

ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal to Lexington County

MAR 16 2017

Doyet A. Early, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

AUGUST BYRON KREIS, III,

APPELLANT.

APPELLATE CASE NO. 2015-002340

RETURN TO MOTION TO RELIEVE COUNSEL

Undersigned counsel making the return to appellant's motion to relieve him as counsel would respectfully show this court:

1. This is appellant's second motion to relieve undersigned counsel. The Honorable James E. Lockemy denied the first motion to relieve counsel in his order dated January 26, 2017. See, Exhibit A.
2. In response to appellant's first motion to relieve counsel undersigned counsel on December 28, 2016 noted that a defendant on appeal does not have a constitutional right to represent himself. See, State v. Roberts, 364 S.C. 583, 614 S.E.2d 626 (2005). See, Exhibits B and C. Further, a pro se

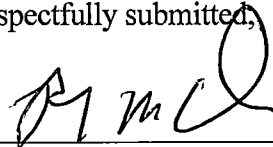
defendant at trial can only harm himself. A pro se appellant on appeal can do violence to precedent or miss setting positive precedent that other criminal defendants would be bound by given an unskilled appellant acting as his own appellate lawyer.

3. In his present motion to relieve counsel appellant essentially makes the same request he did in his first motion by stating again in his letter: "I don't want you as my lawyer nor anyone at your office. I fired you off my appeals for [ineffective] assistance And no court is going to force me to keep you as my lawyer ..." See, Exhibit D.

4. Undersigned counsel again leaves this second motion to relieve counsel to the sound discretion of this Court. Further, as to any disagreement about raising any other issue(s) undersigned counsel has informed appellant if undersigned counsel missed a winning issue that appellant could raise that issue in post-conviction relief (PCR) as an issue of ineffective assistance of appellate counsel. The final brief in this case was filed on March 2, 2017 with this Court. Counsel views the motion to relieve him as misguided, but does not take it personally, and leaves the matter to the sound discretion of this Court.

WHEREFORE counsel leaves the second motion to relieve him to the sound discretion of this Court.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

March 16, 2017

EXHIBIT A

200

The South Carolina Court of Appeals

The State, Respondent,

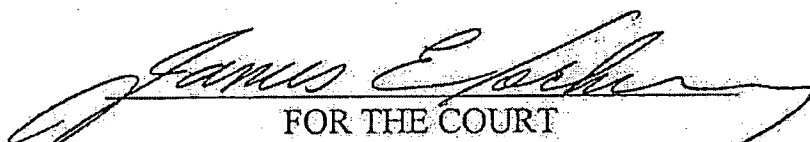
v.

August Byron Kreis, III, Appellant.

Appellate Case No. 2015-002340

ORDER

After careful consideration, Appellant's motion to relieve counsel and proceed pro se is denied. *State v. Roberts*, 364 S.C. 583, 588–89, 614 S.E.2d 626, 629 (2005) ("Appellant clearly does not have a federal constitutional right to proceed pro se in this appeal from his criminal conviction. We also find there is no state constitutional provision which confers such a right. . . . Moreover, appellate counsel has no duty to raise every non-frivolous issue presented by the record and must be allowed to exercise reasonable professional judgment.").


FOR THE COURT

Columbia, South Carolina

cc:

August Byron Kreis, III, 00365998
Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire *mpm*
Vann Henry Gunter, Jr., Esquire

FILED

January 26, 2017

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JAN 26 2017

APPELLATE DEFENSE
APPELLATE DEFENSE

EXHIBIT B



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 16, 2016

Mr. Robert Michael Dudek, Esquire
PO Box 11589
Columbia SC 29211

Re: The State v. August B. Kreis, III
Appellate Case No. 2015-002340

Dear Counsel:

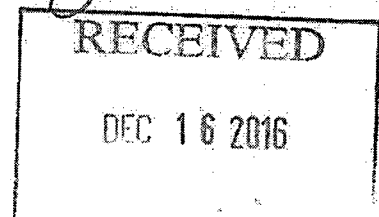
The Court received your client's motion to relieve counsel on December 12, 2016. Within ten (10) days of the date of this letter please file a return to this motion. A copy of the motion is attached.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: August Byron Kreis, III, 00365998
Alan McCrory Wilson, Esquire
Vann Henry Gunter, Jr., Esquire



In the South Carolina Court of Appeals - Columbia

August B. Kreis, III - 365998) CA No: 2015-002340

ProSe 504/ADA-Vet.)

Double Amputee)

- vs -)

The State;)

L.M. Ruder - Counsel)

Defendant)

Motion to Release Sheriff. Assist. Appellant

Counsel Ruder, for failing to bring ProSe's

Constat. violations & ProSe must seek to file

32 pgs. ProSe Memorandum Brief. With this

Motion Clerk Allen blocked on Nov. 30, 2016.

1.) ProSe is forced to remove Sheriff. Assist. Appellant Counsel R.M. Ruder. off his appeal, so he can raise all Constat. violations, to exhaust them for Fed. Habeas. review, if his ProSe's Memorandum Brief 32 pgs. attached reliefs isn't granted & ProSe seeks to proceed. ProSe. so his issues will be proper before the Court for review & correct errors of law;

See: *Lit*, 880 F.2d 1040, 1047 (9th Cir. 1989) 6th Amend. right to proceed ProSe)

See: *Myers v. Collins*, 8 F.3d 249, 252 (5th Cir. 1993) State criminal Def. has a Constat. right to present ProSe Motions & brief on appeal by 6th Amend. & Supremacy Law over rules state law);

Clerk N.C. Allen, Forced ProSe to remove Ruder by refusal to file 32 pgs. nor give Ruder them to file for ProSe, which denied access to Counsel to argue his brief issues.

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1-2

DEC 16 2016

DEC 12 2016

SC Court of Appeals

2.) These prayer court will not just grant relief's & hear his these Memorandum Brief speedily in Emergency proceedings.

Dated: Dec. 5th, 2016

Respectfully Submitted,
August B. Kreis, III #365998

A-K TOP GUN NAVY-Vet.

504/ADA - Double Amputee.

"Certificate of Services"

3.) These certifies he served R.M. Rudel & A.M. Wilson a copy of Motion to remove Rudel as forced to by Clerk Allen & Court's, Miller, 697 S.E. 2d 527c (S.C. 2010) holding is Unconstr. & Viol's Supremacy Clause, at S.C. Comm. of Indigent Defendants P.O. Box 11589, Colo., SC 29201 & Wilson, 1000 Assembly St. Rm 519, Colo., SC 29201; on Dec. 5, 2016 one copy of Motion to remove Rudel & 32 pgs. Sent to G.A. Kitchings, at P.O. Box 11629, Colo., SC 29211; & sworn to under penalty of perjury as true & correct, & Ms. Merchant Mail Dir. will serve all by Inter-Agency Mail from below address.

Dated: Dec. 5, 2016

Respectfully Submitted,
August B. Kreis, III #365998

Dear Clerk Kitchings,

Please file my Motion to remove Rudel, as your letter dated Nov. 30, 2016, forced me to do 32 pgs plus 20 pgs & place before the court, for Emergency appeal hearings. Thanks & God's blessings for the holidays!

Sincerely, A.B. Kreis, III #365998

EXHIBIT C



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 28, 2016

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

Re: The State v. August B. Kreis, III
Appellate Case No. 2015-002340

Dear Ms. Kitchings:

Please accept this letter in lieu of a formal return to the *pro se* motion to relieve counsel filed by appellant, August B. Kreis, III, on December 12, 2016.

Counsel has done his best in raising the issues he thinks provided appellant with the best opportunity to obtain a new trial on direct appeal. Although counsel disagrees with appellant's motion, and believes that it is not in his best interest, counsel does not wish to frustrate the wishes of Mr. Kreis. Therefore, counsel takes no position on this motion and leaves the decision to the sound discretion of this Court. See, State v. Roberts, 364 S.C. 583, 614 S.E.2d 626 (2005); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998).

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/blw

cc: Vann Henry Gunter, Jr., Esquire
August Byron Kreis, III, #365998

EXHIBIT D



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
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www.sccourts.org

March 07, 2017

Mr. Robert Michael Dudek, Esquire

PO Box 11589

Columbia SC 29211

Re: The State v. August B. Kreis, III
Appellate Case No. 2015-002340

Dear Counsel:

The Court received your client's correspondence dated February 7, 2017. The Court construes this document a motion to relieve counsel. Within ten (10) days of the date of this letter please file a return to this motion. A copy of the motion is attached.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: August Byron Kreis, III, 00365998
Alan McCrory Wilson, Esquire
Vann Henry Gunter, Jr., Esquire

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MAR 07 2017

APPELLATE DEFENSE

THE SOUTH CAROLINA COURT OF APPEALS - COLUMBIA

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Dear Ref. E.M. Oude R. &
Court of Appeals Judges &
V.H. Gwenter - A.A. Gen.

FEB 07 2017

Feb. 2, 2017

Wed. 1:00 P.M.

SC Court of Appeals

CA No. 2015-002340 - Appeals

(your notice again - you are fired!)

1.) I don't want you as my lawyer nor anyone at your office. I fired you off my appeals for being ineff. Oursid. on 12, & no court is going to force me to keep you as a lawyer, when you are a Ref. in my Fed. & State law suits. Prose v. David Lee, Sol, et al. 48 of 5,000 conspirators, which you & court & your staff, Atty. there are all Refs. in those 5,000 conspirators.

2.) Filed Jan 30-31, 17 of 28 & 30 pgs. with R.L. Blume, McBride, & McDonald, & Carrigg - Clerks, & A.M. Wilson, V.H. Gwenter, S. Lewis #, J. K. Abese & R.L. Bank, Jr., all were served copies.

3.) To remove yourself & your office & have Court to transfer my Appeals to North Carolina neutral quad. as I served the judges & V.H. Gwenter today of 1-31-17 of 5 pgs. & have a street lawyer appointed to replace ya'll.

See: Strickland, 466 U.S. 668, 692 (1984) & Hopewell, 58 F.3d 38, 41 (2d Cir. 1995) & Swartz, 1995 F.2d 1042, 1045-48 (4th Cir. 1992) Conflic of interest, because Prose filed Prose motion, & counsel has personal interest to do Swartz case his & conspirators & counselors, arrest & suits in self & arrests of Sols. & Atty. Gen. & Judges & Clerks).

So take a hike, you are ineff. & a conspirator Ref. & face arrest, same as judges & Atty. Gens. do.

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FEB 07 2017

Respectfully Submitted,

Dated Feb 2, 2017,

SC Court of Appeals

August B. Kreis, III, #365998

Certificate of Services

4. These parties have served Reps. R. M. Anderson & V. H. Givens & Clerk
Ritchings & Judges Reps. at their addresses Feb. 2, 17 of 2 pgs.
by Ms. Gannell & Sexton, mail staff at below address & sworn
to under penalty of perjury as true;

Respectfully Submitted

x August B. Kreis, III, #365998

Perry Court - Inad. AU-193A / 430 Darlawn Rd / Polyer, So. Carolina 29669

Dear Clerk Ritchings

Please file this letter to fire Atty. Dudley & the Atty. Gen. office off
my appeal

Sincerely,

x August B. Kreis, III, #365998

AUGUST B. KREIS III, 365998
PERRY CORR. INST. AU-193A
430 OAKLAWN RD.
PELZER, SO. CAR. 29669

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FEB 02 2017

PCI Mailroom

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FEB 07 2017

JENNY A. KITCHINGS-CLERK SC Court of Appeals
SOUTH CAROLINA COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal to Lexington County

Doyet A. Early, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

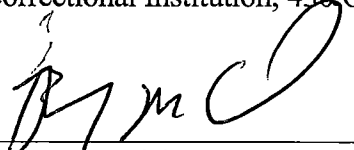
AUGUST BYRON KREIS, III,

APPELLANT

APPELLATE CASE NO. 2015-002340

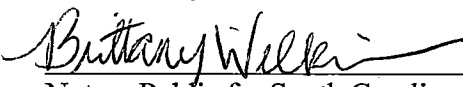
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the return to motion to relieve counsel in the above-referenced case has been served upon opposing counsel, V. Henry Gunter, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and August Byron Kreis, III, #365998, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 16th day of March, 2017.



Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 16th day of March, 2017.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: November 3, 2026.

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MAR 16 2017
SC Court of Appeals



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 16, 2017

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MAR 16 2017

SC Court of Appeals

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

Re: The State v. August Byron Kreis, III
Appellate Case No. 2015-002340

Dear Ms. Kitchings:

Enclosed please find an original and six copies of the return to the motion to relieve counsel.

Thank you for your assistance in this matter.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/blw

cc: V. Henry Gunter, Jr., Esquire
August Byron Kreis, III, #365998