

# The Supreme Court of South Carolina

Mickey Markell Johnson, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001292

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## ORDER

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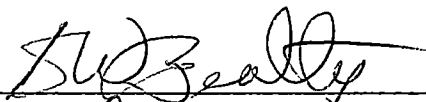
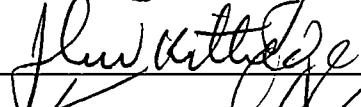



This matter is before the Court by way of a notice of appeal from an order of the circuit court finding petitioner is entitled to a belated review of his direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), but denying and dismissing petitioner's application for post-conviction relief (PCR). Petitioner is currently represented by Robert Pachak of the South Carolina Commission on Indigent Defense, Division of Appellate Defense. Petitioner moves this Court to relieve Mr. Pachak as counsel and appoint substitute counsel. Neither Mr. Pachak nor the State has filed a return to the motion.

A PCR applicant is not entitled to appointed counsel of choice. *Richardson v. State*, 377 S.C. 103, 659 S.E.2d 493 (2008). While an applicant may have the right to reject or discharge court-appointed counsel and proceed *pro se* or retain his own counsel, he does not have the right, without a showing of satisfactory cause, to refuse or dismiss the counsel appointed and have other counsel appointed. *Id.* Appellate counsel is not required to raise every nonfrivolous issue that is presented by the record, but must be allowed to exercise his reasonable professional judgment. *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). We find petitioner has failed to show satisfactory cause to relieve Mr. Pachak *and have other counsel appointed*.

In the alternative, petitioner may relieve Mr. Pachak as counsel and proceed *pro se*, to include the filing of a substitute petition for a writ of certiorari, as long as he knowingly and intelligently waives his right to counsel. *See Faretta v. California*, 422 U.S. 806 (1975); *State v. Brewer*, 328 S.C. 117, 492 S.E.2d 97 (1997). We

take this opportunity to warn petitioner that if he chooses to proceed *pro se*, this Court will require full compliance with all applicable rules and procedures. Petitioner is certain to be unlearned in other aspects of the law as well. Representation by an attorney trained in the law would be highly beneficial, and we strongly encourage petitioner to continue with representation by Mr. Pachak.

After considering this information, petitioner shall, within twenty (20) days of the date of this order, notify this Court whether he wishes to proceed *pro se* or continue to be represented by Mr. Pachak. If petitioner fails to notify this Court of his intentions within twenty (20) days, Mr. Pachak will continue to be listed as counsel of record in this matter.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

February 16, 2018

cc:

Julie Amanda Coleman, Esquire

Robert M. Pachak, Esquire

Mickey M. Johnson, #298814