

MOTION TO BE RELIEVED OF COUNSEL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

J. John C. Hayes, III

2017-001659

RECEIVED

DEC 11 2017

SC Court of Appeals

State of South Carolina,

Respondent,

v.

Dean A. Holcomb,

Appellant.

MOTION TO BE RELIEVED OF COUNSEL

TO: THIS HONORABLE COURT, DEAN ALTON HOLCOMB, RUSSELL D. GHENT, ESQUIRE, ALAN MCRORY WILSON, ESQUIRE AND JOHN BENJAMIN APLIN, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that the undersigned Counsel for the Respondent respectfully move this Honorable Court, pursuant to Rule 264(b) of the South Carolina Appellate Court Rules, to be relieved of counsel.

I, Donald L. Smith, was retained by the Appellant on day four (4) of his General Sessions Trial. Appellant had represented himself up to point that I was given the opportunity by Judge Hayes to continue with the defense of the case. Since I had been subpoenaed as a witness in this trial, I was present in the Courtroom during direct and cross-examinations of some members of law enforcement who had been involved in the investigation which led to his charges. Towards the end of the third day of trial, Appellant's sister approached me; and, expressed her concern

regarding Appellant's self-representation. She asked if I would consider stepping in and providing her brother with representation. Based on my previous involvement in the case and my belief that I could help Mr. Holcomb, I agreed to help him. I saw Mr. Holcomb that Wednesday evening to discuss my involvement, at which time he asked that I help him, especially given his difficulties with sleep during that week.

Appellant was initially denied his request for me to take over his defense from him. Judge Hayes believed that it wasn't fair to me to take over the defense when half of the trial had been completed. However, Judge Hayes relented; and, I assumed a representation following lunch on Thursday June 14, 2017. Defense rested late Thursday, leaving closing arguments for the morning.

Prior to closing arguments, I made a motion for a mistrial based on the fact that one of the jurors had openly questioned why the case was being tried based on the fact that a trial had already been conducted with the same actors. **(I was not present for this event and speak only from what I was told.)**. The alternate on that Friday morning alerted the Court that the same woman had been talking about the case the entire week. A polling of the jury was unanimous in discounting the claims of the alternate. Judge Hayes simply released the alternate from service. I believed that it was impossible to know the effect of such allegations on the jury. Judge Hayes saw it differently and denied my motion for a mistrial.

At the point, Appellant told the Court that he was unhappy with my representation and he wished to relieve me as counsel. Not only did he state that he wished to dismiss me, he made claims of drug use and intoxication, which were baseless. Given the trial was now going to the jury, Judge Hayes denied Appellant's request and I gave my closing to a jury who returned a guilty verdict.

While I had been fired, and certainly had not been hired for any post-trial activity, I perfected Appellant's appeal. However, based on the inherent conflict created by the Complaint made by Mr. Holcomb to the Bar, I don't believe that it would be fair to either of us for me to continue in the capacity of defense counsel. Therefore, I respectfully request that this Court honor Mr. Holcomb's request to relieve me of counsel so that he may continue with his appeal unfettered by any issues that he may have with me.



Donald L. Smith (Bar #: 6699)
Attorney for Appellant
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Anderson South Carolina
This 6th day of December 2017.

**FORM 7
PROOF OF SERVICE
MOTION TO BE RELIEVED AS COUNSEL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
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Respondent,

v.

Dean Alton Holcomb,

Appellant.

PROOF OF SERVICE

I certify that I have served a copy of Counsel's Motion to Be Relieved for the above-referenced Appellant, Dean Alton Holcomb, *SCDCC ID: 00369696*, In Care of: Tyger River Correctional Facility, 200 Prison Road, Enoree SC 29335, The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, PO Box 11629, Columbia SC 29211, South Carolina Attorney General Alan McCrory Wilson at PO Box 11549, Columbia, SC 29211, Russell Ghent, Assistant Solicitor for Seventh Judicial Circuit, at 180 Magnolia Street, Spartanburg SC 29306; and, John Benjamin Aplin, 1000 Assembly Street, Room 519 Columbia, SC 29201; by depositing a copy of it in the United States Mail, postage prepaid, on December 6, 2017.



Donald L. Smith, (SC Bar#6699)
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**FORM 8
LETTER TO THE APPEALS COURT CLERK
FILING MOTION TO BE RELIEVED OF COUNSEL**

December 6, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

RE: The State v. Dean Alton Holcomb
Case Number: 2017-001659

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SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed the following materials:

- 1) Motion to Be Relieved of Counsel; and,
- 2) Form 7 Proof of Service;

Sincerely,



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cc: Dean Alton Holcomb
Russell Ghent, Esquire
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire

Attorney Office of Donald Smith
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Anderson SC 29621

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