

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Aiken County
Doyet A. Early, Circuit Court Judge

RECEIVED
JAN 19 2018
SC Court of Appeals

WILLIAM MCCLADDIE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001979

RETURN TO MOTION TO RELIEVE COUNSEL

On January 18, 2018, undersigned counsel received a copy of Petitioner's motion to relieve counsel and a request from this Court for a return. Pursuant to this Court's request and Rule 240, SCACR, counsel files this return.

Brief Procedural History

Counsel began representing Petitioner on November 15, 2016. Counsel filed the petition for writ of certiorari and accompanying appendix on March 13, 2017. Counsel also filed the brief of appellant pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), on that date. The state responded on July 26, 2017, and counsel filed a reply on August 4, 2017. On October 30, 2017, the Supreme Court transferred the case to this Court.

Motion to Relieve Counsel

Counsel reviewed the motion to relieve counsel. Based upon this review, counsel discerned the following bases for removal of counsel: (1) counsel does not intend to defend Petitioner and makes excuses for the state, (2) counsel does not know the yard on which Petitioner is an involuntary resident, (3) counsel does not know that Petitioner was stabbed five times and could have died, (4) remittitur was issued in Petitioner's case in September 28, 2015, but sixteen months later, the same case remains pending, and (5) Petitioner's case was transferred to the Court of Appeals from the Supreme Court. Counsel will respond to each one in turn.

Counsel worked, and continues to work, diligently to represent Petitioner. Counsel reviewed the proceedings and raised meritorious issues in the petition for writ of certiorari and the belated direct appeal brief. Counsel **denies** Petitioner's claim that she does not intend to defend Petitioner and makes excuses for the state.

Counsel's initial letter to Petitioner requested that he keep counsel updated if he were transferred to another facility because the Department of Corrections does not notify counsel when inmates are moved or released. Counsel is aware of Petitioner being moved one time since November 15, 2016, the date on which counsel began representing Petitioner. He was moved to Perry Correctional Institution from Lieber Correctional on September 20, 2017. Counsel was not aware of any correspondence that was sent to the wrong institution or any correspondence that

was returned due to a bad address.¹ Counsel **denies** that she is not aware of the yard on which Petitioner is an involuntary resident.

On May 26, 2017, Petitioner's mother contacted counsel by phone. She was very concerned about Petitioner's safety, and informed counsel that she wanted him moved to another institution. Counsel advised she could not assist her with the matter, but provided her with several phone numbers for individuals at Lieber Correctional Institution, where Petitioner was residing at the time, so that she could make the request for a transfer. On October 18, 2017, counsel received a letter from Petitioner that was dated October 11, 2017. In that letter, Petitioner stated he "just watched a man get stabbed and beat up today!!! 10-10-17." Counsel responded to Petitioner on October 19, 2017, expressing sympathy for the prison conditions and explaining she could not assist with changing those matters. On December 13, 2017, counsel received a letter from Petitioner dated December 8, 2017, advising her that Petitioner had been stabbed on November 19. On December 13, 2017, counsel responded to Petitioner's letter, but did not address the stabbing matter specifically as there was nothing counsel could do to assist Petitioner and this sentiment had been expressed in a prior letter. On January 18, 2018, counsel received a letter from Petitioner dated January 11, 2018. In that letter, Petitioner again mentioned that he was stabbed, but also included that he had been sent to the hospital following the stabbing. On that date, counsel responded to Petitioner, expressing sympathy for his injuries and explaining she could not assist him regarding any action related to those injuries. Counsel **denies** that she was not aware that Petitioner was stabbed five times.

¹ Counsel wrote to Petitioner on the following dates: November 15, 2016, February 8, 2017, March 13, 2017, June 27, 2017, June 28, 2017, July 31, 2017, August 4, 2017, August 15, 2017, August 22, 2017, August 26, 2017, October 10, 2017, October 13, 2017, October 19, 2017, October 20, 2017, November 2, 2017, December 13, 2017, and January 18, 2018. Additionally, counsel spoke to Petitioner by phone on February 21, 2017.

In a letter dated December 8, 2017, Petitioner expressed his confusion regarding remittitur being issued in his case on September 28, 2015, but counsel telling him that his case remained pending. Petitioner also wrote to the Supreme Court on December 8, 2017, about his case. The Court responded on December 14, 2017, stating “the remittitur was issued in your direct appeal on September 28, 2015, thus ending Case # 2015-001732.” Counsel responded to Petitioner’s letter on December 13, 2017. In the letter, counsel explained that trial counsel served an untimely notice of appeal, this Court dismissed the notice of appeal, and subsequently issued remittitur on September 28, 2015. Counsel’s letter also noted the appendix, which had been provided to Petitioner, included all documentation regarding the notice of appeal, dismissal of appeal, and remittitur. Counsel further explained the post-conviction relief appeal, which included a belated direct appeal, remained pending and no remittitur had been issued. Counsel **denies** that the issuance of the remittitur in the direct appeal action provides a basis to remove counsel.

Finally, Petitioner’s case was transferred to this Court from the Supreme Court. On October 30, 2017, the Supreme Court issued an order transferring a number of post-conviction relief cases to this Court. On November 2, 2017, counsel sent a letter to Petitioner advising him of the transfer and including that the transfer was pursuant to Rule 243(l), SCACR. Further, counsel explained the transfer was “not a good or a bad thing,” but was something the Supreme Court did a couple of times a year. Counsel **denies** that the transfer of the case to this Court provides a basis to remove counsel.

Undersigned counsel is unaware of any basis for her removal from Petitioner’s case. Nevertheless, counsel does not wish to oppose the motion of her client. Therefore, counsel leaves the matter to the sound discretion of this Court.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of January, 2018.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Aiken County

Doyet A. Early, Circuit Court Judge

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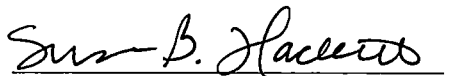
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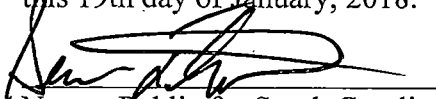
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Motion to Relieve Counsel in the above referenced case has been served upon Julie Coleman, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and William McCladdie, #364614, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 19th day of January, 2018.



Susan B. Hackett
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 19th day of January, 2018.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.