

STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2015-000066

RECEIVED
MAR 22 2016
SC Court of Appeals
Respondent,

THE STATE,

v.

FURMAN EUGENE TAYLOR, JR.,

Appellant.

**RETURN TO MOTION REQUESTING LEAVE BE GRANTED
BASED UPON AFTER DISCOVERED EVIDENCE**

Initially, for the reasons set for the below, Respondent (the State) submits Appellant's *pro se* Motion Requesting Leave Be Granted Based Upon After Discovered Evidence is a nullity and that by responding to said motion, the State is NOT acknowledging its legitimacy or the legitimacy of any future *pro se* filings. However, in the interest of judicial economy the State, through undersigned counsel and making Return to the Motion Requesting Leave Be Granted Based Upon After Discovered Evidence, would respectfully show unto this Court:

1. Appellant was convicted in Greenville County of burglary in the first degree and petit larceny after a jury trial held before the Honorable D. Garrison Hill on January 5 – 7, 2015. Appellant was sentenced to life imprisonment for burglary and thirty (30) days for petit larceny.
2. Appellant filed and served notice of appeal and is currently represented by the South Carolina Office of Appellate Defense.

3. On July 1, 2015, Appellate Defender Robert M. Pachak submitted: (1) an Anders Brief of Appellant presenting the issue of whether the trial court erred in denying Appellant's motion for a directed verdict, (2) a Petition to be Relieved, and (3) a Record on Appeal. Appellant thereafter filed and served a *pro se* Designation of Matter and *pro se* Brief of Appellant. Appellant attached the documents he listed in his Designation of Matter to his *pro se* designation.

4. On October 16, 2015, the State filed a Motion to Strike Matter from Appellant's *Pro Se* Designation of Matter and *Pro Se* Brief. On October 28, 2015, at the request of the Court, Appellant filed a *pro se* objection to the motion to strike. The motion to strike was granted by order filed February 4, 2016.

5. On November 17, 2015, Appellant filed a motion for new counsel to be appointed and substituted as his attorney for the appeal from the trial. On November 24, 2015, this Court wrote a letter asking opposing counsel and counsel for appellant to file a return to Appellant's motion. On December 2, 2015, the State filed a Return opposing Appellant's request for substitution of another attorney as appellate counsel for Appellant due to the late stage in the appellate process.

6. Appellant has now submitted a "Motion Requesting Leave Be Granted Based Upon After Discovered Evidence" in which he asks that this Court grant leave for him to "present grounds which he has discovered since trial which ought first be submitted to the circuit judge upon a motion for a new trial based upon after-discovered evidence." The Motion was received by the State on March 14, 2016.

7. At the current time, Appellant's November 17, 2015, motion for new counsel has not been addressed by the Court. As a result, Appellant is still represented by Mr. Pachak and, under our Supreme Court's opinion in Miller v. State, his current motion is an improper *pro se* filing that should not be accepted by the Court; it is a nullity. Miller v. State, 388 S.C. 347, 347, 697 S.E.2d 527, 527 (2010); see also Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) ("There is no

constitutional right to hybrid representation either at trial or on appeal.”); Foster v. State, 298 S.C. 306, 307, 379 S.E.2d 907, 907 (1989) (ordering the Clerk of Court to return a substantive *pro se* document filed while the petitioner was represented by counsel). Therefore, the motion submitted by Appellant should not be accepted for consideration by this Court.


WHEREFORE, having made Return, the State opposes Appellant’s motion for leave to pursue a claim of after-discovered evidence and submits it should not be accepted by the Court.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

BY: 

J. Benjamin Aplin
S.C. Bar No: 8729

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ATTORNEYS FOR RESPONDENT

March 22, 2016

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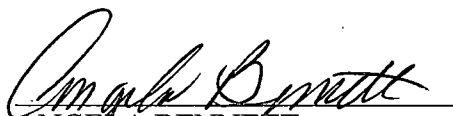
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion Requesting Leave Be Granted Based Upon After Discovered Evidence on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to Robert M. Pachak, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589 and Furman Eugene Taylor, 198161, Perry Correctional Institution, Q4A, Pelzer, SC 29669.

I further certify that all parties required by Rule to be served have been served.

This 22nd day of March, 2016.


ANGELA BENNETT
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

March 22, 2016

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

Re: State v. Furman Eugene Taylor, Jr., 198161

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Respondent's Return to Motion Requesting Leave Be Granted Based Upon After Discovered Evidence in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General

Enclosures

cc: Robert M. Pachak, Esquire
Furman E. Taylor, Jr., 198161
Victim Services