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S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

October 24, 2016

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

RE: Elbert Wallace, v. State of South Carolina
Appellate Case No. 2016-000075

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the **Return to Motion for Appointment of Outside Counsel** in the above-referenced case. By copy of this letter we are serving opposing counsel today.

Sincerely,

Jessica E. Kinard
Assistant Attorney General
SC Bar No. 77889

JEK/fvh
Enclosures

cc: Robert M. Dudek

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

ELBERT WALLACE, PETITIONER.

V..

STATE OF SOUTH CAROLINA, RESPONDENT,

APPELLATE CASE NO. 2016-000075

RETURN TO MOTION FOR APPOINTMENT OF OUTSIDE
COUNSEL

ALAN WILSON
Attorney General

JESSICA E. KINARD
Assistant Attorney General
SC Bar No. 77889

Post Office Box 11549
Columbia, South Carolina 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 Richland County Clerk of Court. Petitioner was indicted during the March 2009 term of the Richland County Grand Jury for Burglary in the First Degree (2009-GS-40-0988), Armed Robbery (2009-GS-40-0989), Assault and Battery with Intent to Kill (2009-GS-40-0997), Burglary in the First Degree (2009-GS-40-1225), Armed Robbery (2009-GS-40-1228), and Murder (2009-GS-40-1229). He was also indicted during the April 2010 term for Burglary in the Second Degree (2010-GS-40-1229). Petitioner was represented by Tivis V. Sutherland, IV. On July 18-21, 2011, Petitioner proceeded to jury trial before the Honorable Clifton B. Newman, where he was convicted as indicted. Judge Newman sentenced Petitioner to life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45.

A notice of appeal was filed on Petitioner's behalf and an appeal was perfected by Appellate Defender Susan B. Hackett. Following briefing, the South Carolina Court of Appeals affirmed Petitioner's convictions and sentences. The Remittitur was sent on May 31, 2013

A post-conviction relief (PCR) application was filed on December 16, 2013. Respondent made its Return on April 7, 2014. Petitioner filed an amended application on June 9, 2015, a second on July 6, 2015, and a third on July 15, 2015. An evidentiary hearing was held on July 15, 2015, at the Richland County Courthouse before the Honorable G. Thomas Cooper, Jr. Petitioner was present at the hearing and was represented by Kristy G. Goldberg, Esquire. Respondent was represented by Assistant Attorney General J. Clayton Mitchell 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 to object to jurors' answers during jury qualifications;
 - b. Failure to request a mistrial when a juror who knew the victim's family was allowed to serve on the jury, failure to properly preserve the argument for appeal, and failure to properly preserve and use his peremptory challenges;
 - c. Failure to assert a Batson motion;
 - d. Failure to object to testimony regarding a K-9 track;
 - e. Failure to call witnesses;
2. Ineffective assistance of appellate counsel:
 - a. Failure to challenge Judge Newman's ruling that the victim's autopsy report was admissible; and
 - b. Failure to raise the issue of improper joinder.

The application was denied and dismissed by Order filed December 29, 2015. This appeal follows.

POSITION

Respondent is aware of Appellate Defender Robert M. Dudek'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, as any work that Ms. Hackett performed on Petitioner's direct appeal could only benefit him during his post-conviction relief appeal, especially as she was found not to be ineffective. The fact that counsel believes a potential conflict may exist is insufficient grounds for disqualifying the State of South Carolina's entire Office of Indigent Defense.

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CONCLUSION

For the reasons stated above, this Court should not disqualify the State of South Carolina's entire Office of Indigent Defence due to the possibility of an appearance of a conflict of interest.

Respectfully submitted,

ALAN WILSON
Attorney General

JESSICA E. KINARD
Assistant Attorney General
SC Bar No. 77889

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

By: 
ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina

Oct. 24, 2016

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No.: 2016-000075

ELBERT WALLACE,.....Petitioner,

v.


STATE OF SOUTH CAROLINA,.....Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Return to Motion for Appointment of Outside Counsel has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Robert M. Dudek
Chief Appellate Defender
S.C. Commission on Indigent Defense
Appellate Defense
PO Box 11589
Columbia, SC 29211

This 24th day of October, 2016


FELICIA V. HAYES
Legal Assistant For Respondent