearing in the record on appeal are not proper for this Court's consideration; Rule 210(c), SCACR: "The record shall not, however, include matter which was not presented to the lower court or tribunal." (Emphasis added).

I.

The letter concerns disciplinary actions in Michigan taken against Petitioner's co-counsel and sister, Brenda Sanders, who at the time of the PCR hearing was a district court judge in Michigan. She was also co-counsel for Petitioner at his February 2001 murder trial. None of the attached information concerns the charges, trial, murder conviction, or events of the subsequent PCR hearing in the instant matter. The initial actions in the pending disciplinary proceedings and much of the allegations upon which the disciplinary actions are based occurred after Judge Sanders testified at her brother's PCR hearing in August 2013. All events appear to have occurred after Judge Sanders represented her brother at his February 2001 murder trial. The materials have no relevance to the instant action.

II.

Further, no motion for a new hearing has been filed pursuant to Rule 60, SCRCP, and no motion is pending before this Court. Additionally, these materials do not amount to after discovered evidence and, at most, would have been merely impeaching at a PCR hearing. See Johnston v. Belk-McKnight Co. of Newberry, 188 S.C. 149, 158, 198 S.E. 395, 399 (1938) (“[I]mpeaching must mean that which is outside the evidence already given, and impeaches that evidence; it may be by attacking the character, the motives, the integrity, or veracity of those who gave the testimony.”) Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983) (among five requirements for after-discovered is a showing the evidence is not merely cumulative or impeaching).

III.

Counsel for Respondent agrees he was advised generally of the new information sometime in November and understood Ms. Shurling was reviewing the information and considering what actions, if any, she would take. Respondent always envisioned opposing whatever action that might be. However, Respondent did not acquiesce to ex parte communications nor did Respondent envision that Ms. Shurling would submit materials to this Court when she is not counsel of record.

III.

Respondent takes the position that none of the circumstances presented by Ms. Shurling should alter this Court's determination that SCCID continue to represent Petitioner on appeal.

CONCLUSION

WHEREFORE, Respondent prays that this Court strike the letter and return the letter to Ms. Shurling.

[SIGNATURE BLOCK APPEARS ON NEXT PAGE]

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

DANIEL E. GOURLEY
Assistant Attorney General

BY: 
DAVID SPENCER

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ATTORNEYS FOR RESPONDENT

December 23, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Barnwell County
Court of Common Pleas
The Honorable Doyet A. Early, Circuit Court Judge

TUNZY SANDERS,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Motion to Strike Correspondence and for this Court to Return Correspondence Concerning Matters Outside the Record Sent by Petitioner's Former Counsel**, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

**Robert M. Dudek, Esquire
SC Commission of Indigent Defense
Post Office Box 11589
Columbia, SC 29201**

This 23rd day of December, 2014



CAROLINE COLLINS
LEGAL ASSISTANT



ALAN WILSON
ATTORNEY GENERAL

December 23, 2014

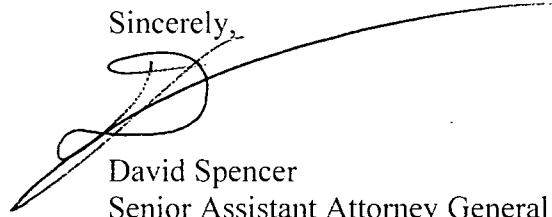
The Honorable Daniel E. Shearouse
Clerk of the South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: Tunzy Sanders v. State of South Carolina
Appellate Case No. 2014-001970
Lower Court Case No. 2006-CP-06-106

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the **Motion to Strike Correspondence and for this Court to Return Correspondence Concerning Matters Outside the Record Sent by Petitioner's Former Counsel** in the above mentioned case.

Sincerely,



David Spencer
Senior Assistant Attorney General
SC Bar #68571

DS/cc

cc: Robert M. Dudek, Esquire
Tara D. Shurling, Esquire

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S.C. SUPREME COURT