

The South Carolina Court of Appeals

The State, Respondent,

v.

Darrin D. Holston, Appellant.

Appellate Case No. 2011-192326

ORDER

On November 8, 2012, Appellant Darrin Holston filed a motion to relieve appellate counsel and proceed *pro se*. In his motion, Holston asks this court to allow him to present a new appellate brief that presents meritorious issues preserved on the record. Holston also filed a motion to stay his direct appeal on November 15, 2012. We deny Holston's request to proceed *pro se*, as the issues Holston wishes to raise regarding his conviction are the same issues raised by appellate counsel. *See State v. Roberts*, 364 S.C. 583, 588-89, 614 S.E.2d 626, 629 (2005) (holding an appellate court "may, in its discretion, allow an appellant to proceed *pro se* in an appeal from a criminal conviction"); *id.* at 588, 614 S.E.2d at 629 (noting a criminal defendant does not have a federal or state constitutional right to proceed *pro se* in an appeal from his criminal conviction). Further, the issues Holston seeks to raise regarding trial and appellate counsels' ineffective assistance of counsel may not be considered on direct appeal and are suited for post-conviction relief. *See id.* at 589, 614 S.E.2d at 629 (holding any mistakes appellate counsel makes in determining viable issues for briefing can be resolved on post-conviction relief); *State v. Felder*, 290 S.C. 521, 522, 351 S.E.2d 852, 852 (1986) (noting an allegation of ineffective assistance of counsel may not be considered on direct appeal). Based on the foregoing, Holston's motion to relieve appellate counsel and proceed *pro se* is denied. Accordingly, Holston's motion to stay his appeal is also denied.

John C. ... C.J.
H. B. ... J.
Daniel G. Pieper J.

Columbia, South Carolina

cc:
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FILED
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