

The Supreme Court of South Carolina

Dan L. Temple, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-001756

Lower Court Case No. 2015CP3700225

ORDER

In an order filed on August 15, 2016, the circuit court denied the application for post-conviction relief in the case. Petitioner's counsel, Hugh W. Welborn, Esquire, served and filed a notice of appeal on August 25, 2016. Thereafter, Mr. Welborn was automatically relieved as counsel when the Division of Appellate Defense assumed responsibility for providing representation to petitioner. Rule 602(e) of the South Carolina Appellate Court Rules (SCACR); Rule 71.1(g) of the South Carolina Rules of Civil Procedure (SCRCP).

By *pro se* motion dated August 25, 2016, petitioner sought relief under Rule 59, SCRCP. The circuit court denied this motion by order dated October 7, 2016, and petitioner has served and filed documents indicating he is appealing that order.

Since petitioner has been constantly represented by Mr. Welborn or the Division of Appellate Defense since the evidentiary hearing in this case, the *pro se* Rule 59 motion should not have been accepted for filing by the clerk of the circuit court. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010);¹ *Jones v. State*, 348 S.C. 13,

¹ "Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel. [citations omitted]. Because petitioner was represented by counsel, the *pro se* motion was not proper, should not have been accepted, and should not have been ruled upon. The motion was essentially a

558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998);
Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

Accordingly, the circuit court order of October 7, 2016, is vacated, and the *pro se* notice of appeal from that order is dismissed as moot.



C.J.

FOR THE COURT

Columbia, South Carolina
December 20, 2016

cc: Johanna Catalina Valenzuela, Esquire
Robert Michael Dudek, Esquire
Mr. Dan Lavert Temple, 240638
The Honorable Beverly H. Whitfield

nullity. . . . We also take this opportunity to remind judges and clerks of court of our directive in *Foster* not to accept substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a party who is represented by counsel."