

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Greenville County  
Court of Common Pleas  
Honorable J.C. Nicholson, Jr., Circuit Court Judge  
\_\_\_\_\_

RECEIVED

JUN 23 2017

S.C. SUPREME COURT

BRAD KEITH SIGMON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001119

\_\_\_\_\_  
RETURN TO MOTION TO STAY THE SCHEDULING OF A  
PETITION AND RETURN UNTIL CONSIDERATION AND RULING  
ON PETITIONER'S RULE 243(C), SCACR EXPLANATION  
\_\_\_\_\_

Petitioner Brad K. Sigmon, makes the following return to the State's motion to stay the scheduling of a petition for writ of certiorari and return until consideration and ruling on petitioner's Rule 243(c), SCACR explanation.

1. In Robertson v. State, 418 S.C. 505, 795 S.E.2d 29 (2016), this Court held where a legitimate issue existed as to whether PCR counsel was qualified under the statutory definition of "qualified counsel" for a death penalty-PCR applicant, then the petitioner was entitled to an evidentiary hearing on this issue. It is respectfully submitted that petitioner Sigmon comes within the ambit of Robertson because the lead counsel appointed to represent him in his death penalty case was not qualified to serve as lead counsel in his death penalty trial under the statute

or court rule. See, SC Code § 16-3-26(B)(1) (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, 238, 371 S.E.2d 793, 795 (1988). (The trial court’s failure to follow the statutory mandates of S.C. Code §16-3-26 (B) denied appellant a fair trial).

2. In Robertson, this Court held that the allegation by Robertson that if prior PCR counsel was not statutorily qualified, under the South Carolina Effective Death Penalty Act, for representation of a death-sentence inmate was sufficient to permit a successive or second in time PCR. This Court also held that a genuine issue of fact existed as to whether Robertson’s prior PCR counsel met the qualification requirements, and that precluded dismissal of the application as simply being successive. Further, non-compliance with the statutory qualifications requirements for PCR representation of a death-sentence defendant constituted deficient performance per se, in an ineffective assistance claim.

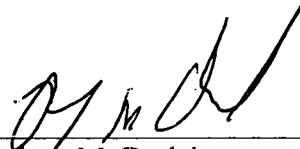
3. In this case, petitioner alleges that PCR counsel Frank Eppes was not qualified to serve as petitioner’s lead trial attorney. Counsel John Abdalla admitted he gave the role of lead counsel to counsel Frank Eppes without resistance. But there is more -- petitioner Sigmon submits that counsel Abdalla was also not qualified to be lead counsel, pursuant to SC Code § 16-3-26(B)(1), since he did not have at least three years’ experience in the actual trial of felony cases. Thus, neither of petitioner’s trial attorneys was statutorily qualified to act as lead counsel. The fact that Robertson involved the allegation that PCR counsel was not qualified, and this case involves the extremely strong allegation that neither trial counsel was statutorily qualified is a distinction without a difference regarding the qualifications of counsel to represent a death penalty litigant.

4. Petitioner submits that a normal briefing schedule should follow in this case. Petitioner has three of the four PCR hearing transcripts in this case. Undersigned counsel will notify this Court upon receipt of the final transcript.<sup>1</sup>

5. The judge granted the state's motion for summary judgment on the purely procedural grounds of successive, and time barred second PCR in this case. Petitioner has made a substantial showing that he is entitled to an evidentiary hearing under Robertson on whether his trial counsel was qualified to serve as lead counsel in a capital case, and petitioner was prejudiced not only by ineffective assistance of counsel but by unqualified counsel.

6. Petitioner submits it should be evident under Robertson that petitioner is entitled to an evidentiary hearing, and it will become clear beyond cavil after petitioner's certiorari petition is filed that petitioner should be granted an evidentiary hearing under the precedent of Robertson.

Respectfully Submitted,



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Robert M. Dudek  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of June, 2017.

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<sup>1</sup> Petitioner also submits that the merits of each Rule 243 (c), SCACR, explanation must rise or fall upon its own merits, and therefore the state's citations to unrelated cases in its motion to stay the filing of the certiorari petition and return are irrelevant.

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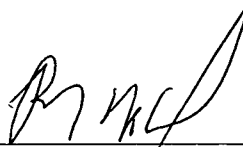
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RESPONDENT

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CERTIFICATE OF SERVICE

I certify that a copy of the Return Motion to Stay the Scheduling of a Petition and Return Until Consideration and Ruling on Petitioner's Rule 243(C), SCACR Explanation in the above-referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of June, 2017.



Robert M. Dudek  
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me  
this 23rd day of June, 2017.

 (L.S.)

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