

April 12, 2017

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APR 13 2017

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

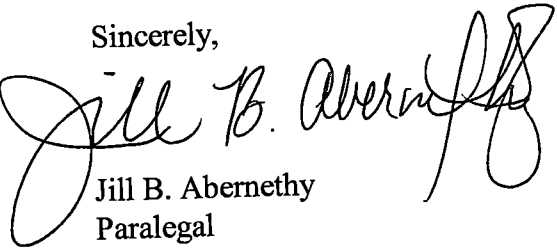
RE: *John B. Bonner, SCDC#338030 v. State of South Carolina*
2017-000758

Dear Mr. Shearouse:

Please find enclosed for filing, with certificate of service, the original and seven copy of the Respondent's Motion for Appointment of Outside Counsel in regards to the above captioned case. Please clock-in the extra copy and return it to me in the enclosed self-addressed stamped envelope.

If you should have any questions, please feel free to contact this office.

Sincerely,


Jill B. Abernethy
Paralegal

cc: Alicia A. Olive, Esq.
Susan B. Hackett, Esq.
Steven D. Epps, Esq.
John Bonner

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Cherokee County
Court of Common Pleas

Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2017-000758

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S.C. SUPREME COURT

JOHN B. BONNER, #338030,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER.

MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

The undersigned respectfully moves this Court for the appointment of outside counsel for Respondent, John B. Bonner, based on a conflict of interest. In support of this motion, the undersigned would show this Court:

1) Respondent was convicted and sentenced in Cherokee County Circuit Court on November 17, 2009 for burglary – 1st degree (life without parole (“LWOP”)), burglary – 2nd degree (15 years), kidnapping (30 years), armed robbery (30 years), assault and battery of a high and aggravated nature

("ABHAN") (10 years), and grand larceny (5 years). All sentences were to run concurrent except for the 10 year sentence for ABHAN, which ran consecutive to all sentences.

2) The Court of Appeals reversed Respondent's sentence of LWOP for the burglary – 1st under *Graham v. Florida*, 130 S. Ct. 2011, 2034 (2010) (holding "[t]he Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide"). *State v. Bonner*, 400 S.C. 561, 735 S.E.2d 525 (Ct. App. 2012).

3) Respondent, represented by his original trial counsel, Joshua Schultz was resentenced on January 22, 2013 by Judge J. Derham Cole to a term of 60 years on the burglary – 1st degree charge. All other sentences remained in place, including the 10 year sentence for the ABHAN charge which was to run consecutively to the 60 year sentence imposed for burglary – 1st degree.

4) Because Schultz did not object to the imposition of the sentence at the resentencing proceeding, the Court of Appeals affirmed the sentence. *State v. Bonner*, Op. No. 2014-UP-401 (S.C.Ct.App. Nov. 12, 2014).

5) In post-conviction relief ("PCR") proceedings, Respondent asserted, *inter alia*, that his resentencing counsel were ineffective in failing to object to the sentence, which, due to its length, constituted the functional equivalent of an LWOP sentence and violated the Eighth Amendment under *Graham*. The PCR court agreed with Respondent and ordered he be resentenced in accordance with *Graham*. The State filed a Notice of Appeal in this Court on March 29, 2017.


6) Also in PCR proceedings, Respondent alleged his appellate counsel, was ineffective for failing to adequately challenge the imposition of the sentence in appealing his resentencing. Appellate counsel Susan Hackett testified at the PCR hearing. The PCR court denied relief on Respondent's claim of ineffective assistance of appellate counsel.

7) Undersigned counsel respectfully requests that she be appointed to represent Respondent on appeal. Outside counsel should be appointed because Susan Hackett, an attorney in the Division of Appellate Defense, was appellate counsel and issues regarding the competency of her representation were raised in PCR. Ms. Hackett still works as an attorney at the Division of Appellate Defense, creating a conflict of interest if an attorney in the office were to handle this case on appeal. Moreover, undersigned counsel has experience and training in representing juveniles facing life without parole sentences and term of years sentences that may constitute the functional equivalent of such a sentence.

8) Finally, although he understands he does not have a right to counsel of choice, Respondent has met with the undersigned and indicated he desires undersigned counsel to represent him on appeal.

Respectfully, for the above reasons, undersigned counsel requests that this Court appoint her to represent Respondent on appeal.

Respectfully submitted,



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JOHN B. BONNER, #338030,

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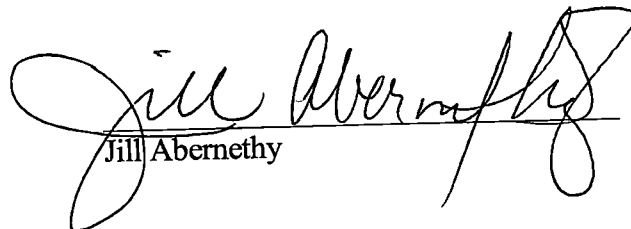
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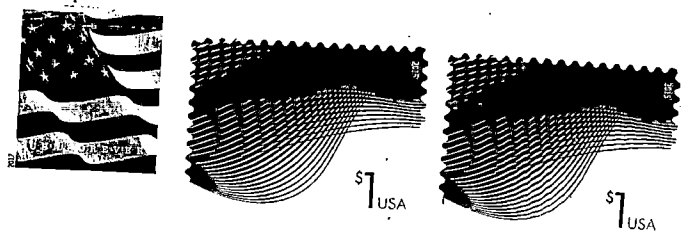
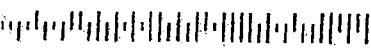
STATE OF SOUTH CAROLINA,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned 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 12th day of April, 2017.


Jill Abernethy



JUSTICE (360) ADVANCING EQUALITY
IN CAPITAL CASES

900 ELMWOOD AVENUE
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The Honorable Daniel E. Shearouse
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