

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Steven H. John, Circuit Court Judge

Appeals Case No.: 2015-001167

RECEIVED

JUL 09 2015

SC Court of Appeals

State of South Carolina,

Respondent,

v.

Lionel Smalls,

Appellant.

PETITION TO WITHDRAW AS COUNSEL FOR APPELLANT

Pursuant to Rules 240 and 264 of the South Carolina Appellate Court Rules, the undersigned attorney, counsel of record for appellant in this appeal, respectfully moves to withdraw as counsel for respondent. Pursuant to Rule 240(b) and (c), counsel is filing an accompanying memorandum in support of this petition and an appendix of supporting documents. As shown by the appendix, counsel has previously notified the client of his intent to file this motion. In accordance with Rule 264(b), counsel is notifying the client and the adverse party in the court below of this petition.

Wherefore, counsel respectfully moves for approval of this petition to withdraw as counsel for the respondent in this appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jesse M. Goode", written over a horizontal line.

Jesse M. Goode
Post Office Box 30606
Charleston, South Carolina 29417
(843) 7547811

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Appellant.

MEMORANDUM IN SUPPORT OF PETITION TO
WITHDRAW AS COUNSEL FOR APPELLANT

Pursuant to Rule 240(b) of the South Carolina Appellate Court Rules, the undersigned attorney, counsel of record for appellant in this appeal, files this memorandum in support of his petition to withdraw as counsel for appellant in this appeal.

Counsel was hired to represent Lionel Smalls in an action brought against him in the Charleston County Court of General Sessions. Pursuant to a retainer agreement dated March 3, 2015, and signed by Mr. Smalls, the representation was expressly limited to representation at the trial level and not on appeal. In particular, paragraph (1) of the agreement stated, "By executing this agreement, the Law Office of Jesse Goode, LLC

agrees to provide legal representation for Lionel Smalls, in connection with the aforementioned charges, up to and through a jury trial, should one be necessary.” Additionally, Paragraph (5) stated, “All parties agree and understand that any appeal(s) in connection with the above mentioned charges may result in additional attorney’s fees and a new Retainer Agreement.” *See* Appendix, Exhibit 1.

A guilty plea pursuant to *North Carolina v. Alford* was entered on May 13, 2015, and final dispositions as to both underlying charges were filed with the Clerk of Court on that same date. Counsel for Appellant filed an appeal with respect to these two dispositions at the request of Appellant.

The certificate of service reflects that the notice of appeal was served by mail on May 26, 2015. By letter dated May 26, 2015, counsel notified Mr. Smalls of the appeal. *See* Appendix, Exhibit 2. This letter advised Mr. Smalls that counsel did not intend to create an agreement for representation on appeal, and requested that Mr. Smalls make arrangements for someone else to handle the appeal.

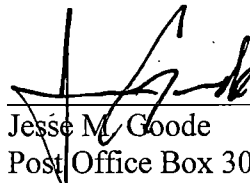
Counsel received two separate letters dated June 2, 2015 and June 26, 2015, from the Clerk’s Office of the South Carolina Court of Appeals, regarding the sufficiency of the requested appeal. By letter dated June 8, 2015, counsel responded to the Court and send to courtesy copy along with an enclosure of the June 2, 2015 letter to appellant. *See* Appendix, Exhibit 3. Additionally, and in response to the June 26, 2015 letter from the Clerk’s Office, counsel provided a Statement Pursuant to Rule 203(d)(1)(B)(iv), which was also sent to appellant on June 30, 2015. *See* Appendix, Exhibit 4.

Rule 264(b) of the South Carolina Appellate Court Rules provides that an attorney of record in a matter pending in the appellate court may not withdraw from representation

of his client without justifiable cause, or the consent of his client, and then only after proper written notice to his client, on petition to and by written order of the appellate court, and with notice to the adverse party. The Supreme Court has recognized that an appropriate basis for withdrawal exists where the attorney demonstrates that he was not hired to represent a non-indigent client on appeal. *See In re Anonymous Member of the Bar*, 303 S.C. 306, 308, 400 S.E.2d 483, 484 (1991). Here, counsel specifically limited his representation to the trial level, and the retainer agreement expressly excludes an appeal. Counsel has notified the client of the appeal proceedings. Under these circumstances, where counsel's representation agreement excluded appeals, justifiable cause exists for his withdrawal.

This Court should approve counsel's petition to withdraw.

Respectfully submitted,



Jesse M. Goode
Post Office Box 30606
Charleston, South Carolina 29417
(843) 754-7811

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Appellant.

APPENDIX OF DOCUMENTS SUPPORTING
PETITION TO WITHDRAW AS COUNSEL FOR APPELLANT

The following documents are submitted in support of the petition to withdraw as
counsel for respondent:

- Exhibit 1 Retainer agreement signed by client and dated March 3, 2015
- Exhibit 2 Counsel's letter to client dated May 26, 2015
- Exhibit 3 Counsel's letter to Clerk of Court, South Carolina Court of Appeals with courtesy copy and enclosures to client dated June 8, 2015
- Exhibit 4 Counsel's letter to Clerk of Court, South Carolina Court of Appeals with courtesy copy and enclosures to client dated June 30, 2015



Jesse M. Goode
Post Office Box 30606
Charleston, South Carolina 29417
(843) 754-7811

EXHIBIT 1

JESSE M. GOODE
ATTORNEY AT LAW
571 SAVANNAH HIGHWAY, SUITE 4
CHARLESTON, S.C. 29407
WWW.JESSEGOODELAW.COM

LAW OFFICE OF JESSE GOODE, LLC
JESSE@JESSEGOODELAW.COM

TEL. (843) 754-7811
FAX (843) 647-7912

March 3, 2015

Lionel Smalls
[REDACTED]
[REDACTED]

Re: State of South Carolina v. Lionel Smalls
Warrant No.: 2014A1010200118 – Indecent Exposure
2014A1010200119 – Indecent Exposure

RETAINER AGREEMENT FOR LEGAL SERVICES

1. This Retainer Agreement is for representation of Lionel Smalls, in connection with Ticket/Warrant Numbers and Offenses listed above, which is/are currently pending in the Charleston County Court of General Sessions. By executing this agreement, the Law Office of Jesse Goode, LLC agrees to provide legal representation for Lionel Smalls, in connection with the aforementioned charges, up to and through a jury trial, should one be necessary.

2. In exchange for said representation, Lionel Smalls agrees to pay an initial non-refundable retainer fee of \$2,500.00 to the Law Office of Jesse Goode, LLC, with the total amount to be paid prior to the start of the aforementioned legal representation. This fee will encompass drafting, filing, preparing, and arguing the Motion to Rescind the Bench Warrants, as well as the initial investigation, research, and case file development.


3. In addition to the aforementioned fee, Lionel Smalls agrees to pay an additional non-refundable retainer fee of \$7,500.00 to the Law Office of Jesse Goode, LLC, with \$2,500.00 to be paid within one month of the date of this agreement, and payments to be made on a monthly basis, payments being due on or before the 3rd day of each month, beginning May 3, 2015, in the amount of \$250.00 until the balance has been paid in full. *\$2000.00 to be paid 3/3/15 and \$500.00 to be paid 3/5/15 JMG r.l.s.*

4. All parties agree and understand that the Retainer Fee is non-refundable and all payments made are deemed earned when paid. As such, this fee will not be held in trust account until earned. It is further understood that the Law Office of Jesse Goode, LLC has the right to withdraw as attorney in this matter at any time if any of the terms of this agreement are not met. Likewise, Client has the right to terminate the lawyer-client relationship and discharge the Law Office of Jesse Goode, LLC; and the Client may be entitled to a refund of all or a portion of the fee if the agreed-upon legal services as outlined above, are not provided.

5. This agreement encompasses the above referenced charges only. Any additional or further charges would require an additional agreement and possible additional attorney's fees. All parties agree and understand that any appeal(s) in connection with the above mentioned charges may result in additional attorney's fees and a new Retainer Agreement.

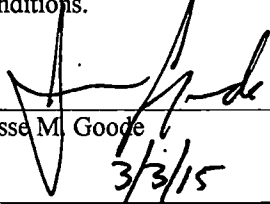
6. By signing this agreement, Client acknowledges he/she has been advised of the Law Office of Jesse Goode, LLC's file retention policy, whereby the file will be retained for seven years after a final resolution has been reached, at which time the file will be destroyed. If Client wishes take possession of the file, they must make a written request to the Law Office of Jesse Goode, LLC prior to the running of the seven-year period.

By signing this document, Client acknowledges that he/she has read it in its entirety, any and all concerns have been addressed and resolved, and he/she agrees to be bound by its terms and conditions.



Lionel Smalls
3/3/15

Date



Jesse M. Goode
3/3/15

Date

EXHIBIT 2

JESSE M. GOODE

ATTORNEY AT LAW
1224 WAPPOO ROAD
CHARLESTON, S.C. 29407

LAW OFFICE OF JESSE GOODE, LLC
JESSE@JESSEGOODELAW.COM

TEL. (843) 754-7811
FAX (843) 647-7912

May 26, 2015

Lionel Smalls, Offender ID: 294573
[REDACTED]
[REDACTED]
[REDACTED]

RE: State v. Lionel Smalls
Case No.(s): 2014GS1001797 & 2014GS1001798

Dear Lionel:

Enclosed please find a Notice of Appeal in connection with each of the above-referenced case numbers. As a follow-up to our meeting on May 17, 2015, please be advised that this is in no way intended to be an agreement for representation. Rather, this is an attempt to make sure your request for an appeal is timely filed should you wish to pursue it. I would suggest that you contact the Appellate Defense Division of the South Carolina Commission on Indigent Defense at the following address:

South Carolina Commission on Indigent Defense
Attn: Appellate Defense
P.O. Box 11433
Columbia, SC 29211-1433

I have the SCCID a courtesy copy of this letter. As I mentioned to you in the previous letter, you should receive a copy of your file shortly.

With kindest regards, I am

Sincerely,

Jesse M. Goode

Enclosure - as stated

cc: South Carolina Commission on Indigent Defense (w/ enclosures)p

EXHIBIT 3

JESSE M. GOODE

ATTORNEY AT LAW
1224 WAPPOO ROAD
CHARLESTON, S.C. 29407

LAW OFFICE OF JESSE GOODE, LLC
JESSE@JESSEGOODELAW.COM

TEL. (843) 754-7811
FAX (843) 647-7912

June 8, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

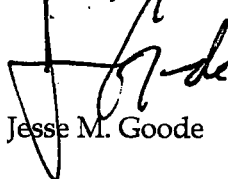
RE: State v. Lionel Smalls
Appeals Case No.: 2015-001167

Dear Ms. Kitchings:

In follow-up to the Court's letter dated June 2, 2015, please find enclosed a copy of the redacted sentencing sheets in connection with the above-referenced matter. Upon information and belief, I am unaware of any issues in this matter that are reviewable on appeal. The original Notice of Appeal was sent at the request of Appellant.

With kindest regards, I am

Sincerely,



Jesse M. Goode

Enclosure - as stated

cc: Lionel Smalls
David Osborne, Esquire
Robert Michael Dudek, Esquire
Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire

EXHIBIT 4

JESSE M. GOODE

ATTORNEY AT LAW
1224 WAPPOO ROAD
CHARLESTON, S.C. 29407

LAW OFFICE OF JESSE GOODE, LLC
JESSE@JESSEGOODELAW.COM

TEL. (843) 754-7811
FAX (843) 647-7912

June 30, 2015

V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: State v. Lionel Smalls
Appeals Case No.: 2015-001167

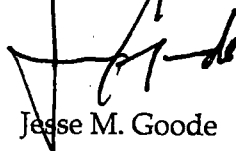
Dear Ms. Allen:

Enclosed please find a Statement Pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules in connection with the above-referenced matter.

Thank you for your time and consideration regarding this matter. If any additional information is necessary, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,



Jesse M. Goode

Enclosure - as stated

cc: Lionel Smalls
David Osborne, Esquire
Salley Elliott, Esquire
Robert Michael Dudek, Esquire

JESSE M. GOODE

ATTORNEY AT LAW
1224 WAPPOO ROAD
CHARLESTON, S.C. 29407

LAW OFFICE OF JESSE GOODE, LLC
JESSE@JESSEGOODELAW.COM

TEL. (843) 754-7811
FAX (843) 647-7912

June 30, 2015

Lionel Smalls, Offender ID: 294573
[REDACTED]
[REDACTED]
[REDACTED]

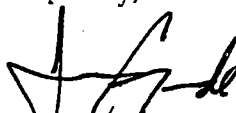
RE: State v. Lionel Smalls
Appeals Case No.: 2015-001167

Dear Lionel:

Enclosed is a June 26, 2015 letter from the South Carolina Court of Appeals, along with my Statement Pursuant to Rule 203(d)(1)(B(iv)) in response. Please keep a copy of these documents for your records.

With kindest regards, I am

Sincerely,



Jesse M. Goode

Enclosure - as stated

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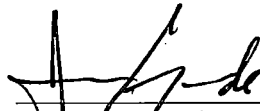
CERTIFICATE OF SERVICE

I hereby certify that I have served the Petition to Withdraw as Counsel for Appellant, together with the memorandum and appendix in support of said petition, on the following persons, by mail to the addresses listed below, on July 6, 2015:

David Osborne, Esquire
Ninth Circuit Solicitor's Office
101 Meeting Street, 4th Floor
Charleston, SC 29401
Trial Counsel for Respondent

Robert Michael Dudek, Esquire
SCCID, Appellate Division
P.O. Box 11433
Columbia, SC 29211-1433

Salley W. Elliott, Esquire
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549



Jesse M. Goode
Post Office Box 30606
Charleston, South Carolina 29417
(843) 754-7811
Counsel for Appellant

JESSE M. GOODE

ATTORNEY AT LAW
1224 WAPPOO ROAD
CHARLESTON, S.C. 29407

LAW OFFICE OF JESSE GOODE, LLC
JESSE@JESSEGOODELAW.COM

TEL. (843) 754-7811
FAX (843) 647-7912

July 6, 2015

V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE: State v. Lionel Smalls
Appeals Case No.: 2015-001167

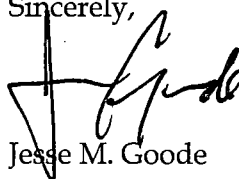
Dear Ms. Allen:

Enclosed please find an original and six (6) copies of a Petition to Withdraw as Counsel for Appellant, together with the memorandum and appendix in support of said Petition.

Thank you for your time and consideration regarding this matter. If any additional information is necessary, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,



Jesse M. Goode

Enclosure - as stated

cc: Lionel Smalls
David Osborne, Esquire
Salley Elliott, Esquire
Robert Michael Dudek, Esquire

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stamps.com
07/06/2015

PRIORITY MAIL 2-DAY™

Law Office of Jesse Goode, LLC
1224 Wappoo Road
P.O. Box 30606
Charleston SC 29417

0024

B012

SHIP
TO:

V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211-1629



USPS TRACKING #



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RECEIVED

JUL 09 2015

SC Court of Appeals