IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ex Parte: Tara Dawn Shurling, Attorney, Petitioner,

In Re:
State of South Carolina, Respondent,

v.

Bejay Harley, Defendant

Court of Appeals Appellate Case No. 2013-001298

Supreme Court Appellate Case No. 2015-001580

RECEIVED
SEP 16 2015
S.C. Supreme Court

Appeal from Richland County
L. Casey Manning, Circuit Court Judge
Court of General Sessions
Trial Court Case No.: 2003-GS-40-6670
Court of Appeals Appellate Case No. 2013-001298

AMENDED PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Attorney/Petitioner certifies, pursuant to Rule 242(d)(1), SCACR, that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on June 16, 2015.

INDEX

STATEMENT OF THE ISSUES ON APPEAL

I.

At the time Counsel completed her representation in this case, did S. C. Code Ann. § 17-3-50, (C) require advance approval of fees in excess of the statutory cap?

II.

Did the Chief Administrative Judge who signed the initial funding orders in this case err in concluding that any additional requests to exceed the caps set by his orders would have to be addressed specifically to him personally as opposed to the presiding judge pursuant to S. C. Code Ann. § 17-3-50, (C)?

III.

Did the Chief Administrative Judge who signed the initial funding orders in this case properly modify his previous Orders approving increased fee and expense caps pursuant to S. C. Code Ann. § 17-3-50(C) to remove the provisions authorizing the presiding judge to determine if any additional increases in the caps were warranted at the conclusion of the case?

IV.

Did the Chief Administrative Judge who signed the initial funding orders in this case err in revoking his previous Orders approving an increased fee cap pursuant to S. C. Code Ann. § 17-3-50, (C) where judge who presided over the guilty plea proceeding in this matter had already signed an order approving Counsel's total fees, including those in excess of the cap previously set by the Chief Administrative Judge in question, based upon the original Order approved and signed him?

V.

Did the presiding judge in this murder case err in revoking his previous orders approving Counsel's fees and expenses where the Orders of the Chief Administrative Judge in place at the time he signed his orders were proper and supported the authority of the pressing judge to make the final determination on fees and expenses in accordance with S. C. Code Ann. § 17-3-50, (C) and previous rulings of the Supreme Court of South Carolina?

VI.

At the time the presiding judge initially approved Counsel's billing requests for fees and expense, did he in fact have authority to do so pursuant to S. C. Code Ann. § 17-3-50 (C), independent of any previous Order from the Chief Administrative Judge?

VII.

Having authority to approve Counsel's fee and expense bills in excess of the caps set forth in S. C. Code Ann. § 17-3-50, (A) and (B) at the end of this case, did the presiding judge err in revoking that approval in the absence of any specific objections to the amount of time Counsel expended in this particular case or the expenses incurred in building a defense to the charges brought against her client?

STATEMENT OF THE CASE

Petitioner was court-appointed as counsel in this Richland County murder case. She had previously served as court-appointed counsel in this individual's circuit court Post-Conviction Relief case. Following the grant of a new trial based upon a finding of ineffective assistance of counsel against a member of the Richland County Public Defender's Office, Petitioner was appointed to represent the Defendant on remand to the Court of General Sessions

Following her appointment in this matter, Petitioner filed multiple requests for funding authorization with the Court. A hearing was held on those funding requests on May 23, 2011 before the Honorable Clifton Newman, then Chief Administrative Judge for the Fifth Judicial Circuit. During that proceeding, Judge Newman set a fee rate for Petitioner above that set by S.C. Code Ann. §17-3-50(C). He set Petitioner's fee rate for this case at $70.00 per hour for in-court services and $80.00 per hour for out-of-court services. The proposed order provided to the Court, and subsequently adopted by the Court, inadvertently set Petitioner's fee rate in this case at $70.00 per hour for in and out-of-court services. This case was, therefore, billed at that rate. Judge Newman set a fee cap in this matter of $10,000.00.

Following the entry of an *Alford Plea* in this case, Petitioner provided Judge Newman a proposed order for fee rates and the fee cap. That Order was signed on December 1, 2011. Orders approving expenses were entered by Judge Newman within days of the May, 2011 hearing.

Petitioner submitted her voucher for fees and expenses to the presiding judge in this case, Casey Manning, after receiving Judge Newman's Order dated December 1, 2011. On December 5, 2011, Judge Manning signed Orders approving fees and expenses in excess of the caps set by

Judge Newman's Orders. The voucher and the Orders addressing payment issues were then submitted to South Carolina Commission on Indigent Defense (SCCID) for payment.

SCCID objected to payment of any fees and expenses in excess of the limits set in Judge Newman's Orders despite the fact that the Orders signed by Judge Newman authorized the presiding judge to make a final determination as to fees and expenses.

A hearing on SCCID's objections was held on December 28, 2011 before Judge Newman. Judge Newman indicated during that proceeding that it had been his intent that any subsequent increases in the fee and expense caps set by his orders had to be approved by him. The record of that proceeding indicated that Judge Newman intended to issue an amended written order; however, no such order was ever entered.

Judge Manning subsequently declined to hold a hearing on the status of his Orders in this matter. He did, however, allow written submissions on these issues. Following the submission of proposed orders by Petitioner and SCCID, Judge Manning issued an Order modifying previous his Orders to limit counsel's fees and expense reimbursements, to the amounts set as caps in Judge Newman's Orders. Petitioner filed a Motion to Reconsider which was denied. Petitioner subsequently appealed the rulings of both Judge Manning and Judge Newman to the South Carolina Court of Appeals. The Petitioner's Notice of Appeal from the rulings below was filed on June 3, 2013. The decisions of the lower court concerning this matter were subsequently affirmed by the South Carolina Court of Appeals. *Ex Parte Tara Dawn Shurling*, Unpublished Opinion No. 2015-UP-215 (filed April 29, 2015). Petitioner's timely Petition for Rehearing En Banc was denied by Order filed June 16, 2015. Petitioner now most respectfully seeks review of the issues addressed below.

PROCEDURAL HISTORY

Counsel was court-appointed in this case by Order dated March 30, 2009. By Order issued by Judge Clifton Newman, then Chief Administrative Judge for the Richland County Court of General Sessions, on December 1, 2011, the fee rate for court-appointed counsel in this murder case, Tara Dawn Shurling, was set at $70.00 per hour out-of-court and $80.00 in-court services.[1] In addition, that Order set a cap of $10,000.00 for attorney fees which could be submitted to SCCID[2] for payment without further approval of the Court. Counsel's fee rate and the fee cap in this matter were set by Judge Newman at a hearing held on May 23, 2011. R. p. 29, lines 12-16. Counsel had also requested funding approval for a second chair for the upcoming trial of this complex murder case and had additionally asked for funding for three expert witnesses inasmuch as the State had announced its intent to produce between three and seven expert witnesses on the issue of proximate causation of death. Judge Newman denied Counsel's request for funding for a second chair for this trial and limited Counsel to funding for one expert witness. The fee rate and fee caps approved by Judge Newman were likewise lower than those requested by Counsel in her funding motions. See, R. p. 51 and R. p. 179 and R. p. 18, line 21 - p. 20, line 10. SCCID was represented at this hearing by its Director, Patton Adams and Deputy Director and Chief Counsel, Hugh Ryan. Despite having prevailed on the majority of the funding issues before the Court on that date, SCCID never provided Judge Newman with proposed orders documenting his rulings from the bench on that date. After this case resolved in a guilty plea on the morning a trial was set to begin, Counsel discovered that no orders had even been signed by Judge Newman concerning the matters ruled upon by him on May 23, 2011.

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[1] At the May 23, 2011 hearing, Judge Newman actually approved fees at a rate of $80.00 for in court and $70.00 for out-of-court. Counsel subsequently prepared an order which erroneously stated that the rate approved was $70.00 per hour for in-court and out-of-court services. That Order was signed by Judge Newman and Counsel's bill was calculated at $70.00 per hour across the board.

[2] South Carolina Commission on Indigent Defense.

Counsel then drafted proposed orders documenting the rulings made by Judge Newman at the May 23, 2011 proceeding as she understood them to be. In so doing, Counsel drafted proposed orders which not only reflected the rulings of Judge Newman from the bench, but also reflected the language found in S. C. Code Ann. § 17-3-50, (C) and previous rulings of the Supreme Court of South Carolina on the subject of attorney fee rates and caps. Counsel did not realize until much later that her proposed orders were inadvertently not sent to SCCID at the time they were forwarded to Judge Newman in November, 2011. Judge Newman adopted and filed the proposed order authorizing Attorney Fees and Fee Cap, R. p. 180, Order Authorizing Fees, filed December 1, 2011 as sent by Counsel, on December 1, 2011.[3] Counsel submitted her final requests for payment of fees and expenses to the presiding judge in this case, L. Casey Manning, for his approval. His Orders approving both Counsel's total fees and total expenses were signed on December 5, 2011. ***See,*** Order of Judge Manning approving General Expenses from date of appointment, March 30, 2009, R. p. 177, and Order approving Attorney Fees dated December 5, 2011. R. p 175. After Judge Manning signed Orders approving her fees and expenses, Counsel submitted them to SCCID for payment. R. pp. 220-233. SCCID then raised objections to certain language in Judge Newman's Fee Order dated December 1, 2011. A hearing was held in this matter on December 28, 2011. SCCID was represented at this hearing by its Director, Patton Adams and Deputy Director and Chief Counsel, Hugh Ryan. R. pp. 120- 173.

During the December 28, 2011 hearing Judge Newman indicated that he intended to issue an Amended Order modifying the Order signed on December 1, 2011. R. p. 155, lines 13-19 and R. p. 171, line 25 – p. 172, line 6. He expressed the view that when he said any fees in excess of the cap authorized by him would be subject to ***"further approval of the Court"*** he meant that

[3] Counsel submitted proposed orders to the Court along with her funding requests for General Expenses and for Investigative Services. Judge Newman signed the Order for Investigative Services, without amendments, on May 23, 2011. He amended Counsel's proposed order for General Expenses, and signed it the day after the hearing; May 24, 2011. That Order was filed on May 25, 2011.

any increase in the cap would have to be approved by him personally and not the Court in the global sense of the phrase. R. p. 157, line 22 – p. 158, line 1; R. p. 163, lines 14-24 and R. p. 167, lines 4-8. He indicated that he would not have signed the orders in question had he ***noticed*** that they contained certain language which permitted the ***presiding judge*** to exceed the cap at the end of the case. R. p. 154, line 23 - p. 155, line 12. Throughout this proceeding he also expressed concern that he really didn't know enough about the case to making the decisions he was being called upon to make. R. p. 155, line 24 - p. 156, line 7. He expressed his frustration with the system and his hope that an appeal in this matter might yield more guidance to the bench and bar concerning these matters. R. p. 155, line 23 - p. 156, line 23.

The record of that hearing reflects that at the conclusion of that proceeding, Counsel inquired as to whether the Court wished for her to draft the amended Order the Court had announced intentions to enter. Counsel's offer was ***declined*** by Judge Newman who noted that he and his law clerk had my original orders from when they were emailed to the Court and they could easily modify them. R. p. 171, line 25 - p. 172, line 7. Thereafter, Counsel received a message from Judge Newman, through his law clerk, that he wanted her to draft an amended order for the Court after all. R. p. 52. Thus, despite the fact that she was not the prevailing party, Counsel did as instructed and forwarded a proposed order, with the corrections instructed by the Court, on January 5, 2012. R. p. 62 and pp. 64-65.

Counsel never received a signed copy of the amended order requested by the Court and provided by Counsel, or any other order purporting to modify the funding orders previously entered in this matter. On February 15, 2012, Judge Newman orally advised Counsel that he had decided not to issue an Amended Order in this matter. On that date, Counsel had two PCR cases before Judge Newman in Richland County. During a break in those proceedings, Counsel approached Judge Newman, in the presence of his law clerk, and inquired about the status of his

amended order in this billing matter. Counsel simply asked the status of the order and expressed her concern that the Court might have executed an order that she had not received for some reason. Judge Newman responded that *he wasn't going to issue an amended order*. He said he had decided that since his term as Chief Administrative Judge was over, he did not have the authority to rule on the issues any longer and stated that he had decided to just leave the matter to Judge Manning and Judge Cooper to decide. By letter dated February 21, 2012, Counsel advised SCCID of this development and expressed the position that this billing matter had then returned to the status it was in after Judge Manning signed orders approving both her total fees and expenses and her vouchers were submitted to SCCID for payment. Counsel provided both Judge Manning and Judge Newman a copy of this correspondence *on that same date* in order to document that she had advised SCCID and Judge Manning of her conversation with Judge Newman. Counsel affirmatively asked Judge Newman to contact SCCID if she had in any way misstated the conversation in question. Counsel heard no response from Judge Newman following that correspondence. R. pp. 66-67.

On March 13, 2012 Counsel wrote SCCID and requested payment on the Orders entered by Judge Manning in December, 2011. R. p. 68. That same date, Hugh Ryan emailed Counsel a Reply to her request for payment. R. p. 69. On December 11, 2012 Counsel wrote Judge Newman a long letter and requested that he please issue an order documenting what he had advised Counsel of orally on February 15, 2012. Counsel explained that she had not been paid anything on this case and that confusion apparently remained over the status of Judge Manning's Orders dated December 5, 2011. R. pp. 70-74.

On January 24, 2013 Counsel wrote Judge Manning a long letter explaining the current status of her payment requests and copied to Judge Newman and Hugh Ryan, SCCID. R. pp. 76-77. On February 12, 2013, having heard nothing further from Judge Newman, Counsel sent an

email to Judge Manning, and copied to Judge Newman and Hugh Ryan at SCCID, asking for assistance in getting a resolution in this matter. R. pp. 81-83. On February 12, 2013 Hugh Ryan wrote the parties by email and indicated his view that Judge Newman had orally modified his original orders in this case and further expressing the desire to be heard at a hearing on this matter. R. p. 84. Counsel received a letter from Judge Newman's Law Clerk dated February 12, 2013 in which the Law Clerk indicated that Judge Newman was aware of Counsel's concerns, but stated Judge Newman did not believe he has anything further to offer. R. p. 85.

On February 26, 2013 the parties received an email from Judge Manning's law clerk indicting that Judge Manning declined to hold a hearing in this matter and asked that the parties submit proposed orders in lieu of a hearing. R. p. 86. On March 11, 2013 Hugh Ryan, on behalf of SCCID, submitted a Proposed Order to Judge Manning. R. pp. 87-93. On March 12, 2103 Counsel submitted her Proposed Order for the Payment of Fees and Expenses in this matter to Judge Manning, along with her Memorandum in Support. R. pp. 94-95 and R. pp. 96-104. Counsel submitted a Reply to the Proposed Order submitted by SCCID on March 14, 2103.[4]

By Order dated March 15, 2013, Judge Manning changed the rulings found in his original orders dated December 5, 2011 and limited Counsel's authorization for payment of fees to $10,000.00 and her reimbursement for all general expenses to $750.00. R. pp. 106-185. Counsel subsequently filed a Motion to Reconsider on March 25, 2013. R. pp. 186-194. On April 29, 2013 Judge Manning's law clerk advised the parties by email that "Judge Manning is prepared to rule on Ms. Shurling's Motion to Reconsider in the matter of Bejay Harley without a formal hearing. Both sides may submit a proposed order for his consideration."... R. p. 195. On

[4] Petitioner designated this document in her Designation of the Matter, however, she has not been able to locate her hardcopy of this pleading and her digital version was inadvertently "saved over" when she subsequently copied a portion thereof in the preparation of another pleading in this case. Opposing counsel advises that he does not have a copy in his file and Judge Manning's current law clerk has been unable to locate the copy provided to the Court. This document is referenced once in the Procedural History, however its content is not referenced elsewhere in this brief.

April 29, 2013 Counsel submitted her Proposed Order granting Reconsideration. R. pp. 196-200. On May 6, 2013, Hugh Ryan submitted a Proposed Order denying Reconsideration. R. p. 201. Said order was adopted by Judge Manning and was filed on May 23, 2013, R. pp. 202-202.

ARGUMENT

Issues I – VII

The total fees claimed by Counsel in this matter totaled $18,431.00. R. pp. 220-233. ***This case was set for trial three times*** and only resolved in a plea after the selection of a jury on the third trial date set in this matter. The case itself involved complex questions of proximate causation of death. R. p. 134, line 19 - p. 136, line 13 and R. p. 38, line 13 - p. 39, line 17. Counsel was originally appointed to represent the Defendant in his Post-Conviction Relief action. As a result of her work in that collateral matter, the Defendant was granted a new trial. R. pp. 204-217. The Respondent ultimately decided not to appeal that ruling. Counsel herein was appointed to represent the Defendant due to the conflict of interest arising from the finding of ineffective assistance of counsel against the Richland County Public Defender's Office which had previously represented the Defendant.

Prior to the scheduled retrial of this matter, Counsel became aware of the State's intention to impeach the expert witness used by Counsel in the PCR matter based on personnel issues having nothing to do with the science behind his opinion as expressed during the PCR action. In addition, the prosecution advised Counsel of its intention to call at least two additional medical experts in addition to the original pathologist whose work had been the subject of the PCR action in this matter. Counsel was put on notice that the prosecution was potentially going to use all the pathologists currently working for the coroner's office as their witnesses if this matter went to trial. R. p. 38, line 13 - p. 39, line 17. Thus the evidence the State had announced intention to present on the proximate causation issue far exceeded that Counsel had dealt with in the context of the PCR action.

As a result of Counsel's efforts in this matter, the Defendant was finally offered a last minute plea deal which resulted in him serving approximately three more months in prison and

being allowed to enter an *Alford*[5] plea. R. p. 135, line 20 - p. 136, line3. While this case did ultimately result in a guilty plea, Counsel had to prepare the case for trial for ***three times*** before the State finally agreed to the resolution ultimately reached in this matter. See, R. pp. 220-233. in each of the two previous instances, the case was continued right before trial after Counsel had already invested a great deal of time preparing the case for court. Counsel would respectfully submit that the degree of her preparation in this matter in no small way contributed to the final outcome in this case. With this background in mind, she respectfully asserts that the total fees requested in this case were reasonable and supported by her time records as submitted to Judge Manning, as the presiding judge at the conclusion of this case. It is worthy of note that SCCID has never raised any specific objections to the time expended by Counsel in this case beyond their vague statements concerning the fact that Counsel had already had this case in a PCR and their belief that the fees were not appropriate where the case eventually ended in a plea. They have never raised any specific objection to any particular time expended in the preparation of a defense for this client. Frankly, their arguments reflect an utter disregard for the amount of time and resources a thorough lawyer spends getting ready for trial and the degree to which the preparedness of such a lawyer impacts the plea offers ultimately made by the prosecution.

S. C. Code Ann. § 17-3-50 (C) ***did not*** require advance approval of fees in excess of the statutory cap for fees at the time Judge Manning's Orders dated December 5, 2011, were signed. That provision states,

> Payment in excess of the hourly rates and limits in subsection (A) or (B) is authorized only if the court certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of that limit is appropriate because the services provided ***were*** reasonably and necessarily ***incurred.*** (Emphasis added).

[5] *North Carolina v. Alford*, 400 U. S. 25 (1970)

The language of that section requires that approval of fees in excess of the cap set forth therein be supported by a detailed order with findings as to **why "the services *provided were* reasonably and necessarily *incurred.*"** (Emphasis added) Thus, the relevant statutory provision clearly envisioned approval of total fees in excess of the cap *at the conclusion of the case.* In fact, Petitioner would respectfully argue that it would be impossible for the Court to issue the required order finding that fees in excess of the cap provided by §17-3-50(A) *were reasonably and necessarily incurred* until after the conclusion of the case. The fact that this statutory provision is worded in the past tense gives credence to the fact that the legislature recognized as much in drafting this provision. This interpretation of S. C. Code Ann. § 17-3-50 (C) is consistent with the previous rulings of this Honorable Court in which the Court has found that an award of attorney fees in excess of the section 17-3-50 cap is "**within the sound discretion of the trial judge**." *Ex Parte Brown, 393 S.C. 214, 220, 711 S.E. 2d 899, 902 (2011)*, citing, Bailey *v. State*, 309 S. C. 455, 464, 424 S.E.2nd 503, 508 (1992).

Counsel is aware that SCCID has succeeded in getting a budget *proviso* added to this section which requires advance approval of any increase in fee rates or caps over those found in the statute itself. That *proviso* however, which applies to subsequent budget years, was not in place at the time Counsel was appointed in this case or when she originally submitted her bill to the presiding judge for approval. The wisdom of that *proviso*, while in doubt in the view of Petitioner, is not an issue before this Court.

Counsel has no desire to impose on this Honorable Court with lengthy arguments restating the positions she has taken in the lower court for the last nearly three years. Counsel therefore incorporates, and relies upon by reference, all the arguments and authorities presented by her in the numerous documents referenced herein all of which will be included in the Record on Appeal. Counsel would note that she had every reason to expect SCCID to prepare proposed orders for

Judge Newman following the May 23, 2011 hearing inasmuch as they managed to prevail upon Judge Newman to rule in their favor on virtually every issue addressed by the Court that day. It was only when the case was concluded, and about to be billed, that she discovered that they had not done so and Judge Newman's rulings from the bench had not been formalized by written Order. Then, and only then, did she presume to submit proposed Orders to Judge Newman to formalize his rulings so she could submit her bill in this case. Counsel's failure to send the proposed order to SCCID was a clerical oversight. An oversight which no doubt reflects the fact that then, sadly unlike now, she did not yet view that agency as adversarial to the court-appointed lawyers it is their duty to serve. This view was reinforced by the fact that their own procedural guidelines, as well as the previous orders of the court, make it discretionary for judges to even seek their inpute in such matters. The fact remains however, that the Orders sent to Judge Newman were in complete harmony with his rulings from the bench during that proceeding. R. p. 29, lines 12-16 and R. p. 44, lines 5-8. While Judge Newman ultimately stated during the December 28, 2011 hearing, at the urging of SCCID, that he ***meant*** something beyond what he ***said*** on the record during that proceeding, he did not make any such requirements clear from the bench during the earlier hearing on these issues. Likewise, the proposed orders sent to Judge Newman were completely consistent with the language found in S. C. Code Ann. § 17-3-50 (C) and, as previously noted, were in compliance with the prior holdings of this Honorable Court on this subject.

The ultimate question before this Honorable Court is not simply whether the Chief Administrative Judge could change his original order *after* the trial judge had approved Petitioner's fees and expenses based upon his previous orders, but rather whether the trial judge, at the time this dispute arose, had the ultimate authority to make the final determination

concerning Petitioner's fees and expenses under both South Carolina statutory law and the prior decisions of our Supreme Court.

THE OPINION OF THE SOUTH CAROLINA COURT OF APPEALS

As argued by Petitioner in her Petition for Rehearing *En Banc*, App.pp. 5-7, Petitioner most respectfully submits that the following points were clearly either overlooked or misapprehended by the Court of Appeals in their decision.

- 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 this Honorable 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). While the CAJ subsequently indicated that *meant* something different from what he articulated on the record during that proceeding, the record supports Petitioner's position that the order she drafted for the CAJ was totally consistent with any rational interpretation of the plain language of the CAJ at that hearing. And further, it was clearly consistent with both the statutory law in place at the time, and the previous rulings of this Honorable Court, on this very subject.

- The Order signed by the trial judge, approving Petitioner'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 Petitioner were ***"necessary and appropriate to providing Defendant with effective assistance of counsel."*** ROA, p. 177

- The policy that ***"one judge of the same court cannot overrule another",*** as noted in the opinion of the Court of Appeals, while an accurate statement of the law, overlooks the operative issues in this case which, Petitioner most respectfully submits, are not controlled by that principle.

i. The Orders of the Chief Administrative Judge, which ***were in place at the time the trial judge originally approved Petitioner's fees and expenses,*** were consistent with the trial judge's authority to make a final determination as to fees and expenses under the previous rulings of this Honorable Court. Likewise, the authority of the trial judge to make the final decision with regard to fees and expenses was, at that time, 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). This position is totally consistent with the requirement that the trial judge make very specific findings concerning the amount of time and resources expended in a case which logically could only be made by the presiding judge who would naturally the only judge to have the knowledge of the case , and the performance of trial counsel, necessary to make the findings required by this statutory provision.

- Contrary to the decision of the Court of Appeals, *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 of the Court of Appeals in this case states. Rather, this Honorable 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 Petitioner's fees and expenses, but rather whether the trial judge had the ultimate discretion to make the final determination concerning Petitioner's fees and expenses under both South Carolina statutory law and the prior decisions of our Supreme Court.

CONCLUSION

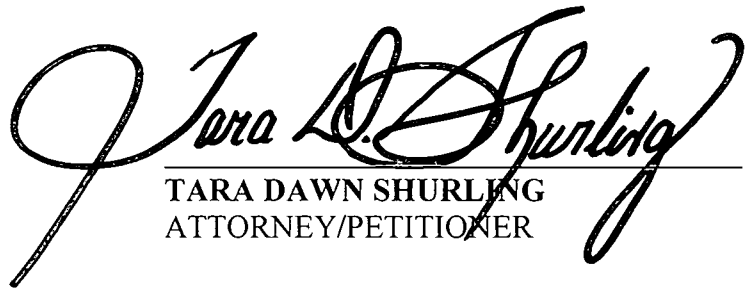
The Petitioner now respectfully asks this Honorable Court to grant the writ and afford Petitioner the opportunity to be fully heard in this matter. She asserts that, at the time this matter was submitted to the presiding judge for billing approval, §17-3-50 (C) did not require the advance approval of fees in excess of the rates or statutory limits set by §17-3-50 (A) or expenses in excess of the limits set forth in §17-3-50 (B). Petitioner seeks this Court's finding that, at the time this matter was submitted to Judge Manning for billing approval, the language of the original order entered by Judge Newman *did not* limit the trial judge's ultimate authority to decide whether the payment of her fees in excess of the statutory caps, as requested by Petitioner at the conclusion of this case, was reasonable and necessary under the terms of §17-3-50 (C).

In addition, the Petitioner asks this Honorable Court to find that §17-3-50 (C) permitted the trial judge to authorize the reimbursement of court-appointed Petitioner for expenses in excess of the cap set by §17-3-50 (B), at the conclusion of the case where the trial judge found the expenses were reasonably and necessarily incurred. Likewise, Petitioner seeks a ruling by this Honorable Court that nothing in the expense order signed by Judge Newman prohibited the trial judge from approving expenses, in excess of the limits pre-approved by that Order, at the conclusion of this case. Counsel notes that certain language found in §17-3-50 (B) suggests that expenses ***for certain professional services or experts*** should be approved in advance of retaining such individuals on behalf of the defense. The expenses in dispute however, do not involve the hiring of such expert witnesses or investigators. Those expenses in this case were in fact authorized by separate orders not the subject of this appeal. R. pp. 48-50. Petitioner asks this Honorable Court to find that the total fees and expenses submitted for payment in this case were necessary and appropriate on the facts of this extremely complex murder case and were within the authority of *the trial judge* to approve after the disposition of this case by *Alford* plea.

Petitioner asks that his Court to direct SCCID to pay Petitioner's bills as originally approved by the presiding judge, Judge Manning, on December 5, 2011. Counsel seeks this Court's finding that Judge Manning's original orders approving both her fees and expenses were entered within the authority of Judge Manning at the time they were signed and should not have been modified at a later date based upon the position advanced by Judge Newman during the December 28, 2011 hearing *well after the original orders were entered.*

Based upon all the reasons and authorities set forth herein, as well as those advanced by Counsel in all the documents referenced herein, Counsel asks that this Honorable Court not only to find that the Orders entered by Judge Manning on December 5, 2011 were proper and within his authority to enter but, further that they should not have been changed based upon a position not taken by the former Chief Administrative Judge until well after the Orders were signed and filed.

Respectfully submitted,



TARA DAWN SHURLING
ATTORNEY/PETITIONER

This 15th day of September, 2015

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ex Parte: Tara Dawn Shurling, Attorney, Petitioner,

In Re:
State of South Carolina, Respondent,

v.

Bejay Harley, Defendant

Court of Appeals Appellate Case No. 2013-001298

Supreme Court Appellate Case No. 2015-001580

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Amended Petition for Writ of Certiorari and Corrected Appendix in the above matter has been served on opposing counsel on this 15th day of September, 2015 by depositing in the U.S. Mail, postage prepaid, properly addressed to:

J. Hugh Ryan, III
General Counsel
South Carolina Commission on Indigent Defense
P. O. Box 11433
Columbia, SC 29211-1433

Tara D. Shurling

TARA DAWN SHURLING
Attorney and Counselor at Law
S. C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803) 738-8622

Attorney/Petitioner

SWORN TO BEFORE me this 15th day
of September, 2015.

Suzanne Graham

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 2/28/24

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ex Parte: Tara Dawn Shurling, Attorney, Petitioner,

In Re:
State of South Carolina, Respondent,

v.

Bejay Harley, Defendant

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S.C. Supreme Court

Court of Appeals Appellate Case No. 2013-001298

Supreme Court Appellate Case No. 2015-001580

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Amended Petition for Writ of Certiorari in the above matter has been served on opposing counsel, J. Hugh Ryan, III, General Counsel, South Carolina Commission on Indigent Defense, on this 16th day of September, 2015 via email addressed to:

Hugh Ryan @ SCCID (hryan@sccid.sc.gov)

Sharon McCollister
Sharon McCollister
Paralegal

Law Office of Tara Dawn Shurling
3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803) 738-8622

SWORN TO BEFORE me this 16th day of September, 2015.

Dawnaine Graham
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 2/28/24.