

STATE OF SOUTH CAROLINA
In The Court of Appeals

Ex Parte: Tara Dawn Shurling, Attorney, Appellant,

**In Re:
State of South Carolina, Respondent,**

v.

Bejay Harley, Defendant

Appellate Case No. 2013-001298

**Appeal from Richland County
L. Casey Manning, Circuit Court Judge
Court of General Sessions
Trial Court Case No.: 2003-GS-40-6670**

Unpublished Opinion No. 2015-UP-215

**PETITION FOR REHEARING
EN BANC**

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SC Court of Appeals

NOW COMES the Appellant in the above captioned matter seeking rehearing *en banc* pursuant to Rules 219 and 221, SCACR, on this Honorable Court's Opinion issued in this appeal dated April 29, 2015. In support of this petition, Appellant would respectfully note the following points which she believes were either overlooked or misapprehended by the Court.

- In *Ex Parte Shurling*, 408 S.C. 309, 312 n. 6, 759 S.E.2d 714, 175 n. 6 (2014), the Supreme Court declined to reach the statutory construction argument advanced, because the clear language of the circuit court order was controlling. In that case, however, the specific language of the Court's Order required "*further advance approval*" of the Court. In this case the original funding order signed by the Chief Administrative Judge, and in place at the time the trial judge initially

approved all counsel's fees, required only "further approval of the Court". ROA, p. 180. Thus, the reason the Supreme Court did not reach the statutory construction argument in *Ex Parte Shurling, supra*, does not exist on the facts of this case.

- The Order approving rates and a cap for attorney fees in this case signed by the Chief Administrative Judge on December 1, 2011, was totally consistent with the Court's rulings from the bench at the hearing held on Counsel's funding requests on May 23, 2011 and with S. C. Code Ann. § 17-3-50 (C).
- The Order signed by the trial judge, approving Appellant's fees, on December 5, 2011, fully complied with the Order of the Chief Administrative Judge dated December 1, 2011 *and* with §17-3-50 (C). This Order entered by the trial judge on December 5, 2011, complied with § 17-3-50(C) in that it found, upon recitation of "specific findings of fact, that payment in excess of the limit was appropriate because the services provided *were* reasonably and necessarily *incurred*." §17-3-50 (C), (Emphasis added). ROA, p 175.
- In addition, the Expense Order of the trial judge found that the total expenses claimed by Appellant were "necessary and appropriate to providing Defendant with effective assistance of counsel." ROA, p. 177
- The fact that "one judge of the same court cannot overrule another", while an accurate statement of the law, overlooks the operative issues in this case which, Appellant most respectfully submits, are not controlled by that principle.
 - i. The Orders of the Chief Administrative Judge in place at the time the trial judge originally approved Appellant's fees and expenses were consistent with the trial judge's authority to make a final determination as to fees and expenses. Likewise, the authority of the trial judge to make the final decision with regard to fees and expenses is supported by statutory law; § 17-3-50 (C).
 - ii. Further § 17-3-50 (C) and prior precedent, vest the trial judge with the authority to make a final determination as to what fees and expenses *were* (past tense) reasonably and necessarily *incurred* (past tense).
- *Bailey v. State, 309 S. C. 455, 464 424 S.E.2d 502, 508 (1992)*, does not simply hold that such matters are within the discretion of *the circuit court*, it expressly finds, "[T]his determination which shall be made at the conclusion of the trial, is within the sound discretion of *the trial judge*." (Emphasis added).

- *Bailey, supra.*, likewise recognizes the discretion of *the trial judge*, to make a determination concerning an attorney’s costs and expenses. *Id.*, 309 S.C. at 464-465, 424 S.E.2d at 508-509.
- *Ex Parte Brown*, 393 S.C. 214, 711 S.E.2d 899 (2011), does not simply find that an attorney’s fees in excess of the § 17-3-50 statutory cap are “within the sound discretion of the circuit court” as the opinion in this case states. Rather, the Supreme Court in *Ex Parte Brown, supra*, expressly recognized, quoting *Bailey*, that, “[A]n award of attorney’s fees in excess of the §17-3-50 statutory cap is “within the sound discretion of *the trial judge*.” *Brown*, 393 S. C. at 220, 711 S. E. 2d at 902. (Emphasis added)
- Thus, the question before the Court is not simply whether the Chief Administrative Judge could change his original order *after* the trial judge had approved Appellant’s fees and expenses, but rather whether the trial judge had the ultimate discretion to make the final determination concerning Appellant’s fees and expenses under both South Carolina statutory law and the prior decisions of our Supreme Court.

In light of the foregoing, Appellant asks for rehearing. Because of the unique and important issues involved in this appeal, Appellant asks for Rehearing *En Banc* pursuant to Rule 219 (a), SCACR. In the alternative, Appellant asks that this Honorable Court withdraw its decision in this case and request certification of the questions addressed in this appeal pursuant to Rule 244, SCACR.

Respectfully submitted,



TARA DAWN SHURLING
APPELLANT, *pro se*

This 7th day of May, 2015.

STATE OF SOUTH CAROLINA
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L. Casey Manning, Circuit Court Judge
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Trial Court Case No.: 2003-GS-40-6670

Ex Parte: Tara Dawn Shurling, Attorney, Appellant,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Petition for Rehearing *En Banc* in the above-entitled case has been served upon opposing counsel, J. Hugh Ryan, III, General Counsel, by depositing in the U.S. Mail, postage pre-paid, this 7th day of May, 2015 addressed to the following:

J. HUGH RYAN, III
General Counsel
S. C. Commission on Indigent Defense
Post Office Box 11433
1330 Lady Street, Suite 401
Columbia, SC 29211-1433


Tara Dawn Shurling
Attorney/Appellant

SWORN TO BEFORE me this 7th day
of May, 2015.


Suzanne Johnson
Notary Public for South Carolina

My Commission Expires: 2/28/24

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Ex Parte: Tara Dawn Shurling, Attorney, Appellant,

In Re:
State of South Carolina, Respondent,

v.

Bejay Harley, Defendant.

Appellate Case No. 2013-001298

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2015-UP-215
Submitted March 26, 2015 – Filed April 29, 2015

AFFIRMED

Tara Dawn Shurling, of Law Office of Tara Dawn
Shurling, PA, of Columbia, for Appellant.

James Hugh Ryan III, of South Carolina Commission on
Indigent Defense, of Columbia, for Respondent.

PER CURIAM: Tara Dawn Shurling appeals the circuit court's order denying her additional attorney's fees in excess of \$10,000 and limiting her reimbursement for

general expenses to \$750. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Ex Parte Shurling*, 408 S.C. 309, 312 n.6, 759 S.E.2d 714, 715 n.6 (2014) (declining to reach appellant's statutory construction argument regarding the Indigent Defense Act because the clear language of the circuit court's funding order was controlling in the case); *Ex Parte Brown*, 393 S.C. 214, 220, 711 S.E.2d 899, 902 (2011) (stating an award of attorney's fees in excess of the statutory cap set forth in section 17-3-50 of the South Carolina Code (2014) is within the sound discretion of the circuit court); *Charleston Cnty. Dep't of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) ("There is a long-standing rule in this State that one judge of the same court cannot overrule another."); *Bailey v. State*, 309 S.C. 455, 464, 424 S.E.2d 503, 508 (1992) ("[A] determination of an attorney's costs and expenses for trial preparation shall also be made within the discretion of the trial judge.").

AFFIRMED.¹

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

LAW OFFICE OF



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May 7, 2015

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE: Ex Parte: Tara Dawn Shurling, Attorney, Appellant.
In Re: State of South Carolina v. Bejay Harley
Appellate Case No. 2013-001298

Dear Ms. Kitchings:

I am *pro se* Appellant in this appeal. This matter involves an appeal from the circuit court's ruling on Appellant's request for payment of her fees and expenses as court-appointed counsel. Enclosed please find for filing an original and six (6) copies of the Petition for Rehearing *En Banc* and Certificate of Service in the above captioned matter. We would appreciate your office clocking and returning the two extra copies in the self-addressed stamped envelope provided for your convenience. With my thanks for the Court's kind assistance in this matter, I remain,

Sincerely yours,

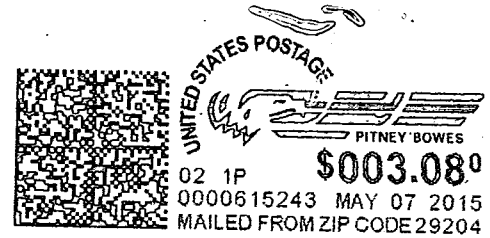
A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is written over the typed name and title below it.

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: Hugh Ryan, Deputy Director and General Counsel SCCID (w/enclosures)



Law Office of
TARA DAWN SHURLING, PA

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The Honorable Jenny A. Kitchings
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