

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

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ROBERT M. WATKINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002191

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SUPPLEMENTAL APPENDIX

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Appellate Defender

South Carolina Commission on Indigent  
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ATTORNEY FOR PETITIONER

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ATTORNEYS FOR RESPONDENT

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# The South Carolina Court of Appeals

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March 8, 2011

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Robert Mills Ariail, Esquire  
13th Circuit Solicitor's Office  
305 E. North St., Ste. 325  
Greenville, SC 29601-2185

Re: The State v. Watkins, Robert

Dear Counsel:

Enclosed is the opinion of the Court of Appeals in this case. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Greenville County after fifteen (15) days, exclusive of the date of filing of this opinion.

No extension for a Petition for Rehearing will be granted except in the most extraordinary circumstances and, except in the rarest cases, with seven days' notice.

Sincerely,

A handwritten signature in cursive script that reads "V. Claire Allen".

V. Claire Allen  
Deputy Clerk of Court



ALAN WILSON  
ATTORNEY GENERAL

March 21, 2011

**VIA HAND DELIVERY**

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

Re: State v. Robert Watkins,

Dear Ms. Gee:

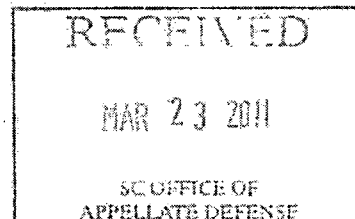
Please find enclosed for filing the original and six (6) copies of the Petition for Rehearing, with proof of service, in the above-referenced case.

Sincerely,

William M. Blich, Jr.  
Assistant Attorney General

Enclosures

cc: Elizabeth A. Franklin-Best, Esquire (2 copies enclosed)  
Victim's Services (enclosure)



STATE OF SOUTH CAROLINA  
 IN THE COURT OF APPEALS

\_\_\_\_\_  
 Appeal From Greenville County  
 Hon. Larry R. Patterson, Circuit Court Judge  
 \_\_\_\_\_

The State,

Respondent,

v.

Robert Watkins,

Appellant.

\_\_\_\_\_  
**PETITION FOR REHEARING**  
 \_\_\_\_\_

On March 8, 2011, this Court reversed and remanded this appeal to the circuit court for a new trial. The Court found, pursuant to the holding in Floyd v. State, 303 S.C. 298, 400 S.E.2d 145 (1991), the trial judge erred in denying Watkins' motion for recusal.

Pursuant to Rule 221, SCACR, the Respondent State of South Carolina submits that in reversing Appellant's conviction, the panel overlooked or misapprehended the timing of Appellant's motion for recusal. Further, the Court overlooked or misapprehended the facts and circumstances of this case which distinguish it from the South Carolina Supreme Court's holding in Floyd.

**I. Recusal**

First, the issue is not properly preserved for review on appeal. While Appellant stated at the April 18 hearing: "I believe that I asked you to step down from hearing my case" this was during a pre-trial hearing and did not express any specific grounds for the motion to recuse the trial judge.

(R.38-39). As a result, it is not properly preserved. An objection must be made on a specific ground. State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) (citing State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997)). Further, neither Appellant nor his counsel renewed the motion during either a May 30 or September 11, 2008 hearing, even though both hearings were in front of Judge Patterson. Additionally the objection was not renewed prior to the start of his trial. Therefore, he waived his objection to Judge Patterson handling this trial.

Next on the merits, Appellant's and this Court's reliance upon Floyd v. State, 303 S.C. 298, 400 S.E.2d 145 (1991), is misplaced and the case is not applicable under the current facts and circumstances. In Floyd, the South Carolina Supreme Court found, upon motion, the same judge that presided at trial should not preside at a subsequent post-conviction relief hearing in which the defendant seeks relief from the prior conviction. The Court found it best to avoid any appearance of impropriety or partiality. In circumstance such as Floyd, the judge could be called upon to rule on the propriety of its rulings and whether counsel was or was not ineffective for failing to challenge the judge's prior rulings, thereby leading to at least the possibility of an image of partiality.

This case is more similar to a situation where a trial judge heard the initial trial resulting in the defendant's conviction and the conviction was later reversed on appeal. The original trial judge may, and often does, sit as the trial judge on remand. There is no appearance of bias or prejudice in that situation.

In the instant case, Judge Patterson was the post-conviction relief judge and not the trial judge. Accordingly, he was not involved in the original admission of evidence, hearing of testimony, or ruling on motions or objections in the first trial. There should be no perceived bias or impartiality in his hearing Appellant's second trial, even where his ruling on post-conviction relief was reversed. He was called upon to judge the error and prejudice from a trial conducted in front of another judge

and not a trial conducted in front of him, accordingly, the perceived bias or partiality that may be argued in Floyd would absolutely not be present in the current case.<sup>1</sup>

Additionally, Canon 3(C)(1) of the Code of Judicial Conduct, Rule 501, SCACR, states: "A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business." "A judge must exercise sound judicial discretion in determining whether his impartiality might reasonably be questioned." State v. Cheatham, 349 S.C. 101, 111, 561 S.E.2d 618, 624 (Ct. App. 2002). "Absent evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." Id. "A motion to recuse may not be predicated on the judge's rulings in the case before him or on rulings in a related case, nor on his demonstrated tendency to rule in any particular manner, or on a particular judicial leaning or attitude derived from his experience on the bench." Mallett v. Mallett, 323 S.C. 141, 146-147, 473 S.E.2d 804, 808 (Ct. App. 1996) (emphasis added) (citing, inter alia, United States v. Grinnell Corp., 384 U.S. 563, 86 S.Ct. 1698, 16 L.Ed.2d 778 (1966); Berger v. United States, 255 U.S. 22, 31, 41 S.Ct. 230, 232, 65 L.Ed. 481 (1921)).

Appellant does not allege Judge Patterson was partial, maintained a bias, or acted improperly in presiding over his trial. The record indicates nothing about the previous proceedings which would have affected the trial judge's impartiality. Appellant merely asserts a *per se* rule of recusal should be created when a trial judge previously presided of the defendant's post-conviction relief action.

---

<sup>1</sup>The State does not believe the rule in Floyd is necessary as there should be no indication of partiality or bias simply because a judge previously participated in some aspect of the case, even if it was a trial judge. The traditional rule as found in Mallett v. Mallett, 323 S.C. 141, 146-147, 473 S.E.2d 804, 808 (Ct. App. 1996), should apply unless the defendant is able to demonstrate the bias or actual partiality that has traditionally required recusal.

Such a rule is not necessary and is certainly not mandated by the holding in Floyd.<sup>2</sup> Accordingly, the State asks the Court to reconsider its opinion and affirm the trial judge's refusal to recuse himself from presiding over Appellant's trial.

## II. Proceeding *Pro Se*

Because the State believes this Court should reconsider its ruling reversing Appellant's conviction and sentence based on the trial judge's failure to recuse himself, the Court will need to address Appellant's Issue I regarding the trial court's decision to allow Appellant to proceed *pro se*. First, the trial court conducted a proper Faretta inquiry prior to allowing Appellant to proceed *pro se* at trial. Even if the Faretta colloquy was insufficient, the record clearly demonstrates Appellant has a sufficient background to understand the dangers of self-representation, was made aware of the pitfalls prior to his proceeding *pro se*, and knowingly and voluntarily elected to proceed *pro se*.

The State further refers to, and incorporates by reference, its full arguments on this issue. Accordingly, the State asks the Court to affirm the decision to allow Appellant to proceed *pro se*.

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<sup>2</sup> Given the constraints of the current economic and budgetary situation, automatic recusal of judges may result in hardship in some counties with finding judges capable of hearing a defendant's case.

**CONCLUSION**

**For all of the foregoing reasons, Respondent requests that the panel rehear this matter, and affirm Appellant's conviction and sentence.**

**Respectfully submitted,**

**ALAN WILSON  
Attorney General**

**JOHN W. McINTOSH  
Chief Deputy Attorney General**

**SALLEY W. ELLIOTT  
Assistant Deputy Attorney General**

**WILLIAM M. BLITCH, JR.  
Assistant Attorney General**

**W. WALTER WILKINS, III  
Solicitor, 13<sup>th</sup> Judicial Circuit**

**305 E. North Street, Suite 325  
Greenville, South Carolina 29601-2185  
(864) 467-8647**

**BY:**   
**William M. Blich, Jr.**

**Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727**

**ATTORNEYS FOR RESPONDENT**

**March 21, 2011**



## The South Carolina Court of Appeals

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April 21, 2011

Assistant Deputy Attorney General Salley W. Elliott  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Re: The State v. Watkins, Robert

Dear Counsel:

Enclosed is a copy of an Order of the Court denying your Petition for Rehearing in the above case.

The Remittitur in this case will be held in this Court only so long as required by Appellate Court Rule 221 (b).

Please notify this office, in writing, within ten (10) days from the date of this letter, whether or not you want any of the remaining Records on Appeal and briefs we may have in this case. Also enclose a check payable to the S. C. Court of Appeals, in the amount of \$7.50, to cover mailing costs. If we have not heard from you within ten (10) days, the Record on Appeal and briefs will be disposed of.

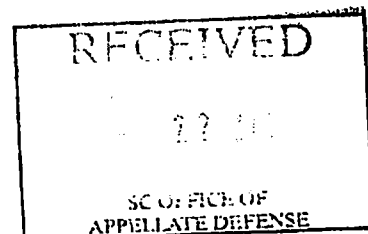
Sincerely,

*V. Claire Allen*

V. Claire Allen  
Deputy Clerk of Court

VCA/tf

cc: Appellate Defender Elizabeth Franklin-Best  
Robert Watkins, #243803  
Robert Mills Ariail, Esquire



# The South Carolina Court of Appeals

The State,

Respondent,

v.

Robert Watkins,

Appellant.

The Honorable Larry R. Patterson  
Greenville County  
Trial Court Case No. 2002-GS-23-01063

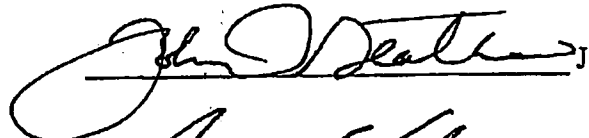
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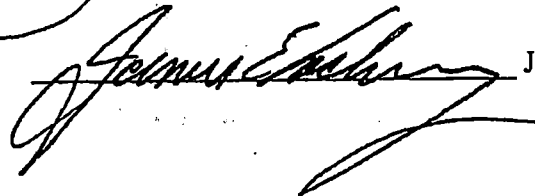
## ORDER

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After a careful consideration of the Petition for Rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

 J.

 J.

 J.

Columbia, South Carolina

**FILED**

April 21, 2011



## The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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June 2, 2011

### REMITTITUR

The Honorable Paul B. Wickensimer  
305 E. North Street  
Greenville, SC 29601-2120

Re: The State v. Watkins, Robert  
2002-GS-23-01063

Dear Mr. Wickensimer:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

A handwritten signature in cursive script that reads "V. Claire Allen".

V. Claire Allen  
Deputy Clerk of Court

VCA/tf

cc: Appellate Defender Elizabeth Franklin-Best  
Robert Watkins, #243803  
Assistant Deputy Attorney General Salley W. Elliott  
Robert Mills Ariail, Esquire

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal From Greenville County  
Hon. Larry R. Patterson, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

JUN 15 2011

**SC Court of Appeals**

The State,

Respondent,

v.

Robert Watkins,

Appellant.

**EXPEDITED MOTION TO RECALL REMITTITUR**

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

On March 8, 2011, this Court filed an opinion reversing and remanding this case to the circuit court for a new trial. Pursuant to Rule 221, SCACR, Respondent served and filed its Petition for Rehearing on March 21, 2011.

II.

Respondent was never served with a copy of the Order of the Court of Appeals denying Respondent's Petition for Rehearing. The undersigned checked his incoming mail log, any unfiled mail, and the file associated with this appeal, and has been unable to find any indication of being served with a copy of the Order denying the Petition for Rehearing.

## III.

Respondent contacted the docketing office of the Court of Appeals and was informed the Order was sent on or around April 21, but was sent to Salley Elliott with this office instead of the undersigned. As a result, the legal assistant for Salley Elliott checked the mail log and mail for Salley Elliott since the beginning of April. She could not locate any Order received by Salley Elliott related to this appeal.<sup>1</sup> Additionally, the undersigned rechecked his mail log and mail and was unable to find any Order denying the Petition for Rehearing.

## IV.

As a result of never receiving the Order denying the Petition for Rehearing, Respondent never received notice that the time for serving and filing the intended Petition for Writ of Certiorari had begun to run. In the event the Petition for Rehearing was denied, it has always been the intention of the undersigned to seek certiorari in the South Carolina Supreme Court.

## V.

Further, it has come to the undersigned's attention that items from the Court, including recent Orders, have been received by the Office of Appellate Defense even though they were intended for receipt by this office. As an example, the undersigned recently received an Order in the State v. Mark Hoyle appeal that originally went to the Office of Appellate Defense, as evidenced by a received stamp, and was forwarded to the undersigned approximately 5 days later. Other individuals in the office have indicated similar circumstances.

The undersigned asks the Court to recall the remittitur because it was sent without the undersigned receiving a copy of the Order denying the Petition for Rehearing, and as a result, the

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<sup>1</sup>Both the undersigned and Salley Elliott are willing to provide Affidavits indicating neither has ever been served a copy of the Court of Appeals' Order denying Respondent's Petition for Rehearing if this Court finds Affidavits would be beneficial.

undersigned cannot Petition for Writ of Certiorari as intended. See Wise v. S. Carolina Dept. of Corr., 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (citing State v. Keels, 39 S.C. 553, 17 S.E. 802 (1893)).

WHEREFORE, Respondent asks the Court to recall the remittitur because Respondent was never served a copy of the Order denying the Petition for Rehearing, and for such other relief as the Court deems appropriate.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

WILLIAM M. BLITCH, JR.  
Assistant Attorney General

W. WALTER WILKINS, III  
Solicitor, 13<sup>th</sup> Judicial Circuit

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BY:   
William M. Blitch, Jr.

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ATTORNEYS FOR RESPONDENT

June 15, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County  
Hon. Larry R. Patterson, Circuit Court Judge

**RECEIVED**

JUN 15 2011

**SC Court of Appeals**

The State,

Respondent,

v.

Robert Watkins,

Appellant.

**PROOF OF SERVICE**

I, Ellen R. DuBois, certify that I have served the within Expedited Motion to Recall Remittitur by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esquire  
SC Commission on Indigent Defense  
Division of Appellate Defense  
P. O. Box 11589  
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.  
This 15<sup>th</sup> day of June, 2011.

*Ellen R. DuBois*

ELLEN R. DuBOIS  
Administrative Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

# The South Carolina Court of Appeals

The State,

Respondent,

v.

Robert Watkins,

Appellant.

The Honorable Larry R. Patterson  
Greenville County  
Trial Court Case No. 2002-GS-23-01063

---

## ORDER

---

Respondent has asked this court to recall the remittitur in the above-captioned appeal to seek certiorari in the Supreme Court. On March 10, 2011, this Court reversed Appellant's conviction. Respondent timely filed a petition for rehearing, which this Court denied on April 21, 2011. Remittitur was issued on June 2, 2011.

Respondent requests the recall of remittitur because it never received notice of the petition for rehearing's denial. Because Respondent did not receive such notice, we grant Respondent's motion to recall remittitur. See State v. Keels, 39 S.C. 553, 553, 17 S.E. 802, 802 (1893) (providing that remittitur may be recalled upon "a very strong showing . . . that remittitur was sent down through some mistake or inadvertence on the part of this Court or its officer . . .").

AND IT IS SO ORDERED.

H. Bruce Wilkins, J.

John D. Seate, J.

James E. Schuyler, J.

Columbia, South Carolina

**FILED**

Jun 30, 2011