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September 21, 2015

RECEIVED

SEP 23 2015

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

S.C. SUPREME COURT

Re: *John Kennedy Hughey v. State*, Appellate Case No. 2010-170387
State v. John Kennedy Hughey, Case No. 1996-GS-01-220

Dear Mr. Shearouse:

As you are aware, this Court issued the Remittitur in the post-conviction relief case on August 6, 2015. Please allow Ms. Waters and I to update the Court on the developments since then and request this Court assign a Circuit Court Judge to preside over the re-sentencing proceedings.

On August 31, 2015, Ms. Waters and I submitted a proposed order appointing counsel for the re-sentencing proceedings to the Honorable Frank R. Addy, Jr., Chief Administrative Judge (Criminal) for the Eighth Judicial Circuit. A copy of the proposed order is attached.

Because Judge Addy had worked on this case when he was a Deputy Solicitor in the Eighth Circuit, he referred this matter to the Honorable Donald B. Hocker, Chief Administrative Judge (Civil) for the Eighth Circuit.

On September 1, 2015, Hugh Ryan, General Counsel for the Office of Indigent Defense, requested that his agency be heard on the issue of appointment of counsel and stated he would forward a pleading to Judge Hocker. Judge Hocker indicated he would schedule a hearing on the matter. So far, Mr. Hughey's proposed order appointing counsel is the only pleading that has been submitted to His Honor.

In addition to resolving appointment of counsel, Mr. Hughey needs to begin the process of seeking funding to prepare for the re-sentencing hearing. Logically, one Circuit Court Judge should be assigned to preside over this process in a coordinated manner. Therefore, Mr. Hughey respectfully requests this Court assign a judge to preside over these proceedings. *See Rosemond v. Catoe*, 383 S.C. 320, 326, fn. 3, 680 S.E.2d 5,

8 fn. 3 (2009) (“[T]he Chief Justice of the South Carolina Supreme Court makes judicial assignments in death penalty cases in conjunction with Court Administration.”).

By copy of this letter, we are advising the Circuit Court and counsel of this request.

Thank you for your attention to this matter. We look forward to hearing from the Court.

With kindest regards, I am

Yours very truly,

E. Charles Grose
E. Charles Grose, Jr.

By: Laura Wingard

cc: The Honorable Frank R. Addy, Jr.
The Honorable Donald B. Hocker
The Honorable David M. Stumbo
Hugh Ryan, Esquire
Tara Schultz Waters, Esquire

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

THE STATE

vs.

John Kennedy Hughey

Defendant.

IN THE COURT OF GENERAL SESSIONS
FOR THE EIGHTH JUDICIAL CIRCUIT

Case No. 1996-GS-01-220

Order Appointing Counsel

This matter came before me on the motion of the defendant, John Hughey, and his post-conviction relief counsel, Charles Grose and Tara Waters, for an order appointing counsel. After a review of the procedural history of Mr. Hughey's case, the Court will make findings of fact and conclusions of law.

Procedural History

On December 4, 1995 Mr. Hughey murdered Tasheka Jackson and Luvenia Harris. The state charged Mr. Hughey with two counts of murder, first-degree burglary, grand larceny of a motor vehicle, and possession of a firearm during the commission of a violent crime. Beginning on October 13, 1997, the state tried Mr. Hughey before the Honorable J. Derham Cole and a jury. On October 27, 1997, the jurors convicted Mr. Hughey of all counts. On October 30, 1997, Judge Cole imposed two death sentences in accordance with the jury's recommendation.

Mr. Hughey appealed his convictions and sentences. The Supreme Court of South Carolina affirmed the convictions and sentences on March 27, 2000. *State v. Hughey*, 339 S.C. 439, 529 S.E.2d 721 (2000). The United States Supreme Court denied *certiorari* on October 16, 2000. *Hughey v. South Carolina*, 531 U.S. 946 (2000).

On October 25, 2000, Mr. Hughey filed his initial application for PCR. Hughey filed

amended PCR applications on September 15, 2006 and December 15, 2006. The Honorable Alexander S. Macaulay conducted an evidentiary hearing on the second amended PCR application on October 13-15, 2008. By order dated May 7, 2010, Judge Macaulay granted Mr. Hughey post-conviction relief and ordered a new sentencing hearing

On May 28, 2010 both the State and Mr. Hughey timely served motions to alter or amend the judgment, pursuant to Rule 59(e), SCRCP. By order dated July 22, 2010, Judge Macaulay denied both motions.

On August 25, 2010 the state served a notice of intent to appeal. Hughey filed a notice of intent to cross-appeal on August 26, 2010. The state filed its petition for *certiorari* on January 12, 2011. Mr. Hughey filed his Petition for *Certiorari* on April 29, 2011. By Order dated April 16, 2014, the Supreme Court granted both petitions for writs of *certiorari*. At the request of Mr. Hughey and due to a conflict with the Office of Appellate Defense, Mr. Grose and Ms. Waters represented Mr. Hughey during the cross appeals to the Supreme Court.

On January 15, 2015, the Supreme Court convened oral arguments. On May 13, 2015, the Supreme Court dismissed the cross petitions for writs of *certiorari* as improvidently granted, thereby affirming Judge Macaulay's order granting Mr. Hughey a new sentencing hearing. *Hughey v. State*, (S.C. S.Ct. Op. No. 2015-MO-029) (Filed May 13, 2105). The State petitioned for rehearing. On August 6, 2015, the Supreme Court denied the State's petition for rehearing and issued the Remittitur.

Findings of Fact

Mr. Hughey requests this Court appoint Mr. Grose and Ms. Waters to represent him during his resentencing procedures. As set forth in more detail below, this Court finds Mr. Grose and Ms. Waters qualified to represent defendants in capital cases.

The Honorable Wyatt T. Saunders, the Circuit Court Judge initially assigned to Mr. Hughey's capital post-conviction relief case, appointed Mr. Grose as counsel in 2000. Mr. Grose has continuously represented Mr. Hughey ever since.

Mr. Grose received a B.A. from Furman University (1989) and a J.D. from the University of South Carolina School of Law (1992). He was admitted to practice law in South Carolina on May 17, 1993 and the United States District Court for South Carolina on February 23, 1994. From 1993-1996, he was an Associate Attorney with Grimball & Cabanis P.A. in Charleston South Carolina. In 1996, he became an Assistant Public Defender in Orangeburg County, South Carolina, where he was later promoted to Deputy Public Defender. From 1999-2008, he was the Chief Public Defender for Greenwood and Abbeville Counties, South Carolina. Upon implementation of the Indigent Defense Act of 2007, he was appointed the Circuit Public Defender for the Eighth Judicial Circuit (Abbeville, Greenwood, Laurens, and Newberry Counties), serving a term from August 2008 to August 2012. He is currently a sole practitioner in Greenwood, South Carolina. Throughout his career Mr. Grose has tried numerous felony cases.

Mr. Grose has extensive capital experience and is certified by the South Carolina Supreme Court to be lead counsel in capital cases. His capital trial court experience includes: *State v. Bennie Ray Brown*, Laurens County Warrant Numbers I-556766-67, J-619971-77, currently awaiting a ruling pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002); *State v. Bixby*, Abbeville County Case Numbers 2004-GS-01-321, 322 and *State v. Bixby*, 388 S.C. 528, 698 S.E.2d 572 (2010) as trial and appellate counsel; *State v. Steven A. Tinch*, Abbeville County Case Number 2006-GS-01-417, 419, which resulted in a guilty plea and a forty-five year sentence; *State v. Domonique O. Brown*, Laurens County Case Number 2007-GS-30-220, which resulted

in a guilty plea and a thirty-year sentence; *State v. Anthony A. Myers*, Greenwood County Case Number 2000-GS-24-1170, which resulted in a guilty plea and sentence of life imprisonment without the possibility of parole; *State v. Barry L. Ervin*, Greenwood County Case Number 1998-GS-24-1770, which resulted in a guilty plea and sentence of life imprisonment without the possibility of parole.

In addition to Mr. Hughey's capital post-conviction relief case, Mr. Grose's is currently counsel in the capital post-conviction relief cases of *William O. Dickerson, Jr. v. State*, Charleston County Cases Number 2012-CP-10-3216 and *Jerry Buck Inman v. State*, Pickens County Case Number 2012-CP-39-00918. Most recently, the United States District Court for the district of South Carolina appointed Mr. Grose as counsel in the Federal Habeas action of *Stephen Corey Bryant v. Sterling et. al.*, Case No. 9:15-mc-00217-DCN-BM.

Mr. Grose has received significant death penalty training, including but not limited to federal habeas training, through the Annual National Federal Habeas Corpus Seminar, (2015, 2014, 2013, and 2011); NAACP Legal Defense & Educational Fund, Inc.'s Annual Capital Punishment Training Conference, Airlie Conference Center, Warrenton, VA (2012, 2010, and 2005); and Capital Case Initiative, sponsored by South Carolina Commission on Indigent Defense (2013, 2012, 2011, and 2010).¹

Ms. Waters received a B.A. for the University of North Carolina, Charlotte (2001) and a J.D. from the University of South Carolina School of Law (2004). She was admitted to practice

¹ Additionally, Mr. Grose is the current Chair of the Board of Directors of the Death Penalty Resource & Defense Center, which was formerly known as the Center for Capital Litigation, and was designated by this Court as a Community Defender Organization authorized to provide representation, assistance, information and other matters related to federal death penalty habeas corpus cases. See *In re: Amendments to the Plan on the United States District Court for the District of South Carolina for Implementing the Criminal Justice Act*, filed May 25, 2010.

law in South Carolina on November 15, 2004. She was an Assistant Public Defender for Greenwood and Abbeville Counties from November 2004 until December 2006 and Deputy Public Defender from January 2007 until June 2007. She was an Assistant Public Defender in Charleston County from July 2007 to June 2008. She practiced at the Khaled Law Firm from June 2008 to January 2010. She was an Assistant Public Defender for the Eighth Judicial Circuit in Laurens County from January 2010 to July 2012. She is currently a sole practitioner in Summerville, South Carolina.

When Ms. Waters was employed as an Assistant Public Defender or Deputy Public Defender for Greenwood and Abbeville Counties, her responsibilities included Mr. Hughey's capital post-conviction relief case. When Ms. Waters left the Public Defender for Greenwood and Abbeville Counties, she remained on Mr. Hughey's capital post-conviction relief case and was later formally appointed as one of Mr. Hughey's attorneys by Judge Macaulay. Since her employment in the Office of the Public Defender for Greenwood and Abbeville Counties, Ms. Waters has continuously represented Mr. Hughey.

Ms. Waters has been certified by the South Carolina Supreme Court to be lead counsel in capital cases. In addition to Mr. Hughey's capital post-conviction relief case, Ms. Waters currently serves as mitigation counsel in the capital post-conviction relief actions of *Jerry Buck Inman v. State*, Pickens County Case Number 2012-CP-39-00918, *Ron O'Neal Finklea v. State*, Lexington County Case Number 2010-CP-32-05076, and *Norman Starnes v. State*, Lexington County Case Number 2011-CP-32-00830. Additionally, Ms. Waters provided support for the defense team in the capital trial of *State v. Steven Vernon Bixby*, Abbeville County Case Numbers 2004-GS-01-00321 and 2004-GS-01-322, and currently serves as *guardian ad litem* for death row inmate Donald Allen Jones.

Ms. Waters' capital training includes the NAACP Legal Defense & Educational Fund, Inc.'s Annual Capital Punishment Training Conference, Airlie Conference Center, Warrenton, VA (2010); and Capital Case Initiative, sponsored by South Carolina Commission on Indigent Defense (2013, 2012, 2011, and 2010).

Conclusions of Law

S.C. Code Ann. §16-3-26(B)(1) provides:

Whenever any person is charged with murder and the death penalty is sought, the court, upon determining that such person is unable financially to retain adequate legal counsel, shall appoint two attorneys to defend such person in the trial of the action. One of the attorneys so appointed shall have at least five years' experience as a licensed attorney and at least three years' experience in the actual trial of felony cases, and only one of the attorneys so appointed shall be the Public Defender or a member of his staff. In all cases where no conflict exists, the public defender or member of his staff shall be appointed if qualified. If a conflict exists, the court shall then turn first to the contract public defender attorneys, if qualified, before turning to the Office of Indigent Defense.

The statute requires the Supreme Court to “promulgate guidelines on the expertise and qualifications necessary for attorneys to be certified as competent to handle death penalty cases.”

S.C. Code Ann. §16-3-26(F). Rule 421, SCACR lists these qualifications. Mr. Grose and Ms. Waters meet the requirements of §16-3-26(F) and Rule 421.

“The Sixth Amendment provides that [i]n all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense. [The Supreme Court of the United States has] previously held that an element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him.” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006) (internal quotations omitted). “With respect to continued representation...there is no distinction between indigent defendants and non-indigent defendants.” *Lane v. State*, 80 So. 3d 280, 295 (Ala. Crim. App. 2010), rehearing denied (Apr.

16, 2010), *cert. quashed*, 80 So. 3d 303 (Ala. 2011) *cert. denied*, 132 S. Ct. 1144 (2012). Therefore, “[a]lthough an indigent defendant does not have the right to force a trial court to appoint counsel of his or her own choosing, once counsel is appointed, the trial judge is obliged to respect the attorney-client relationship created through the appointment.... The attorney-client relationship between appointed counsel and an indigent defendant is no less inviolate than if counsel is retained.” *Id.* at 297.²

South Carolina Supreme Court precedent is consistent with *Gonzalez-Lopez* and *Lane*. “[T]he right to be represented by an attorney of one's choosing could, in effect, determine the action, and it is closely related to the right to a particular mode of trial, which is an established substantial right.” *State v. Wilson*, 387 S.C. 597, 602, 693 S.E.2d 923, 925 (2010). The right is so significant that “an order granting a motion to disqualify a party's attorney in a civil case affects a substantial right and may be immediately appealed.” *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005). In a criminal prosecution, the right to counsel is a fundamental right. U.S. Const. Am. VI and XIV; S.C. Const. Art. I, § 14.

Mr. Hughey requests this Court appoint Mr. Grose and Ms. Waters to represent him during his resentencing hearing. Because the Sixth Amendment protects the continuity of counsel, the Court concludes that Mr. Grose and Ms. Waters should be appointed to represent Mr. Hughey in his resentencing.

² See also *Smith v. Superior Court of Los Angeles County*, 68 Cal. 2d 547, 561-62, 440 P.2d 65, 74 (1968) (“A superficial response is that the defendant does not pay his fee, and hence has no ground to complain as long as the attorney currently handling his case is competent. But the attorney-client relationship is not that elementary: it involves not just the causal assistance of a member of the bar, but an intimate process of consultation and planning which culminates in a state of trust and confidence between the client and his attorney. This is particularly essential, of course, when the attorney is defending the client's life or liberty. Furthermore, the relationship is independent of the source of compensation, for an attorney's responsibility is to the person he has undertaken to represent rather than to the individual or agency which pays for the service.”).

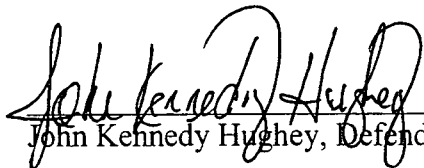
Therefore, it is ordered that Mr. Grose and Ms. Waters are appointed as counsel for Mr. Hughey.

IT IS SO ORDERED.

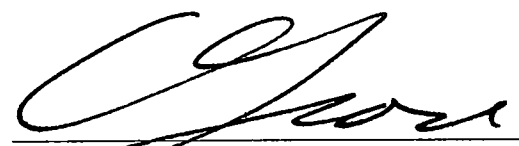
Frank R. Addy, Jr.
Chief Administrative Judge, Eighth Judicial Circuit

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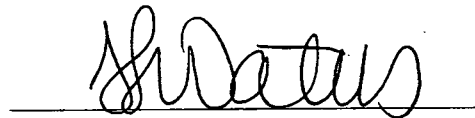
We So Move:



John Kennedy Hughey, Defendant



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