

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Spartanburg County

Robin B. Stillwell, Circuit Court Judge

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**RECEIVED**

**MAY 03 2018**

S.C. SUPREME COURT

RASHAUN JAMINE SOBERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2017-002002

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PETITION FOR APPOINTMENT  
OF OUTSIDE COUNSEL

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Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned counsel, who is presently representing the above-named petitioner on PCR appeal, moves for the appointment of independent counsel in the case. Counsel presents the following facts in support of this motion.

1.) Petitioner Rashaun J. Sobers was found guilty of murder during the September, 2010 term of the Spartanburg County General Sessions Court before the Honorable J. Durham

Cole, Judge. Petitioner received a sentence of life imprisonment. Petitioner appealed, but his conviction and sentence were affirmed on appeal. See State v. Sobers, 404 S.C. 263, 744 S.E.2d 588 (Ct. App 2013). Chief Appellate Defender Robert M. Dudek, of the South Carolina Office of Appellate Defense, represented petitioner on direct appeal.

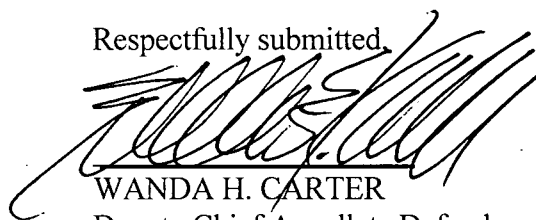
2.) Petitioner filed a post conviction relief application dated February 21, 2014, alleging ineffective assistance of trial and appellate counsels in the case. In the PCR application, petitioner alleged that he received ineffective assistance from appellate counsel because “appellate counsel failed to raise all meritorious issues on appeal.” An evidentiary hearing was convened on June 27, 2017, at the Spartanburg County Courthouse before Judge Robin B. Stilwell. Appellate counsel did not testify at the hearing, but submitted an affidavit that was presented at the PCR hearing as exhibit #1. A copy of the affidavit is attached. In the affidavit, appellate counsel summarized the appellate brief which addressed mainly the trial judge’s error in failing to admit relevant evidence of gang association connected to the case in order to establish petitioner’s fear during the incident in support of his self-defense claim, and added that the issue of the trial judge’s failure to exclude cellular phone video evidence and the solicitor’s burden shifting closing arguments were not issues that would have yielded a reversal on appeal.

On August 2, 2017, Judge Stilwell issued an Order of Dismissal denying post-conviction relief to petitioner and included a ruling that petitioner did not receive ineffective assistance from neither trial counsels nor appellate counsel. In the Order of Dismissal, the PCR judge made a specific finding that no ineffective assistance of appellate counsel existed with respect to the appeal. See pages 25-29 of the Order of Dismissal.

3.) Petitioner appealed Judge Stilwell's Order of Dismissal. The undersigned counsel has been assigned to perfect the appeal from Judge Stilwell's Order dismissing petitioner's PCR action. Inasmuch as a portion of the instant appeal concerns the effectiveness of petitioner's appellate counsel, who was Robert M. Dudek, of the S.C. Office of Appellate Defense, then the undersigned counsel, also of the S.C. Office of Appellate Defense, is presented with a conflict in the case. Counsel in effect has been placed in a position of having to evaluate her own effectiveness in the case, which is an ethical dilemma; and it would be a conflict for the undersigned counsel to in effect pass upon her own performance in petitioner's case in the appeal. See generally, Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989); Poston v. State, 303 S.C. 167, 399 S.E.2d 592 (1989). Compare Carter v. State, 293 S.C. 528, 362 S.E.2d 20 (1987), where this Court cited the impracticality of counsel arguing his own ineffectiveness at a post conviction relief proceeding.

WHEREFORE, the undersigned counsel requests that independent counsel be appointed to represent petitioner in this post conviction relief appeal, and that said appeal be held in abeyance pending the appointment requested.

Respectfully submitted,



WANDA H. CARTER  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 3<sup>rd</sup> day of May, 2018.

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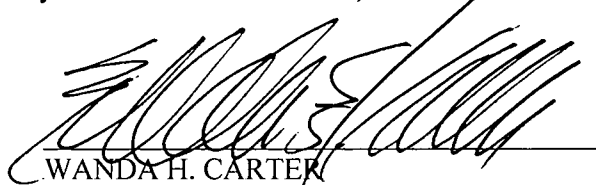
RESPONDENT.

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Petition for Appointment of Outside Counsel in the above referenced case has been served upon opposing counsel, Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Rashaun Jamine Sobers at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 3rd day of May, 2018.



WANDA H. CARTER  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me  
this 3rd day of May, 2018.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.