

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

DEC 14 2017

S.C. SUPREME COURT

---

State of South Carolina )  
Respondent, ) MOTION TO RELIEVE APPELLATE  
-vs- ) COUNSEL OF RECORD AND REQUEST  
Mickey Johnson ) FOR APPOINTMENT OF SUBSTITUTION  
Appellant, ) APPELLATE COUNSEL  
\_\_\_\_\_ )

**Introduction**

"[A]ove captioned Appellant Mickey Johnson hereby respectfully moves this Honorable Court to relieve appellate counsel of record (Robert Pachak) and makes his request for appointment of substitution appellate counsel.

In support of this request Appellant would show this Court the following:

(1). This matter is before this Court pursuant to the granting of a direct appeal and the denial of PCR relief on Appellant's ineffective assistance of counsel ("IAC") claims. C/A No.2014-CP-43-01491).

(2). As noted above the PCR Court granted a belated appeal while simultaneously denied Petitioner's IAC claims. Therefore on the appeal from the PCR Court all the claims including the direct appeal issues and all the IAC claims must be raised in this appeal or the issues would latter be considered procedurally defaulted.

(3). Petitioner does not want to abandon or procedurally default any of his meritorious IAC claims.

(4). The issue that was preserved for the direct appeal was [gang evidence] while the IAC claims were (1) counsel conceding Appellant's guilt in opening and closing; (2). solicitor's improper vouching; (3). counsel's failure to object to the inferred malice instructions; (4). trial court commented on the facts during express malice charge.

(5). Appellant was appointed Robert Pachak of the S.C. Office of Indigent Defense. Appellant has diligently sought to contact Mr. Pachak regarding the issues that will be raised.

(6). However, after numerous attempts to contact Pachak, including Appellant's family trying to contact him, on November 30, 2017 Appellant filed a Formal Complaint with the S.C. Office of Disciplinary Counsel against Mr. Pachak regarding his negligence in my case.

(7). On December 6, 2017 Appellant received the attached (exhibit (A)(correspondence from Pachak), stating that the gang evidence and vouching issues were good issues. Yet, it should be noted that Pachak's neglect in the case is exploited to the maximum by his statement to Appellant "State v. Belcher is not a good issue based on the facts of Appellant's case. ID.

(8). If Pachak would have read the PCR amendment, read the PCR transcript and the PCR Court's Order Pachak would have seen that Appellant has never raised a State v. Belcher claim. Belcher has never been raised by Appellant, the PCR Court or the Respondent. (emphasis supplied and added). See Amended PCR

Application Issue (F) which clearly raises the issue as IAC for not objecting to the burden shifting [mandatory] presumption jury instruction under *Sandstrom v. Montana*, 442 U.S. 510 (1979), not a Belcher issue.

(9). The malice instruction complained of here is meritorious and Appellant should not have to abandon his claims due to Pachak's neglect. The instructions here do not contain the required "permissive inference" instruction when the court instructed the jury on the inference of malice from the use of a deadly weapon. This issue is clearly supported under, Sandstrom supra and addressed by this Court in *State v. Elmore*, 308 S.E.2d 781 (1983) and *State v. Peterson*, 335 S.E.2d 800 (1985).

(10). Appellant does not want to waive his IAC claims nor does he feel the claims should be procedurally defaulted by State appointed PCR Appellate counsel simply based on his negligence and lack of understanding of the law in this regard.

(11). Therefore, out of abundance of caution and the integrity of Appellant's rights to present his meritorious claims in this one appeal, Appellant would respectfully ask that Pachak be removed from the case and substitution of counsel be appointed.

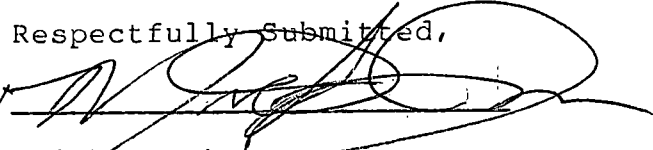
(12). Pachak has threatened Appellant that he (Appellant) either has to keep Pachak or represent himself. Appellant does not feel that he should have to represent himself, he just feels that counsel should render the effective assistance of appellate counsel as required by law.

CONCLUSION

WHEREFORE, based on the foregoing Appellant would ask that Pachak be relived as appellate counsel of record and new counsel be appointed to represent Appellant during the appellate process in this matter.

Respectfully Submitted,

/s/

  
Mickey Johnson

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

**RECEIVED**

DEC 14 2017

S.C. SUPREME COURT

State of South Carolina -- Respondent,

-vs-

Mickey Johnson -- Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies he has served a true and correct copy of the enclosed Motion To Relieve Counsel on the attorney for Respondent Assistant Attorney General, Donald J. Zelenka, P.O. Box 11549, Columbia, SC. 29211, by placing the aforesaid in a properly addressed, first-class postage affixed envelope and placed in the U.S. Mail this \_\_\_\_\_ day of December, 2017.

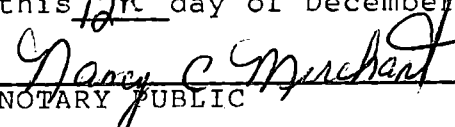
Respectfully Submitted,

/s/

  
Mickey Johnson

Sworn to and Subscribed Before Me

this 12<sup>th</sup> day of December, 2017.

  
\_\_\_\_\_  
NOTARY PUBLIC

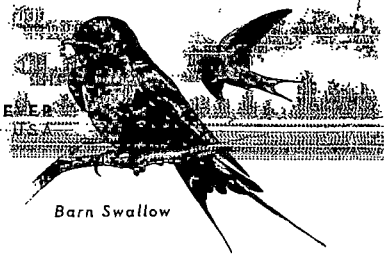
MY COMM. EXPIRES 1-23-2023

11 Money 11104111 Johnson 298814  
P. C. I. F3A-207

430 Oaklawn Rd  
Petzer, SC 29669

GREENVILLE SC 296

FOREVER



Barn Swallow

**RECEIVED**

DEC 12 2017

P.C.I. MAILROOM

South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

SCDC  
Christmas  
Packet

29211-133030

