

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County
James R. Barber, Circuit Court Judge

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AUG 25 2016
SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

EARNEST MAURICE ALLEN,

APPELLANT

Appellate Case No. 2014-000165

MOTION TO RECALL THE REMITTITUR

Now comes, the Appellant, who request this Honorable Court to recall the remittitur. Appellant's request is based on the facts that:

1. Appellant submitted a petition for a rehearing on time.
2. Appeal counsel closed Appellant's case along with letter dated April 11, 2016. Therefore, appellant was not "Hybrid Counsel."(See Exhibit B)
3. When Appellant's counsel became aware that Appellant's petition was not being considered because of his failure to file a motion to relieve himself as counsel, appeal counsel immediately submitted that motion to the Court on May 3, 2016, stating that, "In short, Counsel would not seek additional relief through the direct appeal process on Appellant's behalf."(See Exhibit A, pg.2#5), and also respectfully requested that the Court allow Appellant to re-file.(See Exhibit A, pg.2#10)

For the above mentioned reasons this SC Court of Appeals should grant the Appellant's motion to recall the remittitur, and consider the appellant's

Petition For A Rehearing dated April 20, 2016, timely filed.

Respectfully submitted,

Earnest M. Pickett(Allen)
SCDC#310134
386 Redemption Way
McCormick SC 29899
Pro'Se

This 23rd day of August, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County
James R. Barber, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

EARNEST MAURICE ALLEN,

APPELLANT

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Affidavit

CERTIFICATE OF SERVICE

I, Earnest M. Allen, certify that I have served a motion to recall the remittitur in this case on Jenny A. Kitchings, Clerk of SC Court of Appeals, Post Office Box 11629, Columbia SC 29211, and Jennifer Ellis Roberts, at the Attorney General's Office, Post Office Box 11549, Columbia SC 29211-1549, this 23rd day of August, 2016.

/s/ Earnest M. Allen
Earnest M. Allen #310134
386 Redemption Way
McCormick SC 29899
Pro'Se

SWORN TO BEFORE ME this 23rd day
of ~~May~~, 2016. of August 2016

Michael Camargo (L.S.)
Notary Public for South Carolina
My Commission Expires: July 09, 2026

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(Exhibit A)

STATE OF SOUTH CAROLINA
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STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

ERNEST MAURICE ALLEN,

APPELLANT

Appellate Case No. 2014-000165

MOTION TO BE RELIEVED AS COUNSEL

Counsel for Ernest Maurice Allen moves to be relieved as counsel. In support of this motion, Counsel states:

1. On October 3, 2014, Chief Appellate Defender Robert Dudek moved this Court to appoint Thomas Bouchette as lead counsel in this case as part of the 2014 Appellate Practice Project. On October 7, 2014, this Court appointed Mr. Bouchette as lead counsel and Mr. Dudek as co-counsel. Hereinafter, Mr. Bouchette and Mr. Dudek will be referred to collectively as "Counsel."

2. On January 6, 2015, Counsel filed the Initial Brief of Appellant and Designation of Matter. On April 22, 2015, Respondent filed the Initial Brief of Respondent and Designation of

Matter. The Record on Appeal was filed on June 22, 2015. Counsel filed Final Brief of Appellant on July 16, 2015, and Respondent filed the Final Brief of Respondent on July 15, 2015.

3. This Court heard argument on February 2, 2016.

4. On April 6, 2016, this Court issued an unpublished opinion affirming Appellant's conviction. State v. Ernest Allen, 2016-UP-135 (S.C. Ct. App. filed April 6, 2016).

5. On April 11, 2016, Counsel sent Appellant a letter informing him of this Court's opinion, advising him that our office would be closing his case, and informing him of the rights and time limits associated with an application for post-conviction relief. In short, Counsel would not seek additional relief through the direct appeal process on Appellant's behalf.

6. On April 22, 2016, Appellant filed a *pro se* petition for rehearing.

7. Counsel received notice of the petition for rehearing by way of letter from Mark Farthing, the attorney for the Respondent, on April 29, 2016.

8. After inquiry, the Clerk's Office indicated that they would also like Counsel to file a formal Motion to Withdraw. In compliance with the Clerk's request, Counsel is filing the instant motion.

9. This motion is made in good faith. Counsel has not asked opposing counsel to consent.

10. Counsel understands that Appellant intends to proceed *pro se* or obtain additional counsel. If the Court grants the instant motion, Counsel respectfully requests this Court allow Appellant to re-file his prior *pro se* petition for rehearing.

Wherefore, Thomas Jarrett Bouchette and Robert M. Dudek, Counsel for Ernest Maurice Allen, move to be relieved as counsel.

Respectfully submitted,

Susan B. Hackett for
Robert M. Dudek
Chief Appellate Defender
1330 Lady Street, Ste. 401
Columbia, S.C. 29201
803-734-1330

Susan B. Hackett for
T. Jarrett Bouchette
Johnny Gardner Law Group, P.A.
212 Main Street
Conway, S.C. 29526
803-248-7135

ATTORNEYS FOR APPELLANT

This 3rd day of May, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County

James R. Barber III, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

ERNEST MAURICE ALLEN,

APPELLANT

Appellate Case No. 2014-000165

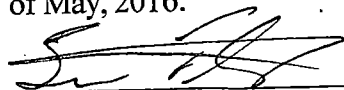
CERTIFICATE OF SERVICE

I certify that a true copy of the motion to be relieved in this case has been served on Jennifer Ellis Roberts at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Ernest Maurice Allen, #310134, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 3rd day of May, 2016.

Susan B. Hackett for
Robert M. Dudek
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 3rd day
of May, 2016.



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

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SC Court of Appeals

(Exhibit B)



JOHNNY GARDNER LAW GROUP, P.A.

DUI • PERSONAL INJURY • CRIMINAL • FAMILY • BUSINESS

JOHNNY GARDNER
HEATHER MOORE
JARRETT BOUCHETTE
ADAM SZYSZKOWSKI

April 11th, 2016

Mr. Earnest M. Pickett (Inmate # 310134)
386 Redemption Way
McCormick SC 29899

Re: State v. Ernest M. Allen: Appellate Case No: 2014-000165

Dear Mr. Pickett (Allen):

Enclosed is a copy of the opinion of the Court of Appeals in your case. Unfortunately, the Court affirmed the trial Court's ruling and denied our request for a new trial. Please be advised that our office will be closing your case along with this letter.

Please be aware that there is a **one year statute of limitations for filing an application for post-conviction (PCR) relief**. This is one year from the date of the enclosed opinion. This statute of limitations is **very strictly enforced**, so please be sure that **you** comply with it. Please understand *it is your responsibility alone to be sure this PCR application is timely filed*. **This application must be filed with the clerk of court in the county of your conviction**. There is also now a **one year statute of limitations for filing for federal habeas**. However, you must **exhaust** your **PCR claims** in state court, before raising them in federal court.

Please be aware that the time between your direct appeal becoming final, and the date your PCR application is filed **will count against your federal habeas statute of limitations in the future**. I do wish you the best. Feel free to contact me if you have any questions.

Sincerely,

T. Jarrett Bouchette, Esq.

TJB
Enclosure: Post-Conviction Relief Application

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SC Court of Appeals

Wherever life takes you, we'll be there.

212 MAIN STREET • CONWAY, SC 29526 • 843.248.7135 • FAX: 843.248.0270
WWW.JOHNNYGARDNERLAW.COM • INFO@JOHNNYGARDNERLAW.COM

August 23, 2016

Dear, Ms. Kitchings,

Enclosed please find for filing my motion, for requesting that the Court of Appeals Recall its Remittitur recently sent down in case no. 2014-000165 (Motion to Recall the Remittitur).

I have enclosed the original and one (1) copy of said motion and I respectfully request that the copy is stamp clocked and returned to me via the enclosed self addressed stamped envelope.

I have also enclosed ~~attached~~ exhibits A and B to said motion.

Your assistance in this matter will be greatly appreciated.

Sincerely,

Earnest M. Pickett (Allen)

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SC Court of Appeals

Earnest M. Pickett (Allen) #310134

F3-B-120

McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

Jenny A. Kitchings
Clerk, SC Court of Appeals
Post Office Box 11629
Columbia SC 29211

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