

September 25, 2018

DANIEL E. SHEAROUSE, CLERK OF COURT
Post Office Box 11330
Columbia, SC 29211

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OCT -5 2018

S.C. SUPREME COURT

Reference: James R. Rose v. State
Appellate Case No.: 2017-002052

Dear Clerk Shearouse:

Find enclosed an original and one copy of the Petitioner's Memorandum
in support of motion for Substitution of Counsel on the above referenced case.

Sincerely,

JS

James R. Rose
MCCI # 293938
386 Redemption Way
McCormick, SC 29899

James R. Rose, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-002052

PETITIONER'S MEMORANDUM
IN SUPPORT OF MOTION FOR
SUBSTITUTION OF COUNSEL

STATEMENT OF FACTS

This Court, by Order dated April 18, 2018, denied petitioner's motion to relieve Robert Dudek, Esquire, as counsel and to have other counsel appointed. Petitioner filed a motion for substitution of counsel dated August 28, 2018. Petitioner, respectfully submits this memorandum in support of his motion for substitution of counsel.

ARGUMENT

In the Order, this Court held: "Petitioner's case can be and shall be handled by Mr. Dudek without any involvement by or interaction with Susan Hackett." However, Mr. Dudek failed to raise petitioner's allegation against Susan Hackett for failing to raise hand of one hand of all and directed verdict issue that was properly preserved for appeal. "A defendant is constitutionally entitled to the effective assistance of appellant counsel." See Southerland v. State, 337 S.C. 610, 615, 524 S.E. 2d 833, 836 (1999).

In Bray v. State, 620 S.E.2d 743 (S.C. 2005), this Court held: "PCR cases are treated differently from traditional civic cases, requiring, for example, that appellate counsel brief all arguable issues despite counsel's belief the appeal is frivolous...." Mr. Dudek failed to brief issues properly preserved for appeal. See State v. Moore, 357 S.C. 458, 593 S.E.2d 608 (2004): "An issue must be raised to and ruled upon by the trial court to be preserved for appellate review." In Simpkins v. State, 401 S.E.2d 142, this Court found, appellate Counsel was ineffective for failing to appeal preserved issues that was entitled to reversal on appeal. see also: Jones v. Barnes, 103 S.Ct. 3308, the Supreme Court held that it's appellate counsel's duty to raise issues for appeal. Therefore, the omission of issues raised to and ruled upon by PCR court demonstrates counsel's failure to render reasonably effective assistance under prevailing professional norms, and the deficient performance prejudices petitioner's appeal.

CONCLUSION

WHEREFORE, petitioner prays for the relief requested.

Respectfully submitted,

15/

James R. Rose
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386 Redemption Way
McCormick, SC 29899

September 25, 2018

McCormick, South Carolina

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MCC
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The Supreme Court of South Carolina
Daniel E. Shearouse, Clerk of Court
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