

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Florence County  
Thomas A. Russo, Circuit Court Judge

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SEP 16 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

DAVID GERRARD JOHNSON,

PETITIONER.

Appellate Case No. 2014-001506

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MOTION TO ARGUE AGAINST PRECEDENT

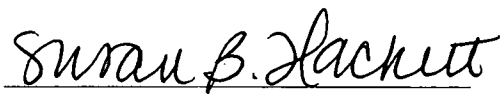
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Pursuant to Rule 217, SCACR, Petitioner moves this Court to permit argument against precedent. This case is scheduled for oral argument on October 8, 2015 at 10:00 a.m. before this Court. There are two issues in the case; however, both concern Petitioner's ability to make a knowing and voluntary waiver of his constitutional rights. Specifically, the central issue is whether Petitioner had the capacity to make a knowing and voluntary waiver of his rights during the custodial interrogation in light of his intellectual disability (mental retardation).

In State v. Hughes, 336 S.C. 585, 594, 521 S.E.2d 500, 505 (1999), this Court held "[a] defendant's mental condition in and of itself does not render a statement involuntary in violation of due process." Although Petitioner will argue that the totality of the circumstances indicates that his waiver was not made knowingly and voluntarily,

Petitioner respectfully requests permission to argue that “a defendant’s mental condition in and of itself *does* render a statement involuntary in violation of due process” as an alternative argument. This argument will be against existing precedent of this Court.

Respectfully submitted,



SUSAN B. HACKETT  
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South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

September 16, 2015

THE STATE OF SOUTH CAROLINA  
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CERTIFICATE OF SERVICE

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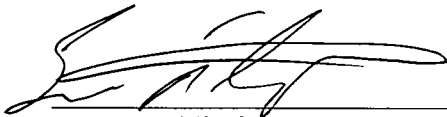
The undersigned attorney hereby certifies that a true copy of the Motion to Argue Against Precedent in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16<sup>th</sup> of September, 2015.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me  
this 16<sup>th</sup> of September, 2015.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022.