

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Georgetown County

Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2017-000211

RECEIVED

OCT 03 2017

S.C. SUPREME COURT

STEPHEN C. STANKO #6022,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITIONER'S MOTION TO REMAND TO DETERMINE QUALIFICATION OF
COUNSEL PURSUANT TO S.C. CODE § 17-27-160(B)

Petitioner, Stephen C. Stanko, through undersigned counsel, for the reasons stated below, respectfully requests that this Court remand this case to the circuit court to determine the qualification of Petitioner's post-conviction relief ("PCR") counsel under S.C. Code § 17-27-160(B) and, if counsel were not qualified, for further post-conviction proceedings. *See Robertson v. State*, 418 S.C. 505, 795 S.E.2d 29 (2016) (requiring a hearing on counsel's qualifications when a Petitioner raises allegations that counsel were not qualified under S.C. Code § 17-27-160(B) and, if counsel were not qualified, further proceedings to determine if counsel's lack of qualification prejudiced the PCR applicant). In support of this motion, Petitioner submits the following:

I. PROCEDURAL HISTORY

Petitioner was found guilty of murder and other offenses and sentenced to death in Georgetown County on August 1, 2006. This Court upheld his conviction and sentence on appeal on February 25, 2008. *State v. Stanko*, 376 S.C. 571, 658 S.E.2d 94 (2008). Petitioner filed an Application for Post-Conviction Relief on October 17, 2008. This Court appointed Judge J. Michael Baxley to oversee the matter, and Judge Baxley initially appointed Everett P. Godfrey, Jr. and J. Andrew Ritner to represent Petitioner. Prior to a hearing on the merits of Petitioner's PCR claims, Petitioner's counsel were both replaced by other attorneys. Due to medical health issues, Godfrey moved to be removed as counsel and Judge Baxley issued an order substituting Stuart Mark Axelrod for Godfrey on June 14, 2010. Order Relieving Lead Counsel and Appointing Post-Conviction Relief Counsel, *Stanko v. State*, No. 08-CP-22-1446 (Ct. Common Pleas June 14, 2010) [hereinafter Order Appointing Axelrod], attached as Exhibit A. Judge Baxley made the following findings relevant to Axelrod's qualification to represent Petitioner in this PCR action:

[Axelrod] has been an active member of the South Carolina Bar since 1997. Mr. Axelrod has in the past worked in the Horry [County] Public Defenders Office, in which he had varied experience in the trial of felony cases, which would satisfy the demands of [South Carolina Code] Section 16-3-26. He was previously appointed by Judge L. Casey Manning as second counsel in the pending Luzenski Cottrell death penalty case. He was previously appointed by Judge John C. Hayes, III, as second counsel in the pending Joseph Ard death penalty PCR action that is still active. This Court finds that Stuart Mark Axelrod meets the minimum qualifications of the prior experience [requirement] pursuant to § 17-27-160(B), to qualify as experienced counsel. Additionally, he has maintained continuing legal education dedicated to representation of capital inmates in similar actions.

Id. at 6-7.

After becoming employed by the Office of the Attorney General, Ritner moved to be relieved as counsel for Petitioner and Judge Baxley appointed Bobby Frederick as second chair counsel on April 22, 2013. Order Relieving Second Chair Counsel and Appointing Substitute Post-Conviction Second Chair Counsel, *Stanko v. State*, No. 08-CP-22-1446 (Ct. Common Pleas April

22, 2013) [hereinafter Order Appointing Frederick], attached as Exhibit B. Judge Baxley made the following findings relevant to Mr. Frederick's qualifications to represent Petitioner in this PCR action:

[T]he Court has considered the qualifications of Mr. Frederick to serve as second chair collateral counsel. Mr. Frederick has been an active member of the South Carolina Bar since 2004 and has limited the majority of his private practice to criminal defense. During his time in private practice, Mr. Frederick has been retained and/or appointed on various cases involving violent crimes and PCR actions. Moreover, the Court is advised that Applicant Stanko consents to the appointment of Mr. Frederick.

Id. at 4.

Axelrod and Frederick represented Petitioner through the remainder of his PCR proceedings, including filing multiple amended PCR applications and representing Petitioner at the hearing on the merits of his claims on April 27-28, 2015.¹ After the PCR hearing, on May 27, 2015, Judge W. Jeffrey Young² signed a consent order adding attorney Tristan Shaffer as "third-chair counsel of record." Consent Order to Add Pro Bono Counsel, *Stanko v. State*, No. 08-CP-22-1446 (Ct. Common Pleas May 27, 2015) [hereinafter Order Adding Shaffer], attached as Exhibit C. The order made no reference to Shaffer's qualifications to represent Stanko.

Judge Young denied relief on June 27, 2016 and denied Petitioner's Motion to Alter or Amend on January 19, 2017. Petitioner filed a Notice of Appeal in this Court on February 3, 2017 and this Court appointed undersigned counsel to represent Petitioner on March 24, 2017. Since that time, undersigned counsel have diligently reviewed the record below and begun preparing

¹ After the hearing, but before the judge ruled on the merits of Petitioner's claims, Frederick moved to be relieved as counsel and for appointment of new second chair counsel on December 10, 2015. Undersigned counsel's review of the record below shows this motion was never ruled upon by the PCR court.

² Prior to the merits hearing, this Court appointed Judge Young to replace Judge Baxley in overseeing this matter.

Petitioner's Petition for Writ of Certiorari. In completing that review, counsel discovered that it does not appear either Axelrod or Frederick were qualified to represent Petitioner under S.C. Code § 17-27-160(B) and now asks this Court to remand the case for further consideration of counsel's qualifications.

II. LEGAL PRINCIPLES AND ARGUMENT

a. *Statutory Qualification Requirements*

The Uniform Post-Conviction Procedure Act provides that an applicant under a sentence of death filing a post-conviction relief application is entitled to two attorneys. S.C. Code § 17-27-160(B). At least one of those attorneys must be qualified under the statute. The statutory qualification requirements are that

At least one of the attorneys appointed to represent the applicant must have previously represented a death-sentenced inmate in state or federal post-conviction relief proceedings or (1) must meet the minimum qualifications set forth in Section 16-3-26(B) and Section 16-3-26(F) and (2) have successfully completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate and/or post-conviction defense.

Id. "Simply stated, at least one attorney appointed pursuant to section 17-27-160(B) must have either (1) prior experience in capital PCR proceedings, or (2) capital trial experience and capital PCR training or education." *Robertson v. State*, 418 S.C. 505, 518, 795, S.E.2d 29, 36 (2016).

b. *Petitioner's PCR Counsel Do Not Appear Qualified Pursuant to S.C. Code § 17-27-160(B).*

Undersigned counsel's research revealed that neither Axelrod nor Frederick appear to have been qualified under the statutory requirements. The PCR court found in 2010 that Axelrod was qualified based on his experience representing Luzenski Cottrell at trial and Joseph Ard in a then-pending PCR action. However, this Court's opinion in *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007), reveals that Ard's PCR proceedings (in the circuit court and on appeal) were concluded in

2007, three years before Axelrod was appointed in this case, and that Ard's collateral appellate counsel were William N. Nettles and Christopher Seeds. A search of the Lexington County Public Index further revealed that Ard's PCR counsel were William N. Nettles and James P. Rogers.³ The Public Index search showed, instead, that Axelrod was appointed to represent Ard in his retrial after Ard's PCR was concluded. Thus, the PCR court's findings that Axelrod was appointed "as second counsel in the pending Joseph Ard death penalty PCR action that is still active" and that Axelrod met the "minimum qualifications of the prior experience" requirement are inaccurate. *See* Order Appointing Axelrod, at 6. Based on undersigned counsel's research, Axelrod had no prior experience representing death sentenced inmates in post-conviction proceedings to satisfy S.C. Code § 17-27-160(B)'s experience requirement, which requires experience "in state or federal post-conviction relief proceedings."

The PCR court's order did not address whether Axelrod would have been qualified under the alternative provision, requiring counsel be qualified to represent a defendant facing a death sentence at trial (qualification under § 16-3-26(B) & (F)) *and* having "successfully completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital *appellate* and/or *post-conviction* defense." S.C. Code § 17-27-160(B) (emphasis added). The PCR court order only indicated Axelrod "maintained continuing legal education dedicated to representation of capital inmates in similar actions." Order Appointing Axelrod, at 6-7. The order thus failed to address the number of continuing legal education hours Axelrod completed and whether the education was in "appellate and/or post-conviction" capital defense making it unclear whether Axelrod was qualified.

³ A printout of the Public Index page is attached as Exhibit D.

The PCR court's order provides even less information about Frederick's qualifications. The order merely stated that Frederick had experience in "cases involving violent crimes and PCR actions." Thus, it appears Frederick did not meet the experience requirement as there is no indication he represented a death-sentenced inmate in post-conviction proceedings; nor is there any information as to whether he was qualified to represent defendants facing a death sentence at trial and had received the required capital appellate or post-conviction legal education.⁴ Because it is unclear from the record below whether PCR counsel were qualified, this Court should remand this case to the PCR court to address counsel's qualifications.

c. Remand Is Warranted.

This Court recently recognized that PCR counsel's lack of qualification under § 17-27-160(B) warrants further PCR proceedings in *Robertson v. State*, 418 S.C. 505, 795 S.E.2d 29 (2016). The Court found this necessary in light of the "intent of the Legislature for appointed counsel to be proficient in capital PCR proceedings and not just capital trial proceedings." *Id.* at 518, 795 S.E.2d at 36. The Court also determined it was necessary for the PCR court to hold a hearing on whether counsel were qualified when "there was a genuine issue of fact as to whether prior PCR counsel met the qualifications of section 17-27-160(B)." *Id.* at 519, 795 S.E.2d at 36.

Here, as discussed above, there is a genuine issue of fact as to whether counsel were qualified to represent Petitioner. Resolution of that issue will require investigation and review, at minimum, of PCR counsel's legal education over the two years prior to their appointment, which

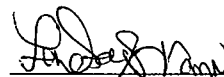
⁴ The Order Adding Shaffer does not include any information from which to determine his qualification, but even if he were qualified, he was not appointed until after the hearing and in addition to the two attorneys (Axelrod and Frederick) to which Petitioner had a right under the PCR statute and would not satisfy the qualification requirements of the statute. *See* S.C. Code § 17-27-160(B) ("If the applicant is indigent and desires representation by counsel, two counsel shall be immediately appointed to represent the petitioner in this action.").

was not part of the record in the lower court, and this Court should remand to the PCR court for consideration of such evidence relevant to counsel's qualifications. *See* Rule 212, SCACR (allowing appellate courts to supplement the record only with materials that were "before the lower court"). To avoid the expenditure of resources on an appeal of a PCR action that may not satisfy the statutory requirements, this Court should remand this proceeding, rather than require Petitioner to file a second PCR action. *Roberson*, 418 S.C. at 521-22, 795 S.E.2d at 37 (concluding that an "allegation that prior PCR counsel were unqualified" is "sufficient reason" to justify a successive PCR application under S.C. Code § 17-27-90).

III. CONCLUSION

For the reasons stated above, this Court should remand this case to the circuit court for further proceedings to determine whether Petitioner's PCR counsel were qualified to represent him under the statutory requirements set forth in S.C. Code § 17-27-160(B), and, if necessary, determine whether Petitioner was prejudiced by their lack of qualifications. *See Robertson*, 418 S.C. at 521, 795 S.E.2d at 37. Petitioner further asks this Court to stay the pending deadlines for the filing of Petitioner's Petition for Writ of Certiorari and Appendix, both currently due to be filed on October 16, 2017, until the resolution of this motion.⁵

Respectfully submitted,



Lindsey S. Vann
Emily C. Paavola

Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-1044

October 3, 2017.

⁵ Staying the pending deadlines is in the interest of judicial efficiency as it will allow this Court to address this issues raised in this motion and for any additional PCR proceedings warranted in light Petitioner's allegations prior to the completion of the appendix and arguments based on the record below.

Exhibit A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
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 Stephen C. Stanko, #6022,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

C/A No. 08-CP-22-1446

ORDER RELIEVING LEAD COUNSEL AND
 APPOINTING SUBSTITUTE
 POST-CONVICTION RELIEF COUNSEL

FILED
 GEORGETOWN COUNTY
 2010 JUN 28 AM 10:01
 CLERK OF COURT

This matter comes before this Court pursuant to the Order of the Supreme Court of South Carolina staying the Order of execution of Georgetown County death row inmate Stephen C. Stanko in order to allow him to pursue potential state post-conviction relief. The Order assigned this Court with continuing jurisdiction regardless of assignment and with the authority to schedule such hearings as may be necessary. The Order directed this Court to conduct a hearing on Mr. Stanko's desires within thirty (30) days of that date pursuant to In Re Stays of Execution, 321 S.C.544, 471 S.E.2d 140 (1996). This Court scheduled the hearing after consultation with various parties to resolve this issue and appoint state post-conviction relief counsel, if appropriate.


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The Applicant, Stephen C. Stanko, was indicted on August 25, 2005 by the Georgetown County Grand Jury for the offenses of murder, two counts of kidnapping, assault and battery with intent to kill, criminal sexual conduct in the first degree, and armed robbery. These charges arose from the April 8, 2005 murder of Laura Ling and the rape and attempted murder (ABWIK) of her daughter Christina Ling on the same date.

The underlying criminal case was initially called for trial on August 7, 2006. Applicant was represented by Gerald Kelly, Esq. and Bill Diggs, Esq. The matter was tried before a jury and the Honorable Deadra L. Jefferson, Presiding Judge. The jury found Applicant guilty of murder, two counts of kidnapping, assault and battery with intent to kill, criminal sexual conduct in the first degree, and armed robbery.

On August 18, 2006, the sentencing proceeding began. At the conclusion of the evidence, the jury was instructed to consider the following statutory aggravating circumstances:

1. The murder was committed while in the commission of criminal sexual conduct in any degree.
2. The murder was committed while in the commission of kidnapping.
3. The murder was committed in the commission of robbery while armed with a deadly weapon.
4. The murder was committed while in the commission of larceny with the use of a deadly weapon.
5. The murder was committed while in the commission of physical torture.

 The jury was further instructed on the following mitigating circumstances:

1. The murder was committed while the defendant was under the influence of mental or emotional disturbance [S.C. Code Ann. Section 16-3-20(C)(b)(2)], and
2. The capacity of the defendant to appreciate the criminality of his conduct or conform his conduct to the requirements of the law was substantially impaired. [S.C. Code Ann. Section 16-3-20(C)(b)(6)].
3. any other mitigating circumstance supported by the evidence.

The jury found the existence of all of the aggravating circumstances beyond a reasonable doubt. Further, the jury returned a recommendation of a death sentence. On August 18, 2006, Judge

Jefferson sentenced Applicant to death for murder, twenty years for assault and battery with intent to kill, thirty years for criminal sexual conduct in the first degree, thirty years for the kidnapping of Christine Ling, and thirty years for armed robbery. Pursuant to South Carolina law, Judge Jefferson did not sentence Applicant on the kidnapping charge where Laura Ling was the victim.

Applicant appealed to the Supreme Court of South Carolina. On appeal, Applicant was represented by Joseph L. Savitz, III, Chief Appellate Defender and Katherine H. Hudgins, both of the South Carolina Office of Appellate Defense. In his appeal he raised the following issues:

1. Did the trial court err in refusing to allow Appellant to ask potential jurors about their feelings and viewpoints concerning the defense of insanity during voir dire?
2. Did the trial court err in failing to instruct the jury on an additional and unrequested statutory mitigating circumstance?

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3 On February 25, 2008, the Supreme Court of South Carolina affirmed the convictions and death sentence in State v. Stanko, 376 S.C. 571, 658 S.E.2d 94 (2008). After a petition for rehearing was timely made, the Court denied the petition on March 19, 2008.

Applicant next filed a petition for writ of certiorari in the United States Supreme Court. In that petition, he asserted the following question:

- (1) Is a capital defendant who relies solely on the defense of insanity at the guilt phase of his murder trial entitled, under the Sixth and Fourteenth Amendments, to question prospective jurors about their possible bias against that defense?

Certiorari was denied on October 6, 2008.

Applicant next filed a petition for a stay of execution on October 9, 2008. In his petition, through appointed appellate counsel Savitz and Hudgins, Applicant asserted that he intended to file

an application for state post-conviction relief alleging ineffective assistance of counsel, as follows:

1. Applicant did not receive effective assistance of either trial or appellate counsel because the Court held that the failure to instruct the jury on the statutory mitigating circumstance of the age or mentality of defendant at the time of the crime as provided by S.C. Code Ann. Section 16-3-20(C)(b)(7) was not preserved for appellate review.

The Supreme Court granted the stay and ordered this proceeding to occur concerning the appointment of counsel, with Chief Justice Toal dissenting.

On Monday December 8, 2008, this Court convened a hearing in Conway, South Carolina at the Horry County Courthouse pursuant to the Order of the Supreme Court to determine the desires of Applicant regarding counsel. Applicant was present at the hearing. Respondent was represented by J. Anthony Mabry, Assistant Attorney General, of the South Carolina Attorney General's Office.

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This Court made inquiry of Applicant and found that he desired to have counsel appointed to represent him in the state post-conviction relief action. As a result of that hearing, this Court appointed E.P. "Bill" Godfrey, Esquire, as primary, or first chair PCR counsel in this case. This Court further appointed J.A. Ritner, Esquire, of the Fifteenth Judicial Circuit, as second chair counsel. The case then proceeded forward toward resolution of this matter at a merits hearing.

Subsequently, Mr. Godfrey developed physical health problems requiring medical attention for a significant period of time. As a result of his medical condition, Mr. Godfrey felt that he could no longer properly handle this matter and requested that this Court relieve him as counsel. Mr. Godfrey notified Applicant by letter of his medical condition and of his request to be relieved as counsel.

On January 26, 2010, a hearing was convened before this Court at the Horry County

Courthouse on Mr. Godfrey's request to be relieved as counsel in this matter. Present at the hearing were Mr. Godfrey, Applicant Stephen C. Stanko, Mr. Ritner, and Assistant Attorney General Mabry.

At the hearing, Mr. Godfrey formally moved to be relieved as counsel setting forth the medical problems from which he has suffered. The State did not oppose the motion. Applicant was questioned on the record by this Court, and did not object to Mr. Godfrey being relieved as counsel in this matter. Mr. Stanko further stated that he was satisfied with Mr. Godfrey's representation of him in this matter and appreciated the services he had rendered on his behalf. Attorney Ritner also was questioned by the Court and did not object to Mr. Godfrey being relieved as primary counsel.

THEREFORE, based on the Motion before the Court and Mr. Godfrey's statements regarding his medical condition at this time, which are credible and uncontradicted, and based on the fact that none of the parties involved in this matter objects to the Motion, this Court grants Mr. Godfrey's Motion to Be Relieved as counsel in this matter. This Court leaves it to Mr. Godfrey and Mr. Ritner to work out the logistics of Mr. Godfrey handing over his files and materials on this case to Mr. Ritner and replacement counsel, hereafter appointed.

At this hearing, Applicant also expressed his interest in the Court appointing Timothy Culp, Esquire, as replacement first chair counsel, representing to the Court that he had previously had discussions with Mr. Culp at some point in the past, and Mr. Culp expressed interest in being appointed to this PCR case. As a result, this Court requested that the Attorney General contact Attorney Culp and inquire whether he in fact was interested in accepting appointment to this capital PCR case. Mr. Culp was contacted by the Attorney General's Office and indicated that he was not interested in representing Applicant in this matter at this time and did not want to be appointed on this matter. As a result, this Court directed the Attorney General to inquire of the Clerk of Court and

obtain a list of qualified counsel and this Court would appoint the next qualified attorney on the list to be first chair in this capital PCR matter. The Attorney General did so, and the next qualified attorney on the list is Stuart Mark Axelrod, Esquire.

A. Appointment of Qualified Counsel

Section 17-27-160 provides:

If the applicant is indigent and desires representation by counsel, two counsel shall be immediately appointed to represent the petitioner in this action. **At least one of the attorneys appointed to represent the applicant must have previously represented a death-sentenced inmate in state or federal post-conviction relief proceedings or (1) must meet the minimum qualifications set forth in Section 16-3-26(B) and Section 16-3-26(F) and (2) have successfully completed, within the previous two years, not less than twelve hours of South Carolina Bar approved continuing legal education or professional training primarily involving advocacy in the field of capital appellate and/or post-conviction defense.** The Supreme Court may promulgate additional standards for qualifications of counsel in capital post-conviction proceedings. The court may not appoint an attorney as counsel under this section if the attorney represented the applicant at trial or in a direct appeal unless the applicant and the attorney request appointment on the record or the court finds good cause to make the appointment.

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This Court has considered the qualifications of Stuart Mark Axelrod. He has been an active member of the South Carolina Bar since 1997. Mr. Axelrod has in the past worked in the Horry Public Defenders Office, in which he had varied experience in the trial of felony cases, which would satisfy the demands of Section 16-3-26. He was previously appointed by Judge L. Casey Manning as second counsel in the pending Luzenski Cottrell death penalty case. He was previously appointed by Judge John C. Hayes, III, as second counsel in the pending Joseph Ard death penalty PCR action that is still active. This Court finds that Stuart Mark Axelrod meets the minimum qualifications of the prior experience pursuant to §17-27-160(B), to qualify as experienced counsel. Additionally, he has maintained continuing legal education dedicated to representation of capital inmates in similar

actions. This Court finds it appropriate to appoint Stuart Mark Axelrod as a qualified lead counsel in this matter.

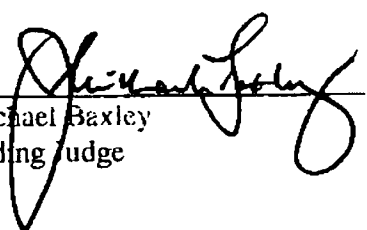
Therefore, it is ordered that the following be appointed as lead counsel to represent Mr. Stephen C. Stanko in the potential state post-conviction relief matter:

1. Stuart Mark Axelrod
Axelrod & Associates
604 16th Ave., N.
Myrtle Beach, SC 29577

This Court further reminds newly appointed state post-conviction relief counsel of its obligation, pursuant to In Re Stays, 471 S.E.2d 140 (S.C. 1996), to provide to the Clerk of the South Carolina Supreme Court, with a copy to this Court and opposing counsel, J. Anthony Mabry of the South Carolina Attorney General's Office, a status letter every sixty (60) days to ensure the pending stay of execution is continued during these proceedings.

WHEREAS, this Court has conducted a hearing of appointment as mandated by the Order of the Supreme Court and appointed the above-named counsel. This Order in no way alters the appointment of second counsel J. A. Ritner, who shall remain in this position.

IT IS SO ORDERED this fourteenth (14th) day of June, 2010



J. Michael Baxley
Presiding Judge

Hartsville, South Carolina

Exhibit B

STATE OF SOUTH CAROLINA)
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 COUNTY OF GEORGETOWN)
)
 Stephen C. Stanko, #6022,)
)
 Applicant,)
)
 -vs-)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

C/A No.: 2008-CP-22-1446

**ORDER RELIEVING SECOND CHAIR
 COUNSEL AND APPOINTING
 SUBSTITUTE POST-CONVICTION
 RELIEF SECOND CHAIR COUNSEL**

FILED
 GEORGETOWN COUNTY, SC
 2013 MAY -6 PM 4:05
 CLERK OF COURT

I. INTRODUCTION

This matter came before the Court on J. Andrew Ritner's Motion to Be Relieved as Second Chair Collateral Counsel.¹ The hearing on Mr. Ritner's motion was held on January 23, 2013 at the Darlington County Courthouse, where this Court was presiding. In his motion, Mr. Ritner argued that his recent acceptance of a job as an Assistant Attorney General with the South Carolina Attorney General's office in its Criminal Division creates a non-waivable conflict of interest with his present position as second chair collateral counsel for Stephen Stanko under the South Carolina Rules of Professional Conduct. For the reasons set forth below, the motion is granted.

II. PROCEDURAL BACKGROUND

On August 18, 2006, Stephen Stanko ("Applicant") was convicted of Murder, two counts of Kidnapping, Assault and Battery with Intent to Kill, Criminal Sexual Conduct in the First Degree, and Armed Robbery. He filed the present Post Conflict Relief ("PCR") action on December 8, 2008, challenging his conviction. In January 2009, this Court appointed Everett

¹ This Court was assigned jurisdiction of this case by an Order of the South Carolina Supreme Court dated November 7, 2008.

Godfrey, Jr. and Andrew Ritner² as first and second chair collateral counsel, respectively. Mr. Godfrey represented Applicant for approximately one year until January 2010, at which time the Court relieved Mr. Godfrey of his appointment as first chair collateral counsel due to his retirement from the practice of law. After Mr. Godfrey was relieved as first chair collateral counsel, the Court appointed Stuart Axelrod as first chair collateral counsel, and Mr. Ritner has continued in his role as second chair collateral counsel since his appointment. Mr. Ritner filed this present motion on October 25, 2012, immediately following his acceptance of a position as an Assistant Attorney General in the Criminal Division of the South Carolina Attorney General's office.

At the hearing on this motion, Mr. Ritner informed the Court that his involvement with Applicant's PCR action has been minimal since his appointment in January 2009. Mr. Ritner has not been assigned any legal tasks by either Mr. Godfrey or Mr. Axelrod in their roles as lead counsel. Mr. Ritner has met only once with Mr. Axelrod since the latter's appointment as first chair collateral counsel in January 2010. At that meeting, which occurred at some point in 2012, Mr. Ritner and Mr. Axelrod reviewed court transcripts and discussed briefly and generally the Applicant's strategy for his present PCR action. Regarding his recent employment as an Assistant Attorney General, Mr. Ritner represented to the Court that he works in a different division on a different floor and is separated from the Respondent's capital litigation counsel in this case, Assistant Attorney General Anthony Mabry. Mr. Mabry also confirmed to the Court at the January 23, 2013 hearing that precautions had been taken by both Mr. Ritner and Mr. Mabry to avoid contact between themselves prior to the hearing on the pending motion. Mr. Ritner affirmed at the hearing that as an officer of the Court, he has not and will not disclose or discuss with Respondent's counsel even the minimal exposure he has had with the Applicant's PCR

² Mr. Ritner was employed as an Assistant Public Defender with the Fifteenth Judicial Circuit Public Defender's Office at that time. He continued in that capacity until he accepted his present job with the Attorney General's office.

action or its parties. Neither Respondent nor Mr. Axelrod objected to Mr. Ritner being relieved as second chair counsel.

Mr. Stanko also addressed the Court at its hearing on Mr. Ritner's motion. Specifically, the Applicant raised concerns about the continued prosecution of this PCR action by the Respondent given Mr. Ritner's employment with the Attorney General's office and requested that an independent prosecution be appointed.³

III. DISCUSSION

South Carolina Rules of Professional Conduct 1.7, 1.9, and 1.11 address the various issues that arise when a lawyer acts as an attorney for one client while at the same time possessing conflicting duties owed to a present or past client or situations where the position of one client is adverse to that of another past or present client. Each of these issues is present here.

Even in the event that all parties consented to the status quo arrangement, the fact remains that if Mr. Ritner is compelled to proceed, he would have an indisputable conflict because he is in a "situation inherently conducive to divided loyalties." *State v. Gregory*, 364 S.C. 150, 153, 612 S.E.2d 449, 450 (2005) (quoting *Duncan v. State*, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984)). Mr. Ritner's employment with the Attorney General's office has given rise to a non-waivable conflict of interest. Indeed, the Court cannot envision a situation where two clients' interests are more directly adverse than are present here – one client, the State of South Carolina, seeks to impose the death sentence on the other, Mr. Stanko. Thus, after consideration of the South Carolina Rules of Professional Conduct, particularly the rules listed above, the Court finds that Mr. Ritner is inextricably conflicted with the matter at hand and appointment of a new second chair collateral counsel to represent the Applicant is the only feasible remedy to avoid an impermissible and non-waivable conflict of interest. This Court does not perceive, however, that the removal of the Attorney General's office from this case, and the appointment of a special

³ At the hearing, the Court indicated that it would take Mr. Stanko's request under advisement and agreed to review any briefs the parties wished to submit to the Court on this issue. Subsequent to the hearing, however, the Court was informed that Mr. Axelrod would not be submitting a brief on this issue due to his belief that the motion has no basis in law. Therefore, the Court will decline to grant Mr. Stanko's request given the length of the pending PCR action, the resources and expenses already invested by the State, and the State's interest in prosecuting this matter.

prosecutor, is necessary or warranted under the circumstances. This is because the connection of Mr. Ritner to this case has been minimal, Messrs. Ritner and Mabry who are employed within different sections of the Attorney General's office have agreed not to discuss any aspect of this case, and notions of legal and judicial economy as well as efficient use of state resources would be offended thereby.

Mr. Ritner is hereby relieved from representation of the Applicant in any further proceedings and is cautioned to continue to maintain prudent safeguards to avoid any connection to the case either as former private counsel to Applicant or as a serving Assistant Attorney General. Likewise, Mr. Anthony Mabry, counsel for Respondent, is also ordered to avoid discussions with Mr. Ritner concerning any and all aspects of the Applicant's current PCR action.⁴

At the January 23, 2013 hearing, the Court also requested that Mr. Axelrod advise the Court within fourteen days as to whom he would potentially request to serve as second chair collateral counsel on this matter given Mr. Ritner's motion to be relieved. Mr. Axelrod has proposed the appointment of Bobby G. Frederick to serve as second chair collateral counsel in this case. Since that time, the Court has considered the qualifications of Mr. Frederick to serve as second chair collateral counsel. Mr. Frederick has been an active member of the South Carolina Bar since 2004 and has limited the majority of his private practice to criminal defense. During his time in private practice, Mr. Frederick has been retained and/or appointed on various cases involving violent crimes and PCR actions. Moreover, the Court is advised that Applicant Stanko consents to the appointment of Mr. Frederick. Given the Court's decision to grant Mr.

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⁴ At the hearing on Mr. Ritner's motion, the Court inquired into whether there had been any conversations between Mr. Ritner and Mr. Mabry concerning any aspect of the Applicant's PCR action. Both affirmed that there had been no such conversations. However, since that time, Mr. Mabry has voluntarily disclosed to the Court that there was a comment made by Mr. Ritner to Mr. Mabry during a short phone conversation between the two. Specifically, Mr. Ritner had made a general statement that the Applicant in his PCR action will claim that the State's experts at his trial below had made false statements. The Court notes that Mr. Mabry's failure to disclose this at the hearing was inadvertent. Further, the Court finds there was no harm caused by this statement considering that counsel for the Applicant himself disclosed that information at the hearing on January 23, 2013 before the Court and opposing counsel. But, the Court will again, given the interests at stake in this action, require that Mr. Mabry and Mr. Ritner refrain from discussing any and all aspects of the Applicant's PCR.

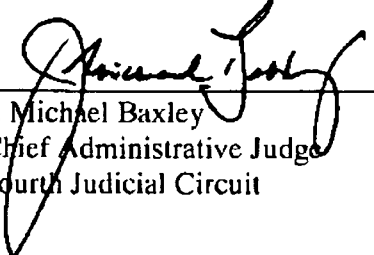
Ritner's motion to be relieved and the qualifications of Mr. Frederick, the Court finds it appropriate to appoint Mr. Frederick as second chair collateral counsel.

THEREFORE, IT IS HEREBY ORDERED that J. Andrew Ritner is hereby relieved as second chair collateral counsel for the Applicant, Stephen C. Stanko. It is further ordered that in Mr. Ritner's place, the following be appointed as second chair collateral counsel to the Applicant in this state post-conviction relief matter:

Bobby G. Frederick, Esquire
Frederick Law Office
P.O. Box 8219
Myrtle Beach, SC 29578

This Order in no way alters the appointment of first chair collateral counsel, Stuart Axelrod, who shall remain in his capacity as first chair collateral counsel.

IT IS SO ORDERED this 22nd day of April, 2013.



J. Michael Baxley
Chief Administrative Judge
Fourth Judicial Circuit

Hartsville, South Carolina

Exhibit C

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)
)
Stephen Stanko,)
) Applicant)
)
v.)
)
State of South Carolina,)
) Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH CIRCUIT

2008-CP-22-1446

CONSENT ORDER TO ADD
PRO BONO COUNSEL

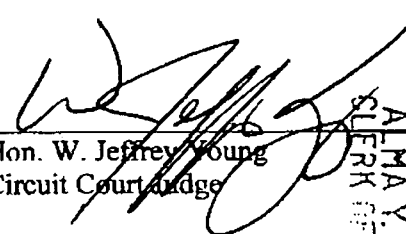
Applicant through his Attorney, Stuart Axelrod, moves to have attorney Tristan Shaffer listed as third-chair counsel of record in the above referenced case. Mr. Shaffer has consented to serve as third-chair counsel in this case *pro bono*.

Pursuant to the request of Applicant, this Court names Tristan Shaffer counsel of record for Applicant in the above referenced case. Mr. Shaffer will serve without compensation.

Pursuant to Rule 608(h)(1), this order does not affect the appointment of Stuart Axelrod as or Bobby Frederick as first and second chair counsel of record. Nor does this order have any effect on the ability of Mr. Axelrod or Mr. Frederick to obtain payment for their time spent representing Applicant.

AND IT IS SO ORDERED.

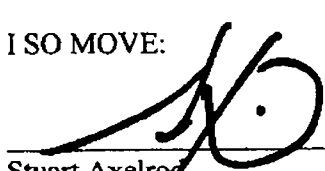
27 May, 2015


Hon. W. Jeffrey Young
Circuit Court Judge

ALMA Y. WHITE
CLERK OF COURT

FILED
GEORGETOWN COUNTY, SC
2015 JUN 17 PM 12:32

I SO MOVE:



Stuart Axelrod

I CONSENT:



Stephen Stanko



Tristan M. Shaffer (SC Bar: 77565)

Exhibit D



Lexington County Eleventh Judicial Circuit Public Index



Lexington County Home Page [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Joseph Lee Ard VS William Catoe, defendant, et al					
Case Number:	1999CP3200566	Court Agency:	Common Pleas	Filed Date:	03/03/1999
Case Type:	Common Pleas	Case Sub Type:	Post Convict Rel 500	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Ended by Non Jury	Disposition Date:	11/22/2004	Disposition Judge:	Kinard, J. Ernest Jr.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties	Judgments	Tax Map Information	Associated Cases	Actions	Financials		
Click the icon to show associated parties.							
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Ard, Joseph Lee			M		Plaintiff		08/18/2007
Attorney General			M		Defendant		08/18/2007
Catoe, William			M		Defendant		08/18/2007
Condon, Charles M,atty Gen			M		Defendant		08/18/2007
Dept Of Correction South Carolina					Defendant		07/28/2009
Nettles, William N	Attorney at Law P.O. Box 12005 Columbia SC 29211				Plaintiff Attorney		
Rogers, James P	Attorney at Law 1728 Main St., Ste. 106 Columbia SC 29201				Plaintiff Attorney		
Zelenka, Donald J	S.C. Attorney General's Ofc. P.O. Box 11549 Columbia SC 29211				Defendant Attorney		

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Georgetown County

Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2017-000211

RECEIVED

OCT 03 2017

S.C. SUPREME COURT

STEPHEN C. STANKO #6022,

PETITIONER,

V.

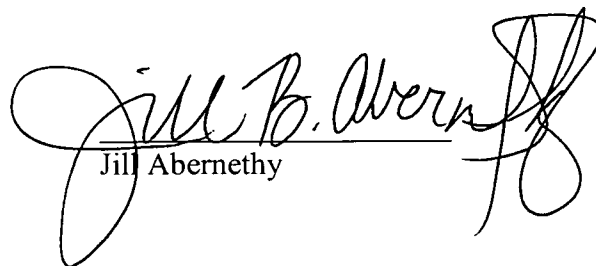
STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Petitioner's Motion to Remand to Determine Qualification of Counsel Pursuant to S.C. Code § 17-27-160(B) was served by first class United States mail, postage prepaid, this 3rd day of October, 2017, upon the following:

J. Anthony Mabry
Caroline Scrantom
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211


Jill Abernethy