

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 19 2017

S.C. SUPREME COURT

STEPHEN C. STANKO #6022,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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

Respondent opposes Petitioner Stephen C. Stanko's Motion to Remand, asserting remand is not the proper procedure for challenging the qualification of capital post-conviction relief ("PCR:") counsel. Upon discovering that Petitioner's PCR counsel may not have been qualified to represent him in his capital PCR proceedings, Petitioner filed a motion to remand seeking a hearing in which the circuit court could determine whether or not PCR counsel were qualified pursuant to S.C. Code § 17-27-160(B) and *Robertson v. State*, 418 S.C. 505, 795 S.E.2d 29 (2016). Respondent opposed Petitioner's request for remand, asserting that Petitioner should be required to complete his PCR appellate proceedings in this Court and then, if unsuccessful in his appeal, file a successive

PCR application in the circuit court challenging PCR counsel's qualifications. Petitioner does not object to following Respondents proposed procedures, however, those procedures seem inefficient and more likely to waste judicial resources.

Contrary to Respondent's contention, *Robertson* does not create a procedure for challenging the qualifications of PCR counsel prior to the conclusion of the PCR appellate proceedings. In *Robertson*, this Court found the proper procedure for challenging PCR counsel's qualification *after* the conclusion of Robertson's PCR proceedings—including his PCR appeal¹—was to file a successive PCR application alleging the lack of qualification. The Court in *Robertson*, however, did not have before it the question presented in this case—i.e. what procedures should be followed when PCR appellate counsel determines initial PCR counsel may not have been qualified.

Petitioner proposes that an immediate remand for further proceedings in the circuit court is the most efficient procedure for handling a case in this procedural posture. This would avoid conducting appellate proceedings—including briefing and submission of an appendix on certiorari and potential briefing and oral argument on the merits of Petitioner's claims—on a record that may be defective because of PCR counsel's lack of qualification. Respondent does not argue a hearing in the circuit court on PCR counsel's qualifications is not warranted in this case, but instead, asserts the hearing should be held after the conclusion of this appeal. Return to Petitioner's Motion to Remand to Determine Qualification of Counsel Pursuant to S.C. Code § 17-27-160(B), at 7 & n.3. Thus, an eventual hearing in the circuit court would only be rendered moot if this Court granted

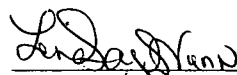
¹ Robertson's PCR application was dismissed on March 24, 2008. This Court denied certiorari to review Robertson's PCR claims on October 6, 2010. *Robertson*, 418 S.C. at 509, 795 S.E.2d at 31. After new counsel was appointed in federal habeas proceedings in 2011, Robertson filed a second PCR application. *Id.* Thus, in *Robertson*, the issue of what procedures should be followed when PCR appellate counsel raise an issue of the lack of qualified PCR counsel was not before the Court.

Petitioner relief on a claim granting him a new trial. Otherwise, Petitioner would file a successive PCR application after conclusion of this appeal, beginning the PCR and PCR appellate process anew. To the contrary, immediate remand would allow the circuit court to first hold a limited hearing on the qualifications of PCR counsel, *see Robertson*, 418 S.C. at 520, 795 S.E.2d at 36, and, if necessary further proceedings to determine whether PCR counsel's lack of qualification prejudiced Petitioner, *see id.* at 37, 795 S.E.2d at 37. With an immediate remand, any errors resulting from PCR counsel's lack of qualification could be remedied before this Court addresses Petitioner's PCR appeal.

CONCLUSION

For the reasons stated above, this Court should determine the procedures for challenging PCR counsel's qualifications while a PCR appeal remains pending. Petitioner asserts an immediate remand of this case to the circuit court for further proceedings to determine whether Petitioner's PCR counsel were qualified to represent him is the most efficient procedure for addressing the issues raised in this case.

Respectfully submitted,



Lindsey S. Vann, SC Bar No. 101408
Emily C. Paavola, SC Bar No. 77855
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-1044

October 17, 2017.

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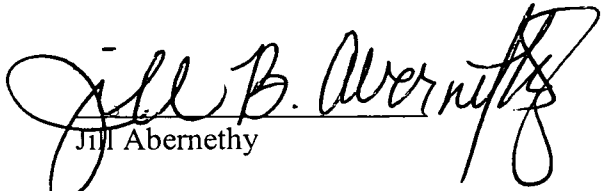
STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Petitioner's Reply to Respondent's Return to 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 17th day of October, 2017, upon the following:

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


Jill Abernethy