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11-20-17

SC Court of Appeals

THE HONORABLE JENNY ABBOT KITCHINGS
CLERK, SOUTH CAROLINA COURT OF APPEALS
P.O. Box 11629
Columbia S.C. 29211

RE: THE STATE V TERRY DEAN SWANGER
2009 GS-27-000368
Appellate Case No. 2017-002023

DEAR Ms. Kitchings:

I AM IN RECEIPT
OF A LETTER FROM CATHERINE BADGETT
(SEE EXHIBIT A) WHO, ACCORDING TO
A LETTER FROM YOUR OFFICE (SEE EXHIBIT E)
REMAINS COUNSEL OF RECORD IN MY
CASE. IN THE LETTER FROM Ms. BADGETT
(SEE EXHIBIT A) SHE INSTRUCTS THE
DEFENDANT (ME) "THAT HE MUST, NO
LATER THAN TWENTY DAYS FROM THE
DATE OF THIS LETTER SUBMIT A
PRO SE EXPLANATION, SHOULD HE SO
DESIRE."

COUNSEL'S INSTRUCTIONS TO
CLIENT ONLY GAVE THE CLIENT

2.

twelve days (eight legal days) to respond since client did not receive the letter until Nov. 16, 2017 (see exhibit B)

That being said, I am not an attorney and I do not feel that I am qualified to submit an explanation pro se. I will say that Ms. Badgett's failure to procure my appeal after I specifically requested she do so violated my due process right to effective assistance of counsel on first direct appeal.

(Ms. Badgett told my parents she would immediately file an appeal the day I was sentenced) - see exhibits C and D -

Furthermore, by demanding (must) that I submit an explanation pro se, Ms. Badgett is asking or instructing me to do something that goes against my constitutional rights.
* SEE Rodriguez v United States

3.

395 US 327 (1969) c.f. / Peguero v United States 526 US 23, 28 (1999)

("[W]hen counsel fails to file a requested appeal, a defendant is entitled to [a new] appeal without showing that his appeal would likely have had merit.") This is so because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing a notice of appeal is a purely ministerial task, and the failure to file reflects inattention to the defendant's wishes.

Also, "THE INEFFECTIVENESS OF TRIAL COUNSEL TO PROPERLY FILE PETITIONER'S APPEAL AMOUNTS TO A COMPLETE DENIAL OF COUNSEL."

GIDEON v WAINWRIGHT, 372 US. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792, 93 A. L. R. 2d 733 (1963).

SEE ALSO, POWELL v ALABAMA, 287 U.S. 45, 77 L. Ed. 158, 53 S. Ct. 55, 84 A. L. R. 527 (1932)

4.

Due to the fact that client's attorney has failed to properly file client's Notice of Appeal in the appropriate court per South Carolina Appellate Court Rule (SCACR) 262(A)(1) [Filing and Service] "Delivering the document to the clerk of the appellate court.", counsel has provided constitutionally ineffective assistance of counsel, and prejudice is presumed.

Ms. Badgett has clearly contradicted herself in her own letter to the Court of Appeals in which she states she filed the appeal, then didn't file the appeal, then filed the appeal out of "caution" (what does that mean?)

Clearly Ms. Badgett cannot competently represent my best interest in any future legal matters as she has clearly shown lack of competence and a hostile manner (see exhibit E)

5.

AND A REFUSAL TO CONTACT
HER CLIENT EXCEPT WHEN
MADE TO DO SO BY THE COURTS.

THEREFORE, I PLEAD
WITH THIS COURT FOR HELP
IN ACQUIRING APPROPRIATE LEGAL
REPRESENTATION FOR my
APPEAL PROCESS.

Respectfully,

TERRY D. SWANGER
214364 Q-1 A105