

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County
The Honorable Brian M. Gibbons, Circuit Court Judge
Appellate Case No. 2016-002282

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JAN 10 2017

SC Court of Appeals

THE STATE,

Respondent,

vs.

TERRELL C. FLOOD,

Appellant.

**RETURN TO MOTION
FOR COUNSEL**

Appellant Flood appeals the denial of his "Motion for sentence reduction and consideration based upon evidence that makes the conviction unreliable, etc. see attachments." This Court, by letter dated December 14, 2016, requested Appellant to file a letter with the Court showing a transcript was ordered from the court reporter and a motion requesting permission to order the transcript outside of the filing deadlines found in Rule 207, SCACR. In response, Appellant advised this Court in a letter dated December 22, 2016 that no hearing was held, and therefore, no transcript needed to be ordered. Judge Gibbons' order denying Appellant's motion bears this out – Judge Gibbons ruled on the pleadings. In his response to this Court, Appellant also requested appointment

of counsel. The State objects to this request.

I.

Appellant was convicted of assault and battery with intent to kill (ABWIK), possession of a firearm during a violent crime, and possession of crack cocaine on June 14, 2004. Appellant's direct appeal was dismissed. His two applications for post-conviction relief were denied. Appellant's habeas corpus petition was also denied.

On September 28, 2012, he filed the aforementioned motion for a reduction in sentence, described in Judge Gibbons' order as follows:

Petitioner argues in his current Motion that he should be granted a reduction in sentence due to discrepancies in the forensic reports regarding the serial number of the firearm that was used. Petitioner argues that the serial number of the gun listed on the arrest warrant does not match the serial number of the gun listed on the SLED forensic report, and that this discrepancy entitled him to a reduction in sentence. The serial number listed on the warrant is 0306801, while the serial number listed on the SLED report is D307801.

Order dated September 13, 2016. Judge Gibbons found the motion untimely. Id.

II.

Appellant is not entitled to assistance of counsel on appeal from a collateral proceeding filed in General Sessions. Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) ("We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions, Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further.") *quoted with approval by* Aice v. State, 305 S.C. 448, 452 n.2, 409 S.E.2d 392, 395 n.2 (1991). Note that state law provides for appointment of counsel in post-conviction relief proceedings but not in a Rule 29, SCRCrimP proceeding. See Aice. Appellant has enjoyed the

entire appellant process, the full “bite at the apple” as described by Aice and is not entitled to representation of counsel in a third state court collateral proceeding. Accordingly, the motion for counsel should be denied.

THEREFORE, the State respectfully requests this Court deny the motion for counsel.

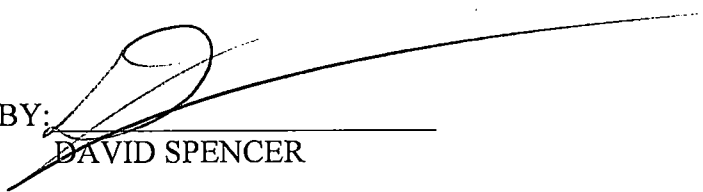
Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

RANDY E. NEWMAN, Jr.
Solicitor, Sixth Judicial Circuit

BY:



DAVID SPENCER

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ATTORNEYS FOR RESPONDENT

January 10, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

On Return to Motion for Counsel to the Court of Appeals
Appeal from Lancaster County
Court of Common Pleas
Honorable Brian M. Gibbons
Appellate Case No. 2016-002282

THE STATE,

Respondent,

vs.

TERRELL C. FLOOD,

Appellant.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Respondent's Return to Motion for Counsel on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Terrell C. Flood, 302995
Lee Correctional Institution
990 Wisacky Highway
Bishopville, S.C. 29010

I further certify that all parties required by Rule to be served have been served.
This 10th day of January, 2017.


KEELY CARTER

Legal Assistant
Office of the Attorney General
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Columbia, SC 29211
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ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

January 10, 2017

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: State v. Terrell C. Flood – Appellate Case No. 2016-002282

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Respondent's Return to Motion for Counsel, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

David Spencer
Senior Assistant Attorney General
Bar Number 68571

DS/kc
Enclosures

cc: Terrell C. Flood, 302995
Victim Services