

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Spartanburg County
Honorable R. Scott Sprouse, Circuit Court Judge

KEVIN C. CASEY;

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2016-001686

RESPONDENT'S MOTION FOR REMAND
FOR APPOINTMENT OF COUNSEL AND
A NEW EVIDENTIARY HEARING

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S.C. SUPREME COURT

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SC Court of Appeals

This matter is before the Court on appeal from the denial of Petitioner's application for post-conviction relief. On June 12, 2015, an evidentiary hearing was held before the Honorable R. Scott Sprouse in Spartanburg County, South Carolina. Petitioner proceeded *pro se* at the hearing. Judge Sprouse denied relief by order dated June 22, 2015. Petitioner appealed the denial of the application and filed a petition for writ of certiorari on May 17, 2017. Respondent filed its Return to the Petition of Writ of Certiorari on August 31, 2017.

Certiorari was granted on the following issue: "Whether the PCR court erred in failing to ensure that Petitioner's waiver of PCR counsel was knowing and intelligent by informing him of the right to counsel and dangers of self-representation?" Pet'r's Br. 1. Petitioner requested relief in the form of a new PCR hearing and the assistance of PCR counsel. Pet'r's Br. 20.

When a PCR application is not dismissed before a hearing is held, the PCR judge must appoint counsel or obtain a knowing and intelligent waiver of that right by the applicant. Hilton v. State, 422 S.C. 204, 810 S.E.2d 852 (2018); Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315 (1992). As to what constitutes a valid waiver, the PCR applicant must be made aware of the right to counsel and the dangers of self-representation. Hilton, 422 S.C. at 207, 810 S.E.2d at 854 (citing Prince v. State, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990)). The PCR court clearly erred by failing to seek from [Applicant] a valid waiver of his right to counsel. Harris v. State, No. 2018-MO-011 (S.C. Sup. Ct. filed February 28, 2018).

In light of the South Carolina Supreme Court's recent decisions in Hilton and Harris, Respondent would now consent to a remand of this case and the appointment of PCR counsel.¹ Respondent has reviewed the record in its entirety. In the present case, Respondent agrees that prior to the PCR hearing, Petitioner was not informed of his right to counsel and was not made aware of the dangers of self-representation. Respondent agrees that the PCR court failed to seek a valid waiver of Petitioner's right to counsel. Therefore, Respondent moves that this case be remanded to the Court of Common Pleas for the appointment of new PCR counsel and a new evidentiary hearing.

¹ When Respondent filed its Return to the Petition for Writ of Certiorari, Hilton and Harris were undecided.

CONCLUSION

WHEREFORE, Respondent prays that this Court remand this matter to the Court of Common Pleas for a new evidentiary hearing and the appointment of counsel for Petitioner.

Respectfully submitted,

ALAN WILSON
Attorney General

JORDAN A. COX
Assistant Attorney General
S.C. Bar. No. 103157



ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

Oct 2, 2018

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Court of Common Pleas
Honorable Scott R. Sprouse, Circuit Court Judge

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S.C. SUPREME COURT

KEVIN C. CASEY,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

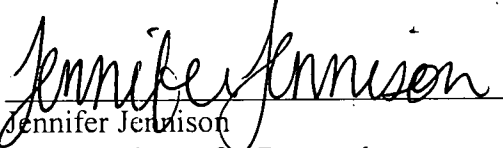
RESPONDENT,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Respondent's Motion for Remand, for Appointment of Counsel, and a New Evidentiary Hearing**, has been served upon opposing counsel by hand delivering two copies via Interagency Mail to:

Laura R. Baer, Esquire
S.C. Commission on Indigent Defense
P.O Box 11589
Columbia, SC 29201

This 2nd day of October, 2018.


Jennifer Jernison
Legal Assistant for Respondent



ALAN WILSON
ATTORNEY GENERAL

October 2, 2018

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The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

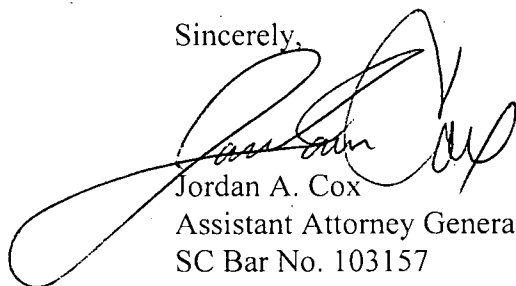
S.C. SUPREME COURT

Re: Kevin C. Casey v. State of South Carolina
Appellate Case No. 2016-001686

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the **Respondent's Motion for Remand, for Appointment of Counsel, and a New Evidentiary Hearing**. By copy of this letter we are serving opposing counsel today.

Sincerely,



Jordan A. Cox
Assistant Attorney General
SC Bar No. 103157

JAC/jaj
Enclosures

cc: Laura R. Baer, Esquire
Victim Advocacy Division