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**MAY 11 2017**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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COUNTY OF GREENVILLE  
Capital-PCR Case, Court of Common Pleas

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Circuit Court Case No. 2014-CP-23-04632

C/A No. \_\_\_\_\_

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BRAD K. SIGMON ..... Appellant-Petitioner.

vs.

STATE OF SOUTH CAROLINA ..... Respondent-Defendant.

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STATEMENT OF EXPLANATION  
PURSUANT TO RULE 243(c), SCACR

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Appellant-Petitioner Brad K. Sigmon, makes the following statement of explanation pursuant to Rule 243(c), SCACR.

Appellant is a death-sentenced inmate at the S.C. Department of Corrections.<sup>1</sup> On August 21, 2014, Appellant filed a second-in-time Application for Post-Conviction Relief (PCR). This Court assigned the Hon. J.C. Nicholson, Jr., with jurisdiction of this matter. In the PCR Application, Appellant claimed that the attorney who served as lead counsel at the capital trial was not qualified under the state statute nor under the S.C. Supreme Court Rule. In fact, lead counsel had *never* tried any type of criminal case, much less any felony trials. As Appellant investigated

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<sup>1</sup> The S.C. Office of Appellate Defense has agreed to represent Appellant after the date of the Notice of Appeal, and to substitute for undersigned appointed counsel in this appeal. The Appellant is indigent and incarcerated at Lieber Correctional Institute, S.C. Dept. of Corrections.

the case, it further appeared that co-counsel also did not have the requisite three years' felony trial experience required by the statute and the Rule, although he had alleged that he had. Regardless, the lead attorney was not qualified to serve as lead counsel. Appellant never had an evidentiary hearing on this claim at his PCR.

While the PCR Judge held four (4) hearings in this matter, at none of the hearings was Appellant's counsel allowed to present evidence or have an evidentiary hearing on the issue of Appellant's trial counsel not being qualified under the statute or Supreme Court rules to serve as lead counsel in a capital trial. The four (4) hearings were as follows: November 12, 2014 (appointment of counsel hearing); February 12, 2015 (Motion to stay proceedings pending the S.C. Supreme Court's determination in *Robertson v. State, infra.*); August 11, 2015 (hearing on State's Motion to Dismiss and for Summary Judgment); and January 20, 2017 (supplemental hearing on State's Motion to Dismiss and for Summary Judgment).

Appellant maintains that his trial counsel were not qualified under the statutory definition and court rules to serve as lead counsel in a death penalty case, and specifically that the lead attorney was not qualified whatsoever – having no criminal trial experience at all. S.C. Code §16-3-26(B)(1)(S.C. Code Ann.)(qualifications for trial counsel in a capital case); Rule 421(b), SCACR (provides for “Certification of attorneys in Death Penalty cases” and “lead counsel”); *See also, State v. Diddlemeyer*, 296 S.C. 235, 371 S.E.2d 793 (1988)(lack of qualifications by trial counsel in a capital case).

In *Robertson v. State*, Op. No. 2012-205909, 2016 WL 7230196 (S.C. Dec. 14, 2016), this Court held that where an issue existed as to whether PCR counsel were qualified under the statutory definition of qualified counsel for a capital-PCR applicant, then the Petitioner was entitled to an evidentiary hearing on this issue. It is respectfully submitted that Appellant Sigmon comes within

the ambit of *Robertson* because the lead counsel appointed to represent him in a capital case was not qualified to serve as lead counsel under the statute or Supreme Court Rule.

The PCR Court's granting of the State's Summary Judgment motion and dismissing Appellant's PCR as impermissibly successive is unwarranted in light of *Robertson, supra*. The *Robertson* Court stated quite clearly that a claim regarding the lack of qualifications of counsel for a death penalty litigant constituted sufficient grounds for an evidentiary hearing at a second-in-time PCR:

We conclude Petitioner's allegation that he was denied a state-created right to qualified counsel constitutes a "sufficient reason" to permit a successive PCR application under section 17-27-90.

...

Contrary to the State's position, we find Petitioner did not waive his challenge to counsel's lack of qualification by failing to raise this issue during the 2006 PCR proceeding. We believe it is unreasonable to think that an indigent PCR applicant, who relies on the State to appoint qualified counsel, would have the knowledge to question counsel's qualifications at the onset of the proceeding.

*Robertson v. State*, Op. No. 2012-205909, 2016 WL 7230196, at \*6 (S.C. Dec. 14, 2016).

The distinction between PCR counsel or trial counsel is a distinction without a difference regarding qualifications of counsel to represent a capital litigant. Furthermore, the factors in favor of resolving sooner rather than later whether *Robertson's* counsel were not qualified under state law to represent a capital litigant, applies equally to Appellant Sigmon.

...[I]t seems nonsensical to require a capital PCR applicant to exhaust all state and federal relief with the assistance of counsel who may ultimately be found

unqualified. In the interest of judicial economy and fundamental fairness, we believe an allegation that capital PCR counsel is unqualified should be resolved at the earliest point in the proceedings and not after an applicant has exhausted all permitted relief.

*Id.* at \*6, fn. 13.

In Appellant's case, it is trial counsel that was unqualified, so that the same interest for judicial economy and fundamental fairness applies to resolve this matter now, and not later.

Furthermore, Applicant stands ready to show at an evidentiary hearing that the attorneys appointed to defend him in his death penalty trial were not qualified under the statute and that he was prejudiced as a result. At an evidentiary hearing, Applicant will show first that the lead attorney appointed to defend him against a capital charge was not qualified under the statute. This issue has not been determined as shown by the record and as highlighted by the Order's footnote no. 4 which points out that the question of counsel's qualifications remains an open question. Applicant would then present evidence of the myriad errors, lapses of knowledge, and mistakes made by counsel during his capital trial.

The significant trial errors include trial counsel's failure to interview and call as witnesses additional family members and community witnesses, and by inadequately interviewing those family members that they did call as witnesses, and/or by failing to call the county detention center psychiatrist as a witness, and/or by failing to present evidence of repeated physical abuse in Sigmon's childhood and his prior treatment for a major mental illness, and/or by failing to introduce an available video exhibit, such that substantial mitigating evidence was not presented; trial counsel's failure to object to the petitioner being made to wear a stun-belt in court which was visible to jurors during the proceedings; trial counsel's failure to be aware that they could both

present a closing argument and that they could choose the order of presentation of closing arguments; and failure to be aware that the second defense attorney could also have presented a closing argument at sentencing after the petitioner. While some few of these errors were partially raised previously, none of them have ever been considered or evaluated free of the unwarranted assumption that the mistakes and misjudgments were made by qualified counsel, and particularly when prejudice is “considered collectively, not item-by-item.” *Kyles v. Whitley*, 514 U.S. 419, 436 (1995); *Accord, Williams v. Taylor*, 529 U.S. 362, 399 (2000)(Court considered “the entire post conviction record ... as a whole and cumulative of mitigation evidence presented originally” in conducting its prejudice analysis); *Wiggins v. Smith*, 539 U.S. 510 (2003)(Court looked at the entire record in assessing prejudice).

Thus, Appellant is entitled to an evidentiary hearing on whether his trial counsel was qualified to serve as lead counsel in a capital case, and that Appellant was prejudiced not only by ineffective assistance of counsel but by unqualified counsel.

Respectfully submitted,

  
Counsel for Appellant Sigmon

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Dated: May 11, 2017

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STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
) )	FOR THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE )	Case No. 2014-CP-23-04632
) )	
BRAD K. SIGMON, #6008 )	
Appellant-Petitioner )	
) )	
) )	
) )	CERTIFICATE OF SERVICE
) )	
STATE OF SOUTH CAROLINA, )	
RESPONDENT )	

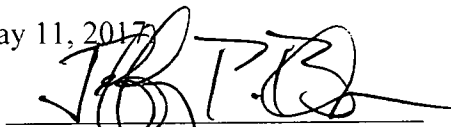
I do hereby certify that I have served the following documents, as set forth below and herein, upon the attorney for the Respondent, by sending them via electronic mail to the address specified, and by depositing a copy of same in the United States Mail, first class, postage prepaid, on May 11, 2017, and filed via U.S. Mail on the same date with the Greenville County Clerk of Court, and addressed as follows to the attorney for Respondent:

Document(s): [1] Notice of Appeal  
                  [2] Statement of Explanation per Rule 243(c), SCACR

Served Upon:  
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This day of May 11, 2017  
  
\_\_\_\_\_  
Jeffrey P. Bloom  
Counsel for Appellant-Petitioner