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S.C. SUPREME COURT

January 12, 2017

The Honorable Lee S. Alford
South Carolina Circuit Court
1675-1J York Highway
York, South Carolina 29745

Re: *James D. Robertson vs. State of South Carolina*
C.A. No. 2011-CP-46-00072

Dear Judge Alford:

Enclosed please find a copy of the South Carolina Supreme Court's Opinion in *Robertson v. State*, Op. No. 27691 (S.C.S.Ct., Dec. 16, 2016), which was on filed December 14, 2016, as well as the December 14, 2016 Remittitur. In its Opinion, a majority of the Supreme Court reversed Your Honor's earlier Order summarily dismissing the 2011 Application and judgment entered thereon. In pertinent part, the Court concluded that:

Despite this Court's express ruling in *Kelly*, Petitioner seeks to have the Court create a state remedy that is the equivalent of the federal remedy established by *Martinez*. We decline to do so. Instead, we reaffirm *Kelly* and extend its holding to encompass capital PCR cases. However, we conclude that Petitioner's allegation that prior PCR counsel were unqualified is not foreclosed by *Aice* or its progeny and constitutes a "sufficient reason" to avoid the prohibition of section 17-27-90 against successive PCR applications. Furthermore, we find that Petitioner's 2011 Application was filed within the one-year statute of limitations provided by section 17-27-45 as prior PCR counsel's alleged lack of qualification was not discovered until federal counsel was appointed in 2011. Additionally, we hold that the PCR judge erroneously construed section 17-27-160(B) as we conclude that at least one attorney appointed pursuant to this code section must have either (1) prior experience in capital PCR proceedings, or (2) capital trial experience and capital PCR training or education.

Because there is a genuine issue of fact as to whether prior PCR counsel were statutorily qualified. Petitioner should be afforded a hearing on this limited issue. *Cf. McCoy*, 401 S.C. at 370, 737 S.E.2d at 627 ("Although Petitioner's PCR claim

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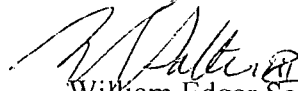
may ultimately prove to be untimely, successive, or perhaps unsuccessful on the merits, the PCR judge erred in granting the State's motion for summary dismissal because genuine issues of material fact exist as to whether Petitioner's PCR claim is successive or untimely."). If prior PCR counsel are deemed unqualified and, as a result, deficient, the PCR judge must make a determination whether under *Strickland*, Petitioner was prejudiced. Accordingly, we reverse the PCR judge's order and remand the matter for a hearing.

Robertson, at p. 15.

Because the appellate proceedings have concluded, I am writing to request that a limited hearing in accordance with the Supreme Court's decision be scheduled at Your Honor's earliest convenience. By copy of this letter I am advising Mr. Robertson's counsel of my request.

Thank you for your assistance in this matter.

Sincerely,



William Edgar Salter, III

Senior Assistant Attorney General

WES/dmd

Enclosures

cc: The Honorable David Hamilton, Clerk of Court, York County
The Honorable Daniel E. Shearouse, Clerk, South Carolina Supreme Court
The Honorable Kevin S. Brackett, Solicitor, 16th Judicial Circuit
Emily Paavola, Esquire (with enclosures)
Keir M. Weyble, Esquire (with enclosures)
Trisha Allen, Victim Services