

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marlboro County
Thomas Russo, Circuit Court Judge

RECEIVED

JUN 18 2018

SC Court of Appeals

ALFONSO STATON,

PETITIONER,

V.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2015-000460

Petition for Rehearing

Pursuant to Rule 243(I), SCACR and Rule 221, SCACR, Counsel would respectfully request this Court rehear its denial of Petitioner's Petition for Writ of Certiorari. To support this petition, Petitioner will show the following:

While Petitioner sat in prison waiting for the appeal of his first PCR to be decided, Petitioner learned that at the time of his trial his attorney was also working as a part time assistant solicitor in the Fourth Circuit. In fact, unknown to Petitioner trial counsel had been relieved as counsel based the conflict by Judge Smoak only to be ordered back on the case by Judge Cottingham. Under *Holloway v. Arkansas*, this would require an automatic reversal.¹

Two months after his first PCR appeal was dismissed, Petitioner file a motion for a new trial based on after discovered evidence pursuant to Rule 29(b), SCRCrimP.

¹ In *Holloway*, the U.S. Supreme Court found that when Counsel timely objects to a potential conflict of interest the defendant need not show prejudice to warrant reversal. *Holloway v. Arkansas*, 435 U.S. 475, 490, 98 S.Ct. 1173, 1181-82 (1978).

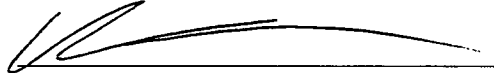
Petitioner's Court appointed 29(b) counsel then proceeded to: submit a substitute motion that waived one of Petitioner's issues; failed to advise the court of the applicable statute of limitations² on a Rule 29(b) in 2009; failed to argue that *Spann* was inapposite; and failed to file a timely appeal. As a result of 29(b) Counsel's performance, Petitioner has been barred from litigating his meritorious conflict of interest claim.

Applicant has filed a second PCR as a remedy to 29(b) Counsel's ineffectiveness, but with only a limited hearing the PCR court summarily³ dismissed his PCR.

Petitioner has done everything in his power to raise the conflict of interest issue with the court. However, through no fault of his own, his appointed counsel has failed to properly preserve this issue for appellate review. The denial of appellate review of this issue denies Petitioner his rights under the Sixth Amendment and the Fourteenth Amendment of the United States Constitution.

Petitioner therefore respectfully requests that this Court rehear his Petition for Writ of Certiorari.

Respectfully submitted,



Tristan M. Shaffer (SC Bar 77565)

P.O. Box 1027

Chapin, SC 29036

(803) 467-2586

tristan@shafferlawsc.com

June 15, 2018

² In 2009, when the 29(b) was filed, the rule provided that the motion must be made in a reasonable amount of time. While his motion was pending this was amended to "within one year."

³ During the hearing in front of the PCR Court, the argument before the PCR court centered on whether an evidentiary hearing should be granted. In the order the PCR Court found that the Application was time barred and successive, but also reached the merits of Petitioner's argument. Petitioner would assert that the finding on the merits was dicta, but in the event that the Court finds this to be a ruling on the merits, Petitioner would argue that he was denied his right to due process in litigating his claims.

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CERTIFICATE OF SERVICE

I certify that on this date I served the Petition for Rehearing on opposing counsel at the following address:

Johnny James, Esquire
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211



Tristan M. Shaffer

June 15, 2018

The Law Office of Tristan M. Shaffer

Litigation • Injury Law • Criminal Defense

June 15, 2018

Jenny Abbott Kitchings
The South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

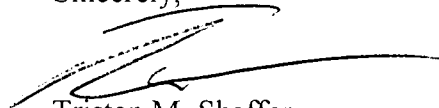
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Re: The State v. Alfonso Staton (Appellate Case 2015-00460)

Dear Ms. Kitchings,

Enclosed please find the Petition for rehearing in the above referenced case.

Sincerely,



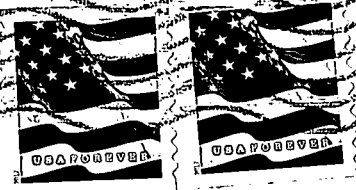
Tristan M. Shaffer

CC: Johnny James

Law Office of Tristan M. Shaffer
P.O. Box 1027
Chapin, SC 29036

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