

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Calhoun County

Maite Murphy, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

MAR 23 2015

**S.C. Supreme Court**

PHILLIP SPEARS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2014-002096  
\_\_\_\_\_

MOTION FOR APPOINTMENT  
OF OUTSIDE COUNSEL  
\_\_\_\_\_

Undersigned counsel respectfully moves this Court to appoint outside counsel to represent Petitioner in his appeal of his post-conviction relief matter. Representation of Petitioner presents a conflict of interest between Petitioner and the Office of Appellate Defense (hereinafter "Office") due to a previous civil action filed by Petitioner against the Office alleging legal malpractice.

## **Relevant Facts**

On October 1 – 5, 2007, October 8, 2007, and October 10, 2007, Petitioner was tried before the Honorable Diane S. Goodstein in Calhoun County on the charges of armed robbery, kidnapping, and possession of a weapon during a violent crime. He was found guilty of all three charges and sentenced to thirty years' imprisonment. Charlie Jay Johnson represented Petitioner at trial. Karen N. Fryar and Bryan S. Jeffries represented the State.

Petitioner filed a notice of appeal. In a published opinion, the South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. See State v. Spears, 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011). The Remittitur was sent on July 1, 2011. Petitioner was represented by M. Celia Robinson and Breen R. Stevens on appeal.

On October 6, 2011, Petitioner filed an application for post-conviction relief. As part of his application, Petitioner claimed ineffective assistance of appellate counsel for failure to cite appropriate legal authority for an issue raised in Petitioner's appeal. On May 21, 2013, Petitioner filed a civil action in the Court of Common Pleas in Richland County against M. Celia Robinson and the Office claiming legal malpractice, Case No. 2013-CP-4003067.

On May 28, 2014, an evidentiary hearing was held in Dorchester County before the Honorable Maite Murphy. Petitioner was represented by Charles T. Brooks, III. Megan Harrigan Jameson represented the State.

Ms. Robinson was called as a witness by the State and testified regarding her performance as appellate counsel. In an order dated September 9, 2014, Judge Murphy denied Petitioner's application for post-conviction relief. Petitioner's civil action against the Office was dismissed in September of 2014.

Petitioner appealed Judge Murphy's order denying relief. Due to his indigent status, the Office was appointed to represent him. Undersigned counsel recently discovered this conflict while preparing Petitioner's petition for writ of certiorari. The petition for writ of certiorari is currently due on March 25, 2015, and has been extended by three orders from this Court. Undersigned counsel has prepared the appendix and will furnish those to outside counsel if this Court grants the motion.

**Discussion**

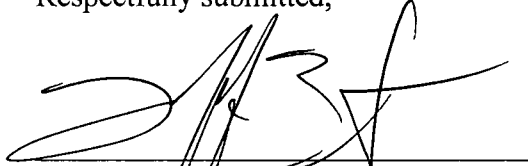
Undersigned counsel respectfully requests the appointment of outside counsel for Petitioner in light of the conflict of interest presented by Petitioner's civil action against the Office. Due to the civil action against the Office of Appellate Defense alleging legal malpractice and negligence, a conflict of interest exists between Petitioner and the Office.

Additionally, undersigned counsel is concerned that representation of Petitioner by the Office may result in a Sixth Amendment conflict of interest in light of the claims of ineffective assistance of appellate counsel presented to the lower court. The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to conflict-free counsel and to effective assistance of counsel on the direct appeal as a matter of right. Mickens v. Taylor, 535 U.S. 162, 168 (2002); Cuyler v. Sullivan, 446 U.S. 335, 348 (1980).

**Conclusion**

Undersigned counsel respectfully requests the appointment of outside counsel to represent Petitioner in his appeal of the PCR court's order denying him relief. Undersigned counsel requests this Court to hold the timelines for filing in abeyance pending a decision on this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Butler', written over a horizontal line.

Tiffany L. Butler  
Appellate Defender

Attorney for Petitioner

This 23rd day of March, 2015

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Calhoun County  
Maite Murphy, Circuit Court Judge

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PHILLIP SPEARS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

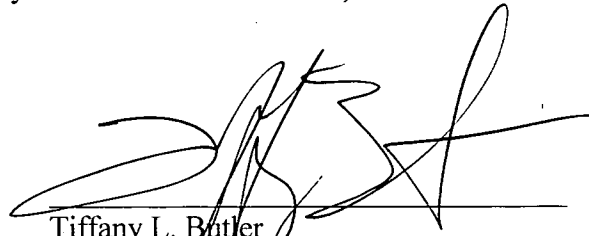
RESPONDENT.

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CERTIFICATE OF SERVICE

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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, Clay Mitchell, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Phillip Spears #297965 at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29210, this 23rd day of March, 2015.




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Tiffany L. Butler  
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me  
this 23rd day of March, 2015.



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(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

 ORIGINAL

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

March 23, 2015

**RECEIVED**

MAR 23 2015

The Honorable Daniel E. Shearouse  
Clerk, S.C. Supreme Court  
P.O. Box 11330  
Columbia, S.C. 29211

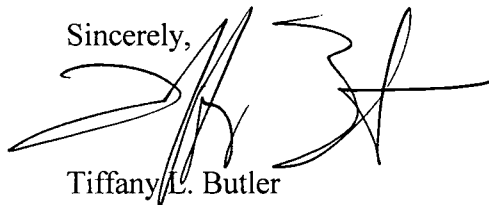
**S.C. Supreme Court**

Re: Phillip Spears v. State of South Carolina

Dear Mr. Shearouse:

Enclosed are an original and six copies of the Motion for Appointment of Outside Counsel in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,



Tiffany L. Butler  
Appellate Defender

TLB/pcm

Enclosure

cc: Clay Mitchell, Esquire