

LAW OFFICE OF
WINTER & RHODEN, LLC

WILLIAM G. RHODEN
ATTORNEY AT LAW

221 E. FLOYD BAKER BLVD.
GAFFNEY, SOUTH CAROLINA 29340
PHONE (864) 489-8128
FAX (864) 489-8806

WILLIAM E. WINTER, JR.
(1944 - 2008)

November 7, 2012

Jenny Abbott Kitchings, Clerk
S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State vs. Wessinger
Appellate Case No.: 2012-213064

Dear Ms. Kitchings:

Thank you for talking with me on November 2, 2012 concerning your letter of October 30, 2012. I do not believe it is proper for me to comply with the directive of your letter for the following reasons.

I am retained counsel for Mr. Wessinger. On September 5, 2012 Mr. Wessinger plead guilty to two (2) counts of indecent exposure. During the guilty plea, over my objections, the plea judge made a finding that the offense of indecent exposure was a sexually violent offense pursuant to Section 44-48-30(2)(0). The appeal of this ruling has been undertaken based upon my advice to Mr. Wessinger because of the collateral consequences of this ruling by the plea judge.

Your directive of October 30, 2012 is contrary to the decisions of the South Carolina Supreme Court whereby the Court has stated that a Defendant has no right to "hybrid representation". *Foster v. State*, 298 SC 306, 379 SE 2d 907 (1989). The S.C. Supreme Court has consistently ruled that a party represented by counsel has no right to file documents directly with the Court. In *Foster* the S.C. Supreme Court instructed the Clerk of Court to return documents not submitted through counsel. In the case of *Jones v. State*, 348 S.C. 13, 558 SE 2d 517 (2002) the S.C. Supreme Court again affirmed its prohibition against hybrid representation. In *Jones* the Defendant, through counsel, petitioned for a writ of certiorari. The Defendant then tried to file a *pro se* amended petition and filed a Motion to do so. Defense counsel then submitted the amended petition on behalf of his client. In this situation the Supreme Court held that defense counsel cannot serve as a mere conduit for *pro se* documents to avoid the prohibition. The Supreme Court in its opinion in *Jones* states,

RECEIVED
NOV 09 2012
appeals

Page 2
November 7, 2012
Jenny Abbott Kitchings, Clerk
S.C. Court of Appeals

There is no constitutional right to hybrid representation either at trial or on appeal. *Foster v. State, supra*. At the appellate stage, particularly, succinct, relevant legal arguments are most likely to be persuasive. Counsel is best able to use professional judgment to determine which arguments are relevant and should be presented for appellate review. While counsel may choose to submit arguments urged by his client, counsel has an obligation to review those arguments for possible relevance and merit before submitting them. In other words, counsel cannot serve as a mere conduit for *pro se* documents in an effort to avoid the prohibition against hybrid representation and the displeasure of his client. As stated by the Supreme Court of Pennsylvania, when faced with a situation similar to this one,

[t]ails should not wag dogs. Merely because an appellant believes that the irrelevant is relevant is no reason to turn the system on its head and solemnly contemplate the wisdom of a person who does not have the sense to be guided by experts in an area where he himself possesses no expertise.

Commonwealth v. Ellis, 534 Pa. 176, 626 A. 2d 1137, 1140 (1993).

I would also emphasize that this is not a situation where the dictates of *Anders v. California*, 386 US 738 (1967) would apply. It is my intent to pursue the only appealable issue in this matter and I believe there is substantial merit to this appeal.

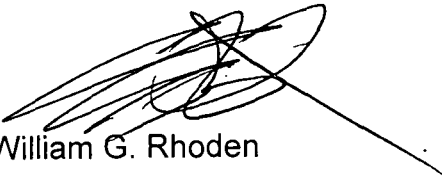
In conclusion, I believe that I cannot follow the instructions of your letter of October 30, 2012 without violating the prohibition against hybrid representation. Further, I do not believe it would be in my client's best interest to correspond directly with your office or the Court. Mr. Wessinger is currently incarcerated and has an eighth grade education. He will either not understand how to respond or worst, he will solicit the advice of a "jailhouse" lawyer" and submit a response that may hurt his cause. I am faced with the conundrum of trying to respect the directives of your office and zealously representing my client and protecting his interest.

Page 3
November 7, 2012
Jenny Abbot Kitchings, Clerk
S.C. Court of Appeals

I would ask that you reconsider your position in this matter.

With best regards, I am,

Sincerely,



William G. Rhoden

WGR/dpf
cc: file