

# The Supreme Court of South Carolina

Kendrick Allen Gude, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-001133

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## ORDER

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Counsel for petitioner moves to be relieved as counsel on the ground that he was not retained to file an appeal. The State has not filed a return to the motion.

Rule 71.1(g), SCRCPP, states that if a post-conviction relief (PCR) applicant represented by counsel desires to appeal, counsel must serve and file a notice of appeal as required by Rule 243, SCACR, and must continue to represent the applicant on appeal unless automatically relieved under Rule 602, SCACR, or allowed to withdraw under Rule 264, SCACR. *If the applicant is indigent, counsel shall assist the applicant in obtaining representation by the Division of Appellate Defense of the Office of Indigent Defense.* Rule 71.1(g), SCRCPP.

Similarly, pursuant to Rule 602(e), SCACR, if counsel is retained to represent a PCR applicant in the circuit court, but at the conclusion of the proceeding the applicant claims to be indigent, counsel must serve and file a notice of appeal, and a determination of the applicant's indigency status must be obtained from the Commission on Indigent Defense, Division of Appellate Defense. If the Division of Appellate Defense determines the applicant is not indigent, retained counsel must continue to represent the applicant on appeal unless granted leave to withdraw pursuant to Rule 264, SCACR. Rule 602, SCACR. If the Division of Appellate Defense determines the applicant is indigent, it will assume representation of the applicant without retained counsel obtaining leave from this Court to withdraw under Rule 264. *Id.* Retained counsel must assist in representing the applicant in any manner necessary to properly establish the applicant's indigency, including, but not limited to, obtaining an affidavit of

indigency from the applicant, and in any other manner requested by the Division of Appellate Defense. *Id.*

Because it does not appear that counsel has fulfilled his duties under Rule 71.1(g), SCRPC, and Rule 602(e), SCRPC, by assisting petitioner in obtaining representation by the Division of Appellate Defense, the motion to be relieved as counsel is denied.



  
C.J.  
FOR THE COURT

Columbia, South Carolina

June 26, 2015

cc:

Suzanne H. White, Esquire

Fletcher N. Smith, Jr., Esquire

Kendrick Allen Gude, #287625

SC Division of Appellate Defense