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APR 20 2015

S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

April 20, 2015

Tracy Garrett
Judge Scheduling Coordinator
Court Administration
Calhoun Building
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201-3739

Re: Jesse Waylon Sapp, #6010 vs. State of South Carolina
C.A. No. 2015-CP-08-955
Request for Assigned Death Penalty PCR Judge

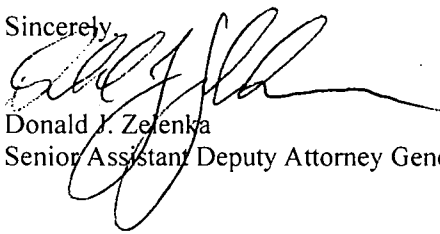
Dear Ms. Garrett:

I am writing to respectfully request that a judge be appointed to hear this capital post-conviction relief action involving a second state PCR application from Berkeley death penalty inmate Jesse Sapp. His prior state PCR hearing judge was the now-retired Judge James Williams which granted a resentencing hearing. The re-sentencing is presently pending before Judge R. Markley Dennis. Mr. Sapp filed a second application for post-conviction relief on April 16, 2015. On the application, it was asserted that Mr. Sapp is represented by Ashley Pennington, Public Defender of the Ninth Circuit, in this post-conviction relief action (who has been appointed to represent the Applicant in the pending resentencing proceeding).

I am notifying counsel, the Solicitor and the re-sentencing judge and the Clerk of the South Carolina Supreme Court of this request for the appointment of a judge by copy of this letter to address the application.

If further information is necessary, please advise me. Thank you for your cooperation in this matter.

Sincerely,


Donald J. Zelenka
Senior Assistant Deputy Attorney General

DZ:dz

Enclosure – PCR Application

cc: Honorable R. Markley Dennis
Ashley Pennington, Esq.
Christopher Adams, Esq.
✓Debbie Hopkins, Deputy Clerk South Carolina Supreme Court w/ enclosure
Honorable Scarlett A. Wilson, Solicitor of the Ninth Circuit
Victims' Services

STATE OF SOUTH CAROLINA

COUNTY OF

IN THE COURT OF COMMON PLEAS

Jesse Waylon Sapp
Lieber GI, P.O. Box 205,
Ridgewell SC
29472-0205

SLDC # 6010

Plaintiff(s)

South Carolina

Defendant(s)

CIVIL ACTION COVERSHEET

2015-CP-08-955

RECEIVED

APR 20 2015

Submitted By: D. Ashley Pennington
Address: 101 Meeting St., 5th floor
Charleston, SC 29401

SC Bar #: 4409
Telephone #: (843) 958-1870
Fax #: (843) 958-5146
Other: (843) 478-1230
E-mail: apennington@charlestoncounty.org
Supreme Court

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts
- Constructions (100)
- Debt Collection (110)
- Employment (120)
- General (130)
- Breach of Contract (140)
- Other (199)

- Torts - Professional Malpractice
- Dental Malpractice (200)
- Legal Malpractice (210)
- Medical Malpractice (220)
- Previous Notice of Intent Case # 20 -NI-
- Notice/ File Med Mal (230)
- Other (299)

- Torts - Personal Injury
- Assault/Slander/Libel (300)
- Conversion (310)
- Motor Vehicle Accident (320)
- Premises Liability (330)
- Products Liability (340)
- Personal Injury (350)
- Wrongful Death (360)
- Other (399)

- Real Property
- Claim & Delivery (400)
- Condemnation (410)
- Foreclosure (420)
- Mechanic's Lien (430)
- Partition (440)
- Possession (450)
- Building Code Violation (460)
- Other (499)

- Inmate Petitions
- PCR (500)
- Mandamus (520)
- Habeas Corpus (530)
- Other (599)

- Administrative Law/Relief
- Reinstate Drv. License (800)
- Judicial Review (810)
- Relief (820)
- Permanent Injunction (830)
- Forfeiture-Petition (840)
- Forfeiture-Consent Order (850)
- Other (899)

- Judgments/Settlements
- Death Settlement (700)
- Foreign Judgment (710)
- Magistrate's Judgment (720)
- Minor Settlement (730)
- Transcript Judgment (740)
- Lis Pendens (750)
- Transfer of Structured Settlement Payment Rights Application (760)

- Appeals
- Arbitration (900)
- Magistrate-Civil (910)
- Magistrate-Criminal (920)
- Municipal (930)
- Probate Court (940)
- SCDOT (950)
- Worker's Comp (960)
- Zoning Board (970)
- Public Service Comm. (990)
- Employment Security Comm (991)
- Other (999)

- Special/Complex /Other
- Environmental (600)
- Automobile Arb. (610)
- Medical (620)
- Other (699)
- Pharmaceuticals (630)
- Unfair Trade Practices (640)
- Out-of State Depositions (650)
- Motion to Quash Subpoena in an Out-of-County Action (660)
- Sexual Predator (510)

Submitting Party Signature:

D. Ashley Pennington

Date: 4/16/2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Berkeley)
)
Jesse Waylon Sapp)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

20 15 - CP - 08 - 9550

v.)

APPLICATION FOR
POST-CONVICTION

State of South Carolina)
)
)
)
)

MAILED
2015 APR 16 AM 11:42
CLERK OF COURT
BERKELEY COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Death Row
2. Name and location of Court which imposed sentence Court of General Sessions
Berkeley County, South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2003-GS-08-686
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 19, 2003 - Death
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Supreme Court
- ii. United States Supreme Court
- iii. Berkeley County - Application for Post-Conviction Relief
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. Certiorari Denied
- iii. New Sentencing Trial Granted
- (c) the date of each such result:
- i. October 24, 2005
- ii. May 15, 2006
- iii. August 17, 2009
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Sapp, 366 S.C. 283, 621 S.E.2d (2005)
- ii. Sapp v. South Carolina, 126 S.Ct. 2025 (2006)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Misconduct by the State violated Mr. Sapp's 5th and 14th Am. rights to due process and a fair trial
- (b) Sapp's 6th Amendment right to counsel was violated by ineffective assistance of prior counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Police and prosecutors intimidated a key witness, preventing her from speaking with Sapp's attorneys
- (b) Prior PCR counsel failed to raise a meritorious due process claim during Sapp's prior PCR
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. A prior PCR application was filed on October 6, 2006.
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Court of Common Pleas, Berkeley County
- ii. _____
- iii. _____
- iv. _____

- (c) the disposition thereof:
 - i. New sentencing trial granted.
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. August 17, 2009.
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) The evidence supporting this claim is newly discovered, S.C. Code § 17-27-45.
- (b) Sapp has not had prior opportunity to argue that PCR counsel was constitutionally ineffective
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Paul Archer, 233 Muirfield Dr., Pawleys Island SC 29585
Robert J. Johnson, PO Box 15035, Surfside Beach SC 29587
 - ii. Joseph L. Savitz III, 1825 St. Julian Place, Unit 15-D, Columbia SC 29204
Robert Lominack, 126 South Sims Ave., Columbia SC 29205
 - iii. Daniel Prenner, 636 King St., Charleston SC 29403
- (b) the proceedings at which each such attorney represented you:
 - i. Archer & Johnson - Trial and Sentencing
 - ii. Savitz - Direct Appeal and Certiorari
 - iii. Lominack & Prenner - Prior PCR Application, 2006

19. State clearly the relief you seek in filing this application:
(1) That this Court grant leave for the parties to conduct discovery;
(2) That this Court grant an evidentiary hearing to present evidence in support of this application;
(3) That this Court grant Sapp a full retrial.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
)
 County of Berkeley)

VERIFICATION

MAREK BROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

2015 APR 16 AM 11:12

JW
 FILED

I, JESSE WAYLON SAPP, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jesse Sapp

SWORN to and subscribed before me this 15th
 day of April, 2015.

D. Kelly P... (L.S.)
 Notary Public

My Commission Expires: Aug 2, 2017

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, JESSE WAYLON SAPP, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jesse Sapp
Applicant

SWORN or affirmed to and subscribed before me this
15th day of April, 2015.

[Signature]
Notary Public

My Commission Expires: August 2, 2017

MARY PATRICKSON
CLERK OF COURT
BERKELEY COUNTY, S.C.

2015 APR 16 AM 11:42

[Signature]
FILED