

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Georgetown County

Honorable W. Jeffrey Young, Circuit Court Judge

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Appellate Case No. 2014-000211

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RECEIVED

FEB 09 2017

S.C. SUPREME COURT

STEPHEN C. STANKO #6022,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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MOTION FOR APPOINTMENT  
OF OUTSIDE COUNSEL

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The undersigned respectfully moves this Court for the appointment of outside counsel for petitioner, Stephen Stanko, based on a conflict of interest. In support of this motion, the undersigned would show this Court:

(1) Petitioner was indicted by the Georgetown County grand jury for the offenses of murder, two counts of kidnapping, assault and battery with intent to kill, criminal sexual conduct in the first degree, and armed robbery.

(2) The State sought the death penalty on the murder charge. Petitioner was represented at trial by William I. Diggs and Gerald Kelly. He was found guilty of all counts. Following a penalty hearing, the jury recommended that Mr. Stanko be sentenced to death, a death sentence was imposed by the Honorable Deadra L. Jefferson on August 18, 2006.

(3) Petitioner appealed his convictions and sentences. He was represented on direct appeal by Joseph L. Savitz and Katherine Hudgins of the South Carolina Office of Appellate Defense. This Court affirmed Mr. Stanko's convictions and death sentence. *State v. Stanko*, 376 S.C. 571, 658 S.E.2d 94 (2008). Rehearing was denied on March 19, 2008.

(4) Petitioner filed a timely application for post-conviction relief ("PCR") in the Georgetown County Court of Common Pleas. Petitioner was represented by Stuart M. Axelrod and Tristan Shaffer at a hearing on his PCR application. In the final amended application for PCR, Petitioner raised issues of ineffectiveness of appellate counsel in addition to ineffective assistance of trial counsel. Appellate counsel Joseph Savitz testified at the PCR hearing. The circuit court's order of dismissal makes specific lengthy findings regarding the issue of ineffective assistance of appellate counsel and denies relief on that basis on pages 75-86. Those pages of the order are attached as Exhibit A. Petitioner filed a timely notice of intent to appeal in this Court.

(5) Undersigned counsel respectfully requests that she be appointed to represent Petitioner in this appeal. Outside counsel should be appointed because the Office of Appellate Defense has a conflict of interest given that Joseph Savitz, the former Chief Attorney of the Office of Appellate Defense<sup>1</sup> was appellate counsel and issues regarding the competency of his representation will be raised in the instant appeal. Katherine Hudgins is also currently an appellate defender at the

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<sup>1</sup> Mr. Savitz was, at the time, the supervisor of the Current Chief Appellate Defender.

Office of Appellate Defense. Moreover, given the unique circumstances of this case, appointment of the undersigned as outside counsel would be the most efficient use of judicial time and resources.

(6) Appointment of undersigned counsel would create judicial efficiencies because she, along with Emily Paavola, represents Petitioner in his PCR proceedings arising out of a death sentence imposed in Horry County. The Georgetown County death sentence (the instant case) and the Horry County death sentence arise out of the same incident, with two murders taking place within twenty-four hours – the first in Georgetown and the second in Horry County. Petitioner’s cases proceeded to trial with the Georgetown County case taking place first. Petitioner was represented by the same lead trial attorney (William Diggs) in both the Georgetown and Horry County cases. As a result, undersigned counsel became intimately familiar with the record of both cases while litigating the PCR claims in the Horry County case. Additionally, undersigned counsel attended the PCR hearing in both cases and would need little additional time to get fully up to speed in preparation for this appeal.<sup>2</sup> Ms. Paavola, who is similarly familiar with the records in both of Petitioner’s cases, has agreed, if undersigned counsel is appointed as outside counsel, to assist with this case in a *pro bono* capacity.

(7) The Georgetown and Horry County cases are now in nearly identical procedural postures. Petitioner’s Motion to Alter or Amend the Georgetown County PCR denial was denied on January 30, 2017. Petitioner also filed a Motion to Alter or Amend the Horry County PCR denial. The Horry County circuit court judge held a hearing on August 1, 2016 and indicated he would deny Petitioner’s Motion to Alter or Amend in a written order. Petitioner, thus, plans to appeal the Horry County case to this Court upon receipt of the denial of his Horry County Motion to Alter or Amend.

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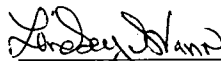
<sup>2</sup> The record in the Georgetown County case (prior to the post-conviction relief proceedings) totaled over 3,700 pages. Similarly, the record in the Horry County case (prior to the post-conviction relief proceedings) totaled over 3,500 pages. Undersigned counsel has previously reviewed and become familiar with both records, which combined total over 7,000 pages.

In the Horry County case, Robert Dudek, the Chief Appellate Defender at the Office of Appellate Defense, represented Petitioner on direct appeal. Petitioner's Horry County PCR application alleged ineffective assistance of appellate counsel and Mr. Dudek testified at the Horry County PCR hearing. Undersigned counsel, therefore, asserts that the Office of Appellate Defense will be conflicted from representing Petitioner in his Horry County appeal and intends to move for appointment in that case as well. Appointing the same counsel in both cases, which arose out of the same facts, would preserve judicial time and resources.

(8) Finally, though he understands he does not have a right to counsel of his choice, Petitioner has indicated that he desires undersigned counsel to represent him in appeal of both of his death penalty PCR appeals.

Respectfully, for the above reasons, undersigned counsel requests that this Court appoint her to represent Petitioner on appeal. Furthermore, counsel requests that time limits governing assembling of the appendix and filing of a petition for a *writ of certiorari* be tolled during the pendency of this motion.

Respectfully submitted,



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**LINDSEY S. VANN #101408**

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February 9, 2017.

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Appeal from Georgetown County

Honorable W. Jeffrey Young, Circuit Court Judge  
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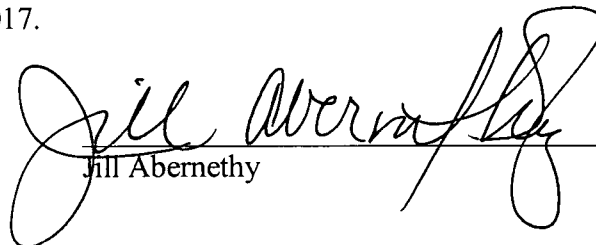
V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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CERTIFICATE OF SERVICE  
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The undersigned attorney hereby certifies that a true copy of the Motion for Appointment of Outside Counsel in the above referenced case has been served upon the Office of the Attorney General via US Mail this 9<sup>th</sup> day of February, 2017.

  
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Jill Abernethy