

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

Honorable George C. James, Jr., Circuit Court Judge

RECEIVED

SEP 28 2015

SC Court of Appeals

ARTHUR MOSELEY,

APPELLANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

RETURN TO MOTION TO SEAL INITIAL BRIEF OF RESPONDENT

AND ATTACHMENTS

The undersigned respectfully shows the Court:

Appellant Arthur Moseley was convicted of the charge of murder on January 31, 2014 following a jury trial. One of the issues pending on appeal is the trial court's error in allowing Moseley to represent himself with his long history of mental illness without conducting an in-depth hearing pursuant to Faretta v. California, 422 U.S. 806 (1975). Due to Appellant's history of mental illness, the trial court had ordered, pursuant to South Carolina Code Section 44-23-410, mental

health evaluation to determine Moseley's competency to stand trial and an evaluation to determine criminal responsibility and his capacity to conform his conduct pursuant to Section 17-24-10.

These evaluations were presented to the trial court, the solicitor, and defense counsel. These evaluations were not admitted as evidence in the trial. January 27-31, 2014 Tr. 1-5. Because these evaluations contain very personal facts about Appellant Moseley's life, family, his history of mental illness, and medical information, these evaluations should be sealed from the public.

In The South Carolina Supreme Court's *Revised Order Concerning Personal Identifying Information and other Sensitive Information in Appellate Court Filings*, 407 S.C. 607, 757 S.E.2d 421 (2014), the Supreme Court ordered that any party seeking to seal material beyond those personal identifiers listed in that order must file a motion to seal with the appellate court in which the matter is pending. The Court held that the standard set in *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006) must be met before the motion to seal is granted.

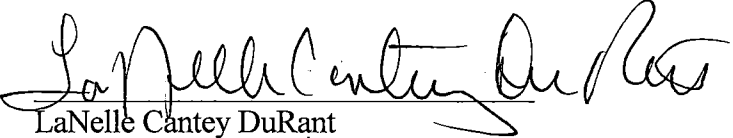
Among the factors listed in the standard are: (1) ensuring the parties' right to a fair trial; (2) the need for witness cooperation; (3) the reliance of the parties upon expectations of privacy; (4) the public or professional significance of the proceeding; (5) the perceived harm to the parties from disclosure; (6) why alternatives other than sealing the documents are not available to protect legitimate private interests; (7) and why the public interest including but not limited to, the public health and safety is best served by sealing the records.

The factors most pertinent to Appellant Moseley's case are his reliance upon his expectation of privacy as related to medical records and the potential for harm to him and his family from public disclosure of his history of mental illness and other personal facts. The trial court and the appellate courts will have access to the sealed records. There are no other alternatives for privacy other than sealing these evaluations. The public interest could be adversely affected by the knowledge that a

person's mental health records could be made public. In the event that Moseley's case is remanded for a new trial, these mental evaluations could be seen by witnesses and the jury even when they were not admitted as evidence.

THEREFORE, based on the above, counsel for Appellant Moseley consents to the sealing of the two mental health evaluations as requested by the state.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "LaNelle Cantey DuRant".

LaNelle Cantey DuRant
Appellate Defender

Attorney for Petitioner

This 28th day of September, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

Honorable George C. James, Jr., Circuit Court Judge

RECEIVED

SEP 28 2015

SC Court of Appeals

ARTHUR MOSELEY,

APPELLANT

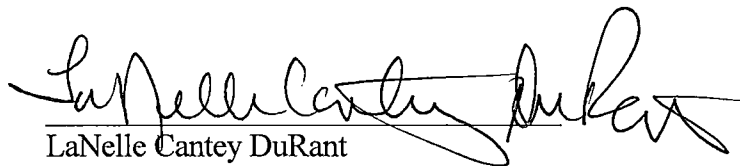
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

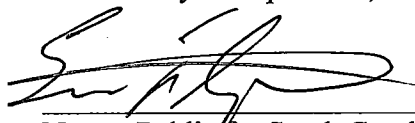
The undersigned attorney hereby certifies that a true copy of the Return to Motion to Seal Initial Brief of Resondent in the above referenced case has been served upon opposing counsel, William Edgar Salter, III, Esquire and Arthur Moseley, #199398 at Lieber Correctional Institution this 28th day of September, 2015.



LaNelle Cantey DuRant
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 28th day of September, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 28, 2015

RECEIVED

SEP 28 2015

SC Court of Appeals

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

Re: The State v. Arthur Moseley
Appellant Case No. 2014-000199

Dear Mr. Shearouse:

Enclosed are an original and six copies of the Return to Motion to Seal Initial Brief of Respondent in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/lmv

Enclosure

cc: William Edgar Salter, III, Esquire
Mr. Arthur Moseley