

The Supreme Court of South Carolina

Otis James Compton, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2010-155114

ORDER

Petitioner was convicted of murder, first degree burglary, armed robbery, malicious injury to property, and possession of a weapon during the commission of a violent crime. He was sentenced to life imprisonment without the possibility of parole for the murder, burglary, and armed robbery charges; thirty days' imprisonment for the malicious injury charge; and five years' imprisonment, to be served consecutively, on the weapon charge. The Court of Appeals affirmed petitioner's convictions and sentences. *State v. Compton*, 366 S.C. 671, 623 S.E.2d 661 (Ct. App. 2005).

By order dated September 23, 2010, Tara Dawn Shurling was appointed to represent petitioner in this appeal from the denial of petitioner's application for post-conviction relief (PCR) due to a conflict of interest on the part of the Commission on Indigent Defense (SCCID), Division of Appellate Defense. The matter was concluded on November 25, 2014.

Ms. Shurling has now submitted a payment voucher to SCCID in which she seeks a \$1,480 (37 hours at a rate of \$40 per hour for out-of-court hours) attorney fee and \$261.65 in expenses (\$13.44 for extraordinary travel expenses; \$3.19 for "FedEx Office Cutting binding from transcript;" \$123.40 for 1,234 copies at .10 per page; \$90.21 for postage; and \$31.41 for Westlaw Online Research). Ms. Shurling states that because the total amount of fees she is requesting exceeds the \$1,000 cap set by SCCID for PCR cases, she must seek approval from this Court.

SCCID's Voucher Payment Policy limits the amount of attorney's fees in PCR

matters to \$1,000. The policy states this limit is based on S.C. Code Ann. § 17-27-60 (2003) and Section 47.4 of the Appropriations Act (now Section 61.1). However, Section 61.3 of the Appropriations Act (Commission on Indigent Defense Appellate Conflict Fund) specifically addresses reimbursement of counsel appointed on appeal due to a conflict of interest on the part of the Division of Appellate Defense. Section 61.3 states the following:

The purpose of this fund is to provide money to pay attorneys for representing indigent defendants on appellate review when the Office of Appellate Defense is unable to do so. Funds designated for appellate use in conflict cases shall be administered by the Office of Indigent Defense. The Office of Appellate Defense must first determine that it is unable to provide representation. Fees shall be \$40 per hour for out of court work and \$60 for in court work, with a maximum of \$3,500 per case for non-capital appeals. . . . The appropriate appellate court shall review and approve vouchers for payment for appellate conflict cases. The Office of Appellate Defense shall continue to provide printing and other support functions currently provided from their resources.


The language of this section, which was formerly found in Sections 35.3 and 47.3, has appeared in every Appropriations Act since 2002-2003.¹


Because the attorney fee Ms. Shurling seeks is within the \$3,500 limit set forth in

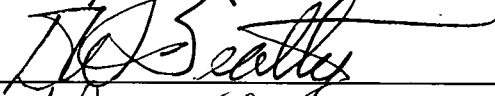
¹ In addition, S.C. Code Ann. § 17-3-50, entitled "Determination of fees for appointed counsel and public defenders; maximum amounts; authorization to exceed maximum; payment for certain service," states the following in section (A):


When private counsel is appointed pursuant to this chapter, he must be paid a reasonable fee to be determined on the basis of forty dollars an hour for time spent out of court and sixty dollars an hour for time spent in court. The same hourly rates apply in post-conviction proceedings. Compensation may not exceed three thousand five hundred dollars in a case in which one or more felonies is charged and one thousand dollars in a case in which only misdemeanors are charged. Compensation must be paid from funds available to the Office of Indigent Defense for the defense of indigents represented by court-appointed, private counsel.


Section 61.3 of the Appropriations Act, which is the provision applicable to her appointment, and based on the time sheets she has provided, the fee appears to be reasonable, we hereby approve payment of the fee. The expenses she seeks are also well within applicable limits and are reasonable, therefore, we approve payment of Ms. Shurling's expenses as well.


C.I.


J.


J.


J.


J.

Columbia, South Carolina

February 4, 2015

cc:
Tara Dawn Shurling, Esquire
James Rutledge Johnson, Esquire