

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY

D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2015-000066

THE STATE Respondent,

v.

FURMAN E. TAYLOR Appellant.

MOTION FOR APPOINTMENT OF COUNSEL
AND MEMORANDUM IN SUPPORT

Now comes the appellant proceeding pro-se, who would move pursuant to Rule 608 SCACR, for an order to appoint counsel in the above captioned case for the following reasons;

(1)

CASE HISTORY

1.) Appellant was appointed Mr. Robert M. Pachak by the South Carolina Commission on Indigent defense to represent him in the above captioned case.

2.) Mr. Pachak advised appellant by letter that all issues raised in the court of appeals would be his.

3.) Mr. Pachak submitted an Anders brief on behalf of the appellant and only provided the court of Appeals with a portion of the record on appeal in his designation of matter.

4.) The appellate Clerk of Court informed appellant that he had (45) forty-five days to submit anything he thought the court should review.

5.) Appellant requested leave to complete the record, or at least in lieu to grant the appellant an extension of time to submit his pro-se brief due to a lack of legal materials as well as appellant merely being a layman of the law.

6.) Appellant was granted an extension to file his brief.

7.) Appellant submitted a brief and record on Appeal which included a designation of matter with portions of the trial transcript of the February 11th and 14th, 2014, mistrial in this case that Mr. Pachak did not include in his designation of matter.

8.) States attorney, Ms. Salley Elliott, moved to strike portions of appellants' designation of matter, and brief claiming it was never before the lower court.

9.) Appellant filed an objection to the States Motion and moved to include the whole transcript of the mistrial or grant leave so that appellant may return to the lower court to complete the record prior to this courts' review.

10.) Appellant then wrote Mr. Pachak instructing him to supplement his designation of matter to include the transcript of the mistrial within (10) ten calendar days and that the failure to do so would constitute his ineffectiveness at this stage.

11.) Mr. Pachak did not include the mistrial transcript in the record within (10) ten calendar days nor did he reply to appellants correspondence.

MEMORANDUM IN SUPPORT

LAW ANALYSIS

Appointed counsel must function in an active role of advocate as opposed to that of Amicus Curiae. Anders v. California, 87 S.Ct. 1396 (1967); Person v. Ohio, 109 S.Ct. 346 (1988). The sixth amendment to the Constitution provides that;

"In all criminal prosecutions the accused shall enjoy the right... to have the assistance of counsel for his defense."

The courts has construed this language to include not only the right to assistance of counsel at trial. Gideon v. Wainwright, 372 U.S. 335; 83 S.Ct. 792; 9 L.Ed. 799, but also to the assistance of counsel on appeal. Douglas v. California, 372 U.S. 353; 83 S.Ct. 814; 9 L.Ed. 2d 84 (1963). We have also held that the right conferred is not simply to the assistance of counsel at trial, but both. (see) United States v. Cronin, 466 U.S. 648; 10 S.Ct. 2039; 80 L.Ed. 2d 657 (1984); Strickland v. Washington, 466 U.S. 668; 104 S.Ct. 2052; 80 L.Ed. 2d

674 (1984); And on Appeals. (see) Evitts v. Lucey,
469 U.S. 387; 105 S.Ct. 830; 83 L.Ed.2d. 821 (1985).

It bears emphasis that the right to be represented by counsel is among the most fundamental of rights. As a general matter, it is through counsel that all other rights of the accused are protected;

"Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have." Kimmelman v. Morrison, 477 U.S. 365, 377; 106 S.Ct. 2574; U.S. v.

Cronic:

The paramount importance of vigorous representation follows the nature of our adversarial system of justice. This system is premised on the well-tested principle that "truth - as well as fairness - is best discovered by powerful statements on both sides of the question." Absent representation, however, it is unlikely that a criminal defendant will be able to adequately test the government's case for

As Justice Sutherland wrote in Powell v. Alabama, 287 U.S. 45; 53 S.Ct. 55; 77 Ed. 2d 158 (1932)

"Even the intelligent and educated layman has small and sometimes no skill in the science of law."¹²
Id. at 69; 53 S.Ct. at 64.

The need for forceful advocacy does not come to an abrupt halt as the legal proceedings move from the trial to appellate stage. Both stages of the prosecution, although perhaps involving unique legal skill, require careful advocacy to ensure the rights are not foregone and the substantial legal and factual arguments are not inadvertently passed over. Moreover, at this stage in the proceedings, only the barren record of Mr. Pachak forces appellant to go without the printed pages in his pro-se designation of matter in the record on appeal that would show through clear and convincing evidence an injustice has been committed revealing hidden merit in his appeal. Which deprives him of the 14th Amendment's guaranteed effective assistance

of counsel if this court decides on an ex parte examination of the record and that the assistance of counsel is not required.

The merits of the one and only appeal an indigent has as of right are decided without the benefit of counsel is an unconstitutional line drawn between the rich and poor giving rise to the Equal Protection and Due-process clauses. Douglas, 372 U.S. at 357; 83 S.Ct. at 816-17; Also see United States v. Palermo, 80 F. 3d 138, 141 (5th Cir. 1996) Thus, by proceeding to decide the merits of appellants' appeal without appointing new counsel to represent him, the court of appeals would deprive both appellant and itself of the benefit of an adversary examination and presentation of the issues.

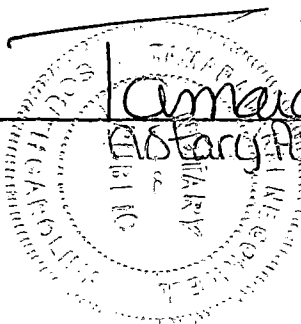
Wherefore, Appellant moves for
Appointment of new Counsel to thus be
Afforded a meaningful review of the issues
and the merits thereof on appeal.

Respectfully Submitted,

FURMAN E. TAYLOR #19816/170-SE

November 17, 2015
Pelzer, SC.

Sworn and Subscribed before me this
17th day of November, 2015.


Tamera Anwell
Notary Public

My Commission Expires
September 25, 2023

my commission expires:

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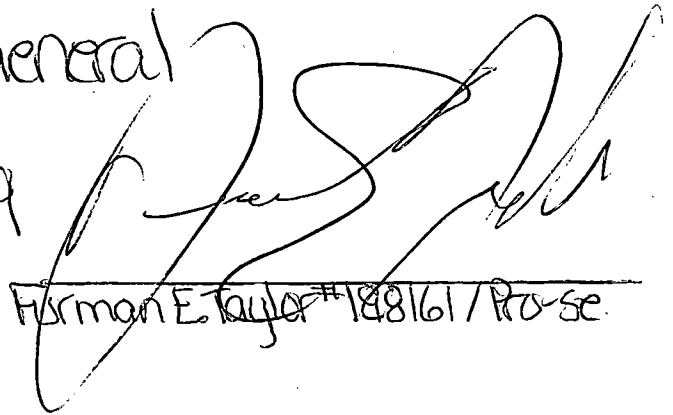
P.C.I. MAILROOM

Certificate of Service

I Furman Taylor, hereby Certify that a copy of a motion for appointment of Counsel and Memorandum in Support, in appellate Case No.: 2015-000066, postage pre-paid, and this day placed in the United States postmasters hand here at Perry Correctional Institution and addressed to the following;

1) Ms. Jenny A. Kitchings, Clerk
S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211-1629

2) Mr. Alan Wilson, S.C.A.G.
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549



Furman E. Taylor #188161 / Pro-se.

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SC Court of Appeals

Ms. Jenny A. Kitchings, Clerk
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211-1629

Furman E Taylor; #198161
Perry Corr. Inst. 104A-123
430 Oaklawn Road
Pelzer, S.C. 29669
(Page 1 of 1)

November 17, 2015

In Re: Furman E. Taylor v. State of S.C., Appellate
Case No., 2015-000066

Dear Ms. Kitchings,

I am writing in concern of the above
referenced case.

Please find enclosed my motion for
appointment of counsel and memorandum in
support, that I would like for you to file in the
courts for this case. I have also served a copy
of same on opposing counsel.

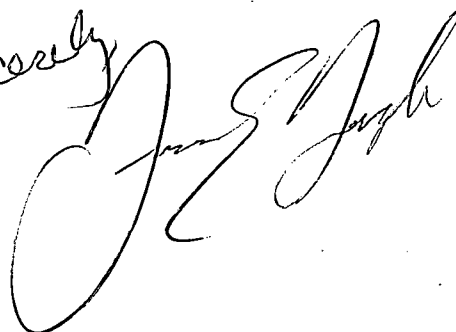
In addition, I would like to "Thank
YOU" in advance for all of your time, help,
and consideration in this matter on my behalf.

I look forward to hearing from you
soon!

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Sincerely,


Furman E. Taylor; ID# 198161
Perry Corr. Inst. 104A-123
430 Oaklawn Road
Pelzer, SC 29669

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P.C.I. MAILROOM

LEGAL MAIL

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Ms. Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211-1629