

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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09 2016

CERTIORARI TO FLORENCE COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

The Honorable D. Craig Brown, Circuit Court Judge

GREGORY DANIELS, ..... PETITIONER.

V.

STATE OF SOUTH CAROLINA, ..... RESPONDENT,

APPELLATE CASE NO. 2015-002033

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**RETURN TO MOTION FOR APPOINTMENT OF OUTSIDE  
COUNSEL**

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ALAN WILSON  
Attorney General

J. CROOM HUNTER  
Assistant Attorney General  
SC Bar No. 101253

P.O. Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

## STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. The Florence County Grand Jury indicted Petitioner in April 2009 for murder and possession of a weapon during the commission of a violent crime (2009-GS-21-427, Counts 1 and 2). Jack W. Lawson Jr., Esquire, represented Petitioner. On April 16, 2010, a jury convicted Petitioner as indicted. The Honorable Thomas A. Russo sentenced Petitioner to life in prison for the murder charge and a concurrent five (5) years for the weapon possession charge.

Petitioner filed a timely notice of appeal. Tristan M. Shaffer, Esquire, and Wanda H. Carter, Esquire, of the Office of Appellate Defense represented Petitioner on appeal. The South Carolina Supreme Court affirmed Petitioner's convictions on October 10, 2012. State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012). The remittitur was returned to the circuit court on October 26, 2012.

A post-conviction relief (PCR) application was filed on February 1, 2013. Respondent made its Return on September 17, 2013. An evidentiary hearing into the matter was convened on April 14, 2015, at the Florence County Courthouse before the Honorable D. Craig Brown. Due to time constraints, the hearing was broken into two days and concluded on April 17, 2015. Respondent notes trial counsel was deceased and thus unable to testify at the time of the PCR hearing. Petitioner was present at the hearing and was represented by Tricia A. Blanchette, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

At the post-conviction relief hearing, Petitioner proceeded to argue his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
  - a. Failure of trial counsel to provide Applicant with a complete copy of discovery and review it with him prior to trial.
  - b. Failure to conduct an independent investigation and properly prepare Applicant's case for trial
  - c. Failure to call witnesses at trial.
  - d. Failure to interview Gary Bostic.
  - e. Failure to object to the State being allowed to proceed on two theories: murder for hire and argument at cookout.
  - f. Failure to raise a third party guilt defense.
  - g. Failure to make all viable contemporaneous objections at trial.
  - h. Failure to review Applicant's statement with him prior to trial, utilize Applicant at the Jackson v. Denno hearing and make a proper argument for suppression of Applicant's statement.
  - i. Failure to utilize Applicant as a witness at trial.
  - j. Failure to investigate and object at trial to the search and resulting records obtained on and from Applicant's phone.
  - k. Failure to advise Applicant of the State's intention to use his girlfriend's letters as evidence against him, failure to utilize the complete letters and/or additional letters to put the selected text into context, failure to prepare and utilize Applicant to testify in response to the introduction of the letters.
  - l. Failure to impeach the state's witnesses.
  - m. Failure to advise Applicant of the evidence the state intended to introduce involving the phone call between the victim and Shavonne Gass.
  - n. Failure to review the statements of Andre Bradley and Jasmine Barrett with Applicant prior to trial.
  - o. Failure to make the record clear as to the disclosure of the proffer agreement between Andre Bradley and the Federal government.
  - p. Failure to properly preserve the arguments made by appellate counsel regarding the jury charge.
2. Ineffective assistance of appellate counsel, specifically failure to address the following objections made by trial counsel:
  - a. Objection to the testimony of Shavonne Gass regarding the call with the victim and the admission of such under the present sense impression exception.
  - b. Objection to the admission of the Applicant's letters to his girlfriend.
  - c. The Jackson v. Denno hearing and admission of Applicant's statement.
3. Prosecutorial misconduct for failing to disclose the law enforcement interview of Gary Bostic.

At the close of testimony, Judge Brown took the matter under advisement and later denied

and dismissed the application by Order filed June 10, 2015. Petitioner filed a rule 59(e) motion which was denied by Order filed August 24, 2015. This appeal follows.

### **POSITION**

Respondent is aware of Appellate Defender Susan B. Hackett's motion to appoint outside counsel. Respondent would object to the appointment of outside counsel on the basis of a perceived conflict of interest with the Office of Appellate Defense. Respondent submits that there is no conflict of interest. The fact that counsel believes a conflict exists between her current client and a former client is insufficient grounds for disqualifying the State of South Carolina's entire Office of Indigent Defense.

Second, counsel's argument that the case should be assigned to outside counsel because she and the Chief Appellate Defender believe the issue raised by Petitioner is meritless, and they feel it would be improper to assign it to another attorney within their office is itself without merit. Respondent can see no benefit, and strongly objects, to the State of South Carolina paying for outside counsel to raise an issue that two of the brightest and most experienced appellate minds in the state believe is without merit. While Respondent can understand the desire to avoid any appearance of ethical or professional impropriety, Respondent believes such potential does not exist in this matter. Respondent submits such a decision could lead to abuse of the system. For example, a Petitioner unhappy with appointed counsel could save themselves or their family potentially tens of thousands of dollars by simply alleging a claim of conflict of interest in an effort to conflict out the Office of Appellate Defense, and instead require the State to pay for what should be a privately funded alternative to this State's Office of Appellate Defense.

**CONCLUSION**

For the reasons stated above, this Court should not allow non-meritorious conflict of interest claims to disqualify the State of South Carolina's entire Office of Indigent Defence.

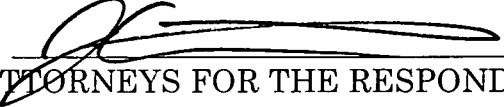
Respectfully submitted,

ALAN WILSON  
Attorney General

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By: \_\_\_\_\_

  
ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina

May 9, 2016

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**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Florence County

The Honorable D. Craig Brown, Circuit Court Judge

GREGORY DANIELS

Petitioner,

STATE OF SOUTH CAROLINA

Respondent.

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**PROOF OF SERVICE**  
\_\_\_\_\_

I, J. CROOM HUNTER, certify that I have served the Return to Motion for Appointment of Outside Counsel on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire  
1330 Lady Street, Suite 401  
Columbia, SC 29201

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

This 9<sup>th</sup> day of May 2016.



J. CROOM HUNTER  
Assistant Attorney General  
Office of Attorney General  
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(803) 734-3737



ALAN WILSON  
ATTORNEY GENERAL

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MAY 09 2016

S.C. SUPREME COURT

May 9, 2016

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**RE: Gregory Daniels v. State of South Carolina  
2015-002033**

Dear Mr. Shearouse:

I am enclosing the original and six (6) copies of the Return to Motion for Appointment of Outside Counsel in the above case.

Sincerely,

J. Croom Hunter  
Assistant Attorney General

Enclosures

cc: Susan B. Hackett, Esquire  
Trisha Allen, Victim Services