

STATE OF SOUTH CAROLINA
Supreme Court
IN THE COURT OF APPEALS

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

**ORIGINAL
RECEIVED**
JUL 02 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN B. FRAZIER,

RECEIVED
JUL - 6 2015
PETITIONER.
S.C. Supreme Court

APPELLATE CASE NO. 2014-002774

MOTION TO PUT INTO ABEYANCE

Counsel for Petitioner John B. Frazier respectfully requests this Court to put the above-captioned case in abeyance until the PCR court renders its decision on the pending Motion to Alter or Amend filed on December 17, 2014. In support of this motion, counsel submits the following:

1. A two-day evidentiary hearing on Petitioner's application for post-conviction relief was held before the Honorable Benjamin H. Culbertson on June 16 -17, 2014. Petitioner was represented by Brana Williams, and the State was represented by Joshua Thomas.
2. The PCR court filed its Order of Dismissal on November 6, 2014.
3. PCR counsel filed a Notice of Appeal from the Order of Dismissal on November 18, 2014.

4. Petitioner's case was referred to the appellate division of the Commission on Indigent Defense for purposes of his appeal from the Order of Dismissal due to his indigent status.

5. Subsequently, on December 19, 2014, Petitioner filed a Notice of Motion and Motion to Reconsider/Alter or Amend the Findings of the Court and the Order of Dismissal pursuant to Rule 59(e), SCRPC. On December 22, 2014, Petitioner filed an Addendum to the motion.

6. On January 8, 2015, the State filed its Return to the motion and a Motion to Strike.

7. On February 9, 2015, Petitioner filed a Reply to the Motion to Strike.

8. PCR counsel did not inform Appellate Defense that she filed the Motion to Alter or Amend and Addendum or that she was continuing to represent Petitioner before the lower court.

9. On information and belief, Petitioner asserts that Assistant Attorney General Thomas and PCR counsel are currently working with the PCR court to set a hearing on the Motion to Alter or Amend. They anticipated a more expeditious hearing and ruling on the Motion, but such has not been accomplished due to scheduling difficulties.

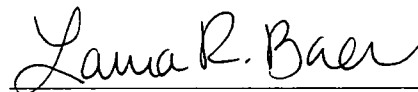
10. In the interest of judicial economy and efficiency, Petitioner requests that this case be held in abeyance pending resolution of the Motion to Alter or Amend. See Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001) (reiterating that a Rule 59(e) motion must be filed if issues are not adequately addressed in the PCR court's order to be preserved for appellate review).

11. Counsel makes this request in good faith and not for purpose of delay.

12. Counsel for the Attorney General's office consents to this request as shown by signature below.

WHEREFORE, the undersigned counsel respectfully requests this Court to hold the case in abeyance until the lower court issues its ruling on the Motion to Alter or Amend based upon the above exigent circumstances. Counsel requests that time limits for filing the petition be held in abeyance pending ruling on this motion.

Respectfully submitted,

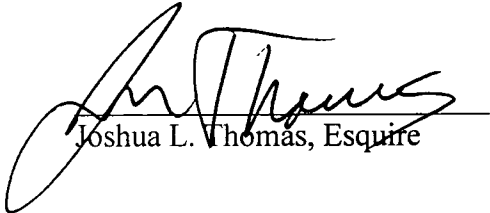


Laura R. Baer
Appellate Defender

ATTORNEY FOR PETITIONER

This 2nd day of July, 2015.

I Consent:



Joshua L. Thomas, Esquire