

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

Appeal from Cherokee County

RECEIVED

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

APR 24 2017

JOHN BENDARIAN BONNER,

S.C. SUPREME COURT

RESPONDENT

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2017-000758

RETURN TO MOTION FOR APPOINTMENT
OF OUTSIDE COUNSEL

Undersigned Counsel submits the following Return to Motion for Appointment of Outside Counsel submitted by Lindsey S. Vann on behalf of Respondent who was granted resentencing pursuant to Graham v. Florida, 130 S.Ct. 2011 (2010) after his trial counsel was found to be ineffective for failing to object to a sentence which, due to its length, constituted the functional equivalent of a life sentence.

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 ("ABRAN") (10 years), and grand larceny (5 years). All

sentences were to run concurrent except for the 10 year sentence for ABRAN, which ran consecutive to all sentences.

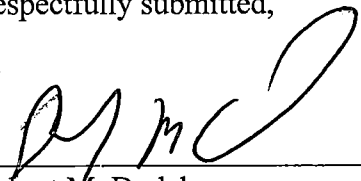
2. Chief Deputy Appellate Defender Wanda H. Carter and Acting Appellate Defender Tristan M. Shaffer represented Respondent on appeal. The Court of Appeals applied the principle of State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct.App.2009), on correcting an obviously illegal sentence, even though there was no objection, for purposes of judicial economy. Therefore, the Court 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. All other sentences remained in place, including the 10 year sentence for the ABRAN charge which was to run consecutively to the 60 year sentence imposed for burglary- 1st degree.
4. Because counsel 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 does not think a conflict of interest exists with the Appellate Division representing Respondent in this case. This is not a case where outside counsel was also PCR counsel, had an established relationship with the client, and the interests of judicial economy made the appointment of outside counsel necessary considering the totality of the circumstances. Since an allegation of ineffective assistance of counsel was made against Appellate Defender Susan Hackett she would not be appointed to handle this case if it remains within the Office of Appellate Defense. Therefore, undersigned counsel leaves this matter to the sound discretion of this Court.

WHEREFORE, undersigned counsel leaves the matter of the motion for the appointment of outside counsel to the sound discretion of this Court.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

April 24, 2017

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Cherokee County

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

JOHN BENDARIAN BONNER,

RESPONDENT

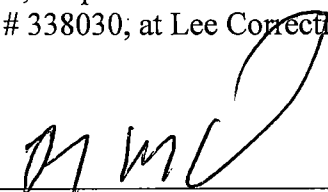
V.

STATE OF SOUTH CAROLINA,

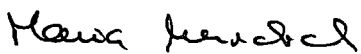
PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to the Motion for Appointment of Outside Counsel in the above referenced case has been served upon opposing counsel, Alicia A. Olive, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and upon Lindsey S. Vann, Esquire at 900 Elmwood Avenue, Suite 200, Columbia, SC 29201, and upon John B. Bonner, # 338030, at Lee Correctional, this 24th day of April, 2017.


Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 24th day of April, 2017.



Notary Public for South Carolina
My Commission Expires: July 3, 2023.



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

April 24, 2017

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, SC 29211

RECEIVED

APR 24 2017

S.C. SUPREME COURT

Re: John Bendarian Bonner v. State of South Carolina
Appellate Case No. 2017-000758

Dear Mr. Shearouse:

Enclosed please find an original and six copies of the Return to the Motion for Appointment of Outside Counsel, along with a Certificate of Service for the same. Please return a stamp clocked copy to me for our records.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/rd
Enclosures

cc: Alicia A. Olive, Esquire
Lindsey S. Vann, Esquire
John B. Bonner, #338030