

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECORDED
NOV 16 2015
SC Court of Appeals

Appeal from Williamsburg County
The Honorable George C. James, Jr., Circuit Court Judge

Appellate Case No. 2014-000199

THE STATE,

Respondent,

vs.

ARTHUR MOSELEY,
a/k/a Shahid Majid,

Appellant.

RETURN TO MOTION FOR SUBSTITUTION OF COUNSEL

In accordance with the November 6, 2015 letter from Deputy Clerk of Court V. Allen, Respondent hereby makes return to Appellant's motion for substitution of counsel. Although Respondent does not take any position as to whether or not his request should be granted, Respondent would make the following showing to this Court:

1. Appellant, Arthur Moseley, # 199398 (Appellant) is confined in the South Carolina Department of Corrections (SCDC) as the result of his Williamsburg County murder conviction and sentence for murdering Tontore "Tory" York, on March 23, 2001. The Williamsburg County Grand Jury indicted him on July 9, 2007, for murder, attempted armed robbery, and criminal conspiracy (2007-GS-45-00052). R. pp. ___ - __. Corey Liner and Steve Durant were similarly indicted.

The Honorable Clifton B. Newman held a pretrial motions hearing on January 21, 2014. Deborah J. Butcher, Esquire, represented Appellant at that time. Ms. Butcher moved for a continuance. She also moved to be relieved as counsel because Appellant had reported her to the Office of Disciplinary Counsel and because Appellant had some motions contrary to counsel's request for continuance that he wished to argue. Appellant waived his right to counsel at this hearing and thereafter appeared *pro se*. He likewise moved to dismiss the case but Judge Newman declined to rule on the motion to dismiss. **1/21/14 Tr. pp. 1-43.**

On January 27, 28, and 31, 2014, Appellant and Liner received a jury trial before the Honorable George James and a jury. Appellant appeared *pro se* and Ms. Butcher acted as standby counsel for him. LeGrand Carraway represented Liner. Assistant Solicitors Kimberly V. Barr and Tyler B. Brown, of the Third Circuit Solicitor's Office, prosecuted the case. Liner pled guilty to attempted armed robbery and criminal conspiracy at the close of the State's case. **Tr. p. 388, line 20 –p. 389, line 25.**

The jury thereafter found Moseley guilty of all indicted offenses. **Tr. p. 656, lines 3-22.** Judge James sentenced Moseley to fifty years for murder, twenty years for attempted armed robbery; five years for the weapons charge; and five years for criminal conspiracy. **Tr. p. 670, line 6 - p. 671, line 10.**

2. Moseley timely served and filed a notice of appeal. Assistant Appellate Defender LaNelle Cantey DuRant, Esquire, of the South Carolina Commission on Indigent Defense's Division of Appellate Defense, has represented Appellant on direct appeal.

3. On April 1, 2015, Ms. DuRant filed an Initial Brief of Appellant and Designation of Matter on Appellant's behalf, in which she raised two issues:

1. Did the trial court err in allowing Appellant Moseley, who had a history of mental illness, to represent himself in his murder trial when the judge

conducted a very inadequate Faretta questioning after the judge suggested that Appellant Moseley could represent himself and continued to emphasize that Moseley had a constitutional right to represent himself after Moseley said he couldn't because it was a murder case? I

2. Did the trial court err in denying Appellant's motion to dismiss based on the violation of his Sixth Amendment constitutional right to a speedy trial when the incident occurred in 2001, thirteen years before he went to trial, and eight years after his arrest in 2006?

Respondent filed the Initial Brief of Respondent and Designation of Matter on September 16, 2015.

4. The undersigned counsel for Respondent has handled a number of cases in which the appellant was represented by Ms. DuRant. It is been the experience of the undersigned that Ms. Durant has always diligently and effectively represented her clients.

4. Appellant complains in her motion because Ms. Durant did not oppose the requests for extension of time, in order to file the Initial Brief of Respondent, made by the undersigned counsel for Respondent. However, Respondent submits that Mr. Durant acted ethically and that Appellant cannot show prejudice from her failure to oppose these extension requests since they were granted by this Court. Further, the Initial Brief of Respondent was filed within the time permitted by the Order granting the final extension obtained.

5. Many of Appellant's other complaints show that appellate counsel is correct in her assessment that he "appears to misapprehend the appellate process," since he complains about counsel's failure to two conduct discovery on his behalf and other matters that are not authorized in the context of a direct appeal. As appellate counsel correctly recognizes, Rule 207,'s SCACR, provides for the necessary ordering of the transcript of the lower court proceeding in order to prepare the appeal. "Rule 208(b)(4), 's SCACR, provides for the references to the record for relevant objections and rulings."

6. Again, appellate counsel correctly recognizes that these Rules “make it clear that an appeal involves only the lower court record.

7. Although Respondent does not take a position on Appellant’s motion, Respondent would note that:

The Sixth Amendment mandates that in all criminal proceedings, the accused shall have the right to the assistance of counsel for his defense. U.S. Const. amend. VI. Furthermore, an indigent criminal defendant is entitled to have an attorney appointed by the court to represent him. *Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S.Ct. 792, 796-97, 9 L.Ed.2d 799 (1963). The erroneous deprivation of a defendant's fundamental right to the assistance of counsel is per se reversible error. *Chapman v. California*, 386 U.S. 18, 23 n. 8, 87 S.Ct. 824, 828 n. 8, 17 L.Ed.2d 705 (1967). The right of an accused to effective assistance of counsel, however, does not extend to the appointment of counsel of choice, or to special rapport or even a meaningful relationship with appointed counsel. *Morris v. Slappy*, 461 U.S. 1, 13-14, 103 S.Ct. 1610, 1617-18, 75 L.Ed.2d 610 (1983).

State v. Boykin, 324 S.C. 552, 555, 478 S.E.2d 689, 690 (Ct. App. 1996).

8. In short, Respondent is unaware of any basis in law for granting Appellant’s motion, other than his simple displeasure with appointed counsel.

WHEREFORE, Respondent does not take any position as to whether or not Appellant’s motion should be granted or denied.

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Attorney General

JOHN W. McINTOSH
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By: 

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ATTORNEYS FOR RESPONDENT.

November 16, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Williamsburg County
The Honorable George C. James, Jr., Circuit Court Judge

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THE STATE,

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Appellant.

CERTIFICATE OF SERVICE

I, William Edgar Salter, III, counsel for Respondent, certify that I have served two (2) copies of the within Return to Motion for Substitution of Counsel on counsel for the Appellant by depositing same in the United States mail, first class, postage prepaid, and addressed as follows:

LaNelle Cantey DuRant, Esq.
SCCID/Division of Appellate Defense
1330 Lady St., Ste. #401
Columbia, SC 29201

This 16th day of November, 2015.



WILLIAM EDGAR SALTER, III

S.C. Bar # 4806
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211



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NOV 16 2015
SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

November 16, 2015

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

Re: *The State-v. Arthur Moseley*
Appeal from Williamsburg County
Appellate Case No. 2014-000199

Dear Ms. Kitchings:

As per this Court's letter dated November 6, 2015, enclosed for filing in your office is the Respondent's Return to Appellant's *Pro se* Motion to Substitute Counsel in the above-captioned matter.

By copy of this letter I am serving counsel for Appellant with the Return. Thank you for your assistance in this matter.

Sincerely,

William Edgar Salter, III
Senior Assistant Attorney General

WES/dmd
Enclosures

cc: LaNelle Cantey DuRant, Esq. (w/two copies of encls.)