

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

JAN 27 2016

SC SUPREME COURT

MELINDA RICHMOND,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001289

MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

Undersigned counsel respectfully moves this Court to appoint outside counsel to represent Petitioner in the appeal of her post-conviction relief matter. Representation of Petitioner presents a conflict of interest, or a potential conflict of interest, for the appellate defenders within the Office of Appellate Defense since Deputy Appellate Defender Wanda H. Carter represented Petitioner on direct appeal, testified at the post-conviction relief hearing, and the lower court made specific findings on Petitioner's claim of ineffective assistance of appellate counsel. The lower court concluded Deputy Appellate Defender Carter was not ineffective as alleged by Petitioner.

Relevant Facts

A Richland County Grand Jury indicted Petitioner at the July 2007 term of General Sessions for the offense of murder. Her case was called to trial on November 10, 2008 before the Honorable

Edward W. Miller, and a jury. Petitioner was represented by Carolyn R. Sutherland, E. Deon O'Neil, and Casey M. Secor.¹ On November 14, 2008, the jury found Petitioner guilty and Judge Miller sentenced her to forty years imprisonment.

Deputy Appellate Defender Carter filed a Brief of Appellant on April 7, 2011. The South Carolina Court of Appeals dismissed the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Melinda Richmond, Op. No. 2012-UP-4187 (S.C. Ct. App. Filed July 11, 2012).

On January 11, 2013, Petitioner filed an application for post-conviction relief (PCR). The state filed a return to this application on May 8, 2013. With the assistance of counsel, Petitioner filed an Amendment and Supplement to Application for Post-Conviction Relief on July 25, 2013 alleging ineffective assistance of appellate counsel. The matter proceeded to an evidentiary hearing on April 1, 2015 before the Honorable Brooks P. Goldsmith. Assistant Attorney General J. Clayton Mitchell, III represented the state, and William M. Saltzman represented Petitioner.

By order dated May 8, 2015, Judge Goldsmith denied Petitioner relief. The court found Deputy Appellate Defender Carter was not ineffective for failing to raise whether the trial court erred by denying Petitioner's numerous motions for a continuance, a mistrial, and, after her conviction, for a new trial due to lead counsel's severe case of laryngitis that affected counsel's ability to effectively communicate with the jury and advocate for Petitioner during trial. This was the sole claim presented during the evidentiary hearing and six witnesses testified about the matter. These witnesses included Carolyn R. Sutherland, E. Deon O'Neil, Casey M. Secor, Wanda H. Carter, Petitioner, and Anna R. Good. Further, this claim of ineffective assistance of appellate counsel is the only issue addressed by the PCR court in the order of dismissal.

¹ At the time of trial, Carolyn R. Sutherland was known by her maiden name, Carolyn R. Gripp.

Petitioner filed a notice of appeal. Due to her indigent status, the Office of Appellate Defense undertook representation and the case was assigned to undersigned counsel. Upon review of the file, undersigned counsel discovered Deputy Appellate Defender Carter's representation of Petitioner during her direct appeal, the claims alleging ineffective assistance of counsel concerning Carter's representation, Carter's testimony at the PCR hearing, and the PCR court's order denying Petitioner relief. Undersigned counsel discussed this case with Chief Appellate Defender Robert M. Dudek and determined that a Motion for Appointment of Outside Counsel was the best course of action in light of the conflict of interest, or potential conflict of interest presented in this case.

The petition for writ of certiorari is currently due on January 29, 2016. The motion is made at this time not to cause any undue delay in the timely disposition of Petitioner's appeal.

Law and Analysis


Undersigned counsel respectfully requests the appointment of outside counsel for Petitioner in light of the conflict of interest, or potential conflict of interest, presented by the representation of Petitioner and this office's employment of Deputy Appellate Defender Carter and undersigned counsel. Rule 1.7(a)(2) of the Rules of Professional Conduct explains that a lawyer has a concurrent conflict of interest "if ... there is a significant risk that the representation of one or more clients will be materially limited by a personal interest of the lawyer." Rule 1.7(a)(2), RPC, Rule 407, SCACR. Due to the employment of Deputy Appellate Defender Carter and undersigned counsel as an assistant appellate defender, a concurrent conflict of interest, or the appearance of a concurrent conflict of interest, exists among the attorneys in the Office of Appellate Defense. Additionally, undersigned counsel is concerned that representation of Petitioner by this office may result in a Sixth Amendment conflict of interest in light of the claims of ineffective assistance presented to the lower court. The Sixth Amendment to the United States Constitution guarantees

criminal defendants the right to conflict-free counsel. Mickens v. Taylor, 535 U.S. 162, 168 (2002); Cuyler v. Sullivan, 446 U.S. 335, 348 (1980).

Conclusion

Undersigned counsel respectfully requests the appointment of outside counsel to represent Petitioner in her appeal of the PCR court's order denying her relief given the highly unusual facts of this case. Undersigned counsel respectfully requests this Court hold the timelines for filing in abeyance pending a decision on this motion.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

Attorney for Petitioner

This 27th day of January, 2016

STATE OF SOUTH CAROLINA
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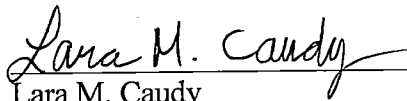
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001289

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Motion for Appointment of Outside Counsel in the above referenced case has been served upon J. Clayton Mitchell, III, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Melinda Richmond, #331874 at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 27th day of January, 2016.



Lara M. Caudy
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 27th day of January, 2016.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

January 27, 2016

RECEIVED

JAN 27 2016

SC SUPREME COURT

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

Re: Melinda Richmond v. State of South Carolina
Appellate Case No. 2015-001289

Dear Mr. Shearouse:

Enclosed are an original and six copies of the Motion for Appointment of Outside Counsel in the above referenced case. Thank you for your assistance in this matter.

Sincerely,

Lara M. Caudy
Appellate Defender

LMC/lmv

Enclosure

cc: J. Clayton Mitchell, III, Esquire