

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Michael G. Nettles, Circuit Court Judge

Opinion No. 5579 (S.C. Ct. App. Filed August 1, 2018)

2014-GS-27-540;541;542

THE STATE,

RESPONDENT,

V.

NATHANIEL WRIGHT,

PETITIONER

APPELLATE CASE NO 2016-000272

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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SC Court of Appeals

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on September 20, 2018.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming the trial judge's refusal to relieve the public defender office from representing Petitioner at his trial for murder because of a conflict of interest where the public defender's supervisor represented one of the State's witnesses and negotiated a reduction in sentence for the witnesses in exchange for his statement and testimony against Petitioner and where the public defender also represented the deceased both in violation of Petitioner's Sixth Amendment right to conflict-free representation?
2. Did the Court of Appeals err in affirming the trial judge's refusal to grant a continuance to allow private counsel to prepare for trial when counsel had been retained and the public defender office operated under a conflict of interest?

STATEMENT OF THE CASE

In November of 2014, the Jasper County Grand Jury indicted Petitioner Wright for murder, possession of a weapon during the commission of a violent crime and failure to stop for a blue light, indictments #2014-GS-27-540, 541, 542. On February 8, 2016, Petitioner appeared before the Honorable Michael G. Nettles and pled guilty to failure to stop for a blue light and proceeded to jury trial on the murder and weapons charges. Stephanie Smart-Gittings and Jared Newman represented Petitioner. Mary Jones prosecuted the case. The jury returned with a verdict of guilty of the lesser included offense of voluntary manslaughter and the weapon charge. Judge Nettles sentenced Petitioner to twenty-three (23) years for voluntary manslaughter, five (5) years concurrent for the weapons charge and three (3) years concurrent for failure to stop for a blue light. A timely notice of intent to appeal was filed on February 12, 2016, and the direct appeal perfected.

On August 1, 2018, the South Carolina Court of Appeals affirmed the convictions and sentences, State v. Wright, 424 S.C. 335, 818 S.E.2d 236 (Ct. App. 2018). A timely petition for rehearing was filed and then denied on September 20, 2018. This petition for writ of certiorari follows.

ARGUMENTS

- 1. The Court of Appeals erred in affirming the trial judge's refusal to relieve the public defender office from representing Petitioner at his trial for murder because of a conflict of interest where the public defender's supervisor represented one of the State's witnesses and negotiated a reduction in sentence for the witnesses in exchange for his statement and testimony against Petitioner and where the public defender also represented the deceased both in violation of Petitioner's Sixth Amendment right to conflict-free representation.**

The jury found Petitioner guilty of voluntary manslaughter in connection with the fatal shooting of Petitioner's brother, Maurice Wright. Prior to trial the Hampton County Public Defender appointed to represent Petitioner on these Jasper County¹ charges, Stephanie Smart-Gittings, brought the conflict issue to the attention of the trial judge. (R. pp. 11-35). The State had not disclosed the identity of one of its witnesses to Ms. Smart-Gittings until the week before trial. (R. pp. 11-12). When the witness's identity was disclosed, the public defender learned that the witness, Antoine Drake, was represented by her direct supervisor in the Hampton County Public Defender office, Stephen Plexico. (R. p. 14, line 21 – p. 15, 16, 17 lines 1-20). The public defender told the judge, "Mr. Plexico brokered – negotiated a deal with the State regarding this particular confidential witness and Mr. Plexico's witness will be testifying against Mr. Wright [Petitioner] during the course of this trial." (R. p. 15, lines 3-6).

The witness, Drake, was initially tried in his absence and sentenced to two years for drug charges. (R. p. 323, lines 16-24). Drake was later arrested on an unrelated pistol charge and learned of the drug conviction and sentence. (R. p. 323, lines 5-21). Mr. Plexico was successful in having the two year sentence reduced to probation in exchange for witness Drake's statement

¹ Robert Hughes, the public defender in Jasper County, transferred Petitioner's case to Ms. Smart-Gittings due to another conflict (R. p. 19, lines 12-17),

and testimony against Petitioner. (R. p. 323, line 25 – p. 354, lines 1-15). Drake claimed to have witnessed the shooting but did not provide a statement to law enforcement until his attorney was able to get the sentence for the drug charge reduced in exchange for testimony against Petitioner. (R. p. 326, lines 18-21). In his testimony at trial Drake directly implicated Petitioner. (R. pp. 307-308). Another witness, Sadie Robinson-Jackson, testified that the day after the shooting Drake told her that he was high on drugs and alcohol and passed out at the time of the shooting. (R. p. 360, line 7 – p. 391, lines 1-4).

The judge asked the Chief Public Defender for the Fourteenth Circuit, Gene Hood, about his understanding of the Rules of Professional Conduct with regard to conflicts. (R. p. 17, lines 21-25). Mr. Hood told the judge:

My understanding of this particular situation of a Chinese wall, which is basically what we're talking about here today, is that if you have an office that has two cases and one case is going to be perhaps testifying against the other case, that the attorneys can successfully build a Chinese wall to prevent any – any problems as far as one knowing things about the other one's case and things of that nature. As long as you keep them separated, you can proceed like that. The issue in this particular case comes down to a supervisor who is going to – his client is going to testify against Ms. Smart's client and, not only that, they were both in the same office.

(R. p. 18, lines 11-22).

Mr. Hood stated that he had attorneys in three different counties, Jasper, Hampton and Allendale, but that Ms. Smart-Gittings and Mr. Plexico were in the same office in Hampton County, shared the same investigator and Mr. Plexico was Ms. Smart-Gittings' supervisor. (R. p. 19, lines 5-20). Later Mr. Hood told the judge, "It's the – it's the appearance of impropriety perhaps that—that really makes this a bad – a bad situation to be in and one that I avoid under any circumstances. I have contract attorneys that could have taken this case and everything else

had we known some time ago, but we just found out about it and, you know, now we're stuck with going forward." (R. p. 23, lines 10-16).

Ms. Smart-Gittings told the judge she had discussed the conflict issue with her client. (R. p. 26, lines 16-18). The judge then asked, "Does he understand that there conceivably could be a potential conflict, which I'm not so certain there is a conflict, but to the extent that there could be, what is your client's preference? Does he want you to represent him or not?" (R. p. 26, lines 19-23). Ms. Smart-Giddings answered, "He does not, Your Honor." (R. p. 26, line 24).

The judge referenced Rule 1.10(e) of the Rules of Professional Conduct and found no conflict. (R. pp. 27-29). The judge found that Ms. Smart-Gittings was not involved in the representation of State's witness, Drake, and that she had not received confidential or privileged information. (R. p. 27, line 15 – p. 28, lines 1-12). Ms. Smart-Gittings noted that the rule indicates that there is not an ethical problem if the lawyer is screened in a timely manner from access to confidential information relating to and from any participation in the representation of the other client. (R. p. 29, lines 19-23). She further noted that she sought and received legal advice about Petitioner's case from her supervisor, Mr. Plexico. (R. p. 29, line 25, p. 30, p. 31, lines 1-11). The judge responded, "The distinguishing factor is whether or not you received confidential information, not whether or not y'all had scholarly discussions about the law." (R. p. 31, lines 12-14).

The public defender office's representation of witness Drake was directly adverse to the office's representation of Petitioner and constituted an actual conflict. The present case is complicated by the fact that the State withheld the identity of the witness until the week before trial. The public defender office was unable to construct a "Chinese Wall" or properly screen when the public defender was unaware that Drake was going to be a witness against Petitioner

until the week before trial. The trial judge erred in refusing to relieve the public defender from representation of the Petitioner based on conflicts of interests. The representation by the Hampton County Public Defender Office violated Petitioner's Sixth Amendment right to conflict-free representation.

The Sixth Amendment right to effective assistance of counsel encompasses the right to representation by an attorney who does not owe conflicting duties to other defendants. Holloway v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978). Where counsel is guaranteed, the client has the right to conflict-free representation. Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980). Violation of this principle is grounds for reversal. Id. A defendant need not demonstrate prejudice if there is an actual conflict of interest. State v. Gregory, 364 S.C. 150, 153, 612 S.E.2d 449, 450 (2005). The trial judge's refusal to relieve the public defender office violated Petitioner's Sixth Amendment right to conflict-free representation and the violation requires reversal. "[A] motion to relieve counsel is addressed to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." State v. Graddick, 345 S.C. 383, 385, 548 S.E.2d 210, 211 (2001) (citation omitted). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). The trial judge's refusal to relieve the public defender office is controlled by an error of law.

"Defense counsel have an ethical obligation to avoid conflicting representations and to advise the court promptly when a conflict of interest arises during the course of trial." Cuyler v. Sullivan, 446 U.S. 335, 346, 100 S. Ct. 1708, 1717, 64 L. Ed. 2d 333 (1980). In order to comply with her ethical obligation to her client, Ms. Smart Gittings followed the South Carolina Rules of

Professional Conduct and properly brought the conflict to the attention of the trial judge. Rule 1.7(a), RPC, Rule 407, SCACR, provides:

Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Although the ethical rules are different for public defender offices as opposed to other law firms in regard to imputed conflicts of interest, the conflict in the present did not meet the requirements of the public defender office exception. The conflict constituted an actual conflict of interest requiring the judge to relieve the public defender office.

Rule 1.10(a), RPC, Rule 407, SCACR, dealing the imputation of conflicts provides:

While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

Rule 1.10(e), RPC, Rule 407, SCACR², however, provides an exception for public defender offices stating:

A lawyer representing a client of a public defender office, legal services association, or similar program serving indigent clients shall not be disqualified under this Rule because of the program's representation of another client in the same or a substantially related matter if:

² The challenge in the present case is not to whether the public defender exception provided by the ethical rules violates Petitioner's constitutional right to conflict-free representation. Instead, the challenge is to the fact that the screening requirements to the exception were not met.

- (1) the lawyer is screened in a timely manner from access to confidential information relating to and from any participation in the representation of the other client; and
- (2) the lawyer retains authority over the objectives of the representation pursuant to Rule 5.4(c).

Rule 1.0(n), RPC, Rule 407, SCACR, defines screened as:

“Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

The more lenient ethical rule for public defender offices is only applicable if the screening requirements are met. There was no screening or Chinese wall in the present case because the public defender was unaware of the identity of witness Drake and unaware of the conflict. Despite the exception found in Rule 1.10(e), the chief public defender advised the judge that if he had known of the conflict, he would have assigned one of the cases to a contract attorney outside of the public defender office. (R. p. 23, lines 10-16).

The conflict in the public defender office constituted an actual conflict. An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendants. Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001); See also Zuck v. State of Alabama, 588 F.2d 436, 439 (5th Cir.1979). Under the imputation of conflicts, the public defender office owed a duty to witness Drake that was adverse to Petitioner. In order for this dual representation not to constitute an actual conflict, there needed to be proper screening, according to the ethical rules. The screening did not take place, as required, because the public defender was unaware of the identity of the witness and unaware of the conflict. The second comment to Rule 1.7 states that the first thing to do in the resolution of a conflict of interest

problem is to clearly identify the clients. The public defender in the present case identified the conflict a week before trial when the State disclosed the name of the witness. The public defender brought the conflict to the trial judge's attention prior to trial. The trial judge abused his discretion in refusing to relieve the public defender office based on the conflict created by the dual representation of both Petitioner and witness Drake without proper screening.

The present case is distinguished from Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984). In the Duncan case Leroy Davis was called as a witness by the State in Duncan's murder case. Attorneys from the same public defender office represented Duncan and represented Davis in an unrelated murder case. Davis had given police a prior inconsistent statement in regard to the chain of custody of a pistol. The public defender representing Davis did not disclose the inconsistent statement to Duncan's other public defenders. In finding no conflict the Court wrote:

This is a case of concurrent representation. The Public Defender's Office represented both Duncan and Leroy Davis, a witness against Duncan. Steve Henry, an Assistant Public Defender, made a conscious decision not to reveal the prior inconsistent statement of Davis to Duncan or his attorney. Henry, representing Davis on an unrelated murder charge, felt he had an ethical duty not to reveal the statement. Thus, Henry states that he acted under what he perceived to be a conflict of interest.

This court is unable to discern the conflict. Duncan and Henry have done no more than state in a conclusory fashion that there was a conflict of interest. There is no evidence in the record to support the conclusion. Revealing the statement could not have harmed Davis because the Solicitor had it already. Henry's proper action should have been to go to the trial judge and explain the situation to him and ask guidance.

Duncan v. State, 281 S.C. 435, 438-39, 315 S.E.2d 809, 811 (1984). In regard to the State's failure to provide the defense with the prior inconsistent statement of Davis, the Court wrote, "In light of the evidence adduced at the trial and PCR hearing, the disclosure of this statement would not have effected [sic] the outcome of the trial. There was ample evidence to establish the chain

of custody of the pistol. Furthermore, Davis was not a key government witness.” Duncan, 281 S.C. at 439, 315 S.E.2d at 811.

In the present case the conflict is clear and not a conclusory statement of a perceived conflict of interest. The present case does not involve a prior inconsistent statement. Instead, Drake was a purported eye-witness to the murder and directly implicated Petitioner. (R. pp. 307-308). Unlike in Duncan, the police did not have a statement from witness Drake until the public defender representing Drake negotiated a reduction in sentence in exchange for a statement and testimony against Petitioner. When the public defender representing Petitioner learned of the conflict, she did as the Court in Duncan suggested and brought the conflict to the trial judge’s attention.

In affirming the trial judge’s refusal to relieve the public defender the South Carolina Court of Appeals wrote:

The situation presented in this case is exactly the circumstances Rule 1.10(e) seeks to avoid. In fact, the Chief Public Defender for the Fourteenth Circuit testified “I have contract attorneys that could have taken this case and everything else had we known some time ago.” However, the State did not disclose the witness’ identity until the week prior to trial. As a result of this late notice, the public defender’s office could not contract with outside counsel or create an adequate screening mechanism to ensure against a possible conflict of interest. While we agree with Wright that an explicit screening mechanism or addition of outside counsel would be the best remedy for this situation, we do not agree that the absence of an explicit screening mechanism creates an incurable conflict of interest such that the public defender’s office should have been removed from handling his case.

We read Rule 1.10(e) as providing a way to ensure the public defender’s office is not conflicted out, **but we do not read it as requiring any specific procedures to ensure the absence of a conflict.** The trial court took sworn testimony from both the Chief Public Defender as well as the attorney supervising Wright’s counsel. They each testified they did not discuss any particulars of Wright’s case with his attorney and they did not discuss anything that would give Wright’s attorney any advantage or disadvantage in this case. While we are troubled by the situation, we are confident in the trial court’s attempt to ensure no actual conflict existed. Rule 1.10(e) provides a public defender may continue representing a

client, even with an imputed conflict of interest, if there is proper screening to prevent the exchange of confidential information. We find the trial court adequately determined no confidential information was disseminated or received by Wright's attorney. Thus, while no member of the office explicitly communicated the need to create a screening mechanism, the testimony indicates such a wall existed in this case. Accordingly, the public defender's office accomplished the purpose of the rule and Wright's attorney did not have to be relieved.

State v. Wright, 424 S.C. 335, 818 S.E.2d 236, 238 (Ct. App. 2018) (emphasis added).

The Court of Appeals erred in finding that Rule 1.10(e) does not require specific procedures to ensure the absence of a conflict. The Court of Appeals ignored the screening mechanism requirements of Rule 1.10(e). A finding that no confidential information was exchanged does not cure the violation of Petitioner's Sixth Amendment right to conflict-free representation. Such a finding goes to prejudice and prejudice need not be shown in the present case based on the actual conflict of interest. When there is an actual conflict of interest a defendant need not demonstrate prejudice. State v. Gregory, 364 S.C. 150, 153, 612 S.E.2d 449, 450 (2005). The trial judge erred, as a matter of law, in refusing to relieve the public defender.

While not binding authority, South Carolina Bar Ethics Advisory Committee opinion 09-02 supports the proposition that Rule 1.10(e) requires specific procedures to ensure the absence of a conflict in the form of a screening mechanism. In the opinion four public defenders represented co-defendants with inconsistent defenses. The attorneys had been screened in a timely manner as prescribed in Rule 1.10(e)(1) and had autonomy required by Rule 1.10(e)(2). The question presented was whether the public defenders needed to get informed consent confirmed in writing from their clients per Rule 1.7 and if there was any difference under Rule 1.7 if one or more of the co-defendants are seeking to testify against the other co-defendants at trial and will be subject to cross examination by the co-defendant's public defender. The Committee answered the questions as follows:

If the requirements of Rule 1.10(e), which are exceptions to Rule 1.10(a), are satisfied, the attorneys need not refer to Rule 1.7. Provided that the appropriate screening and autonomy requirements are met, the attorneys do not need the consent confirmed in writing required by Rule 1.7. Therefore, there is no difference under Rule 1.7 if the co defendants will testify against each other. If, however, the screening and autonomy requirements of Rule 1.10- are not met, the public defender would have to abide by the dictates of Rule 1.7, and under the facts presented (inconsistent defenses), the conflict would not be consentable under Rule 1.7.

SC Adv. Op. 09-02 (S.C. Bar, Eth. Adv. Comm) March 3, 2009, 2009 WL 6850290, at *1. The opinion refers to the screening mechanism as a requirement and makes clear that if the screening mechanism requirement was not met, with regard to co-defendants with inconsistent defenses, the conflict is not consentable. While the present case does not involve co-defendants with inconsistent defenses, the screening mechanism was a requirement in the present case to ensure conflict-free representation. An after the fact determination that no confidential information was exchanged is not sufficient.

In addition to the conflict involving Mr. Plexico's representation of State's witness Drake, Ms. Smart-Gittings also told the judge that she represented the deceased brother on three counts of assault and battery first degree. (R. p. 33, line 11 – p. 34, lines 1-10). That case was transferred to her from Mr. Plexico because of another conflict. (R. p. 33, lines 11-25). Ms. Smart-Gittings told the judge that the dual representation created a conflict because of the need to explore the reputation for violence of the deceased. (R. p. 34, lines 22-23). The judge stated that he would address admissibility of the reputation for violence of the deceased at the appropriate time. (R. p. 35, lines 11-12). Later during the trial the judge allowed the defense to elicit testimony that the deceased brother had a reputation for violence.

The deceased was a former client. Rule 1.9, RPC, Rule 407, SCACR, provides:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that

person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

Petitioner's interests were materially adverse to the interests of the former deceased client, especially in light of the fact that Petitioner argued self-defense and elicited testimony about the deceased's reputation for violence. (R. pp. 358-359). The trial judge abused his discretion in refusing to relieve the public defender based on the conflict created by the dual representation of both Petitioner and the deceased. The co-representation by private counsel, hired less than a week before trial when the public defender learned of the conflict, does not cure the conflict. The Court of Appeals erred in refusing to address the second conflict.

The trial judge abused his discretion in refusing to relieve the public defender office. The public defender office operated under an actual conflict of interest in representing both Petitioner and witness Drake without proper screening. Additionally, the public defender operated under an actual conflict of interest in representing Petitioner and the deceased. The trial judge's failure to relieve the public defender office was an error of law because the failure violated Petitioner's Sixth Amendment right to conflict-free representation. The failure to provide conflict-free representation requires reversal.

2. The Court of Appeals erred in affirming the trial judge's refusal to grant a continuance to allow private counsel to prepare for trial when counsel had been retained and the public defender office operated under a conflict of interest.

Prior to trial, private counsel Jared Newman advised the trial judge that a family member of Petitioner contacted him about representation of Petitioner the week before and that he was holding funds in trust as the family was able to retain him. (R. p. 31, line 19 – p. 32, line 1). Private counsel, however, indicated that due to the complicated nature of the case, he would not be able to immediately take over representation. (R. p. 32, lines 2-11). While private counsel did not specifically move for a continuance in order to have more time to prepare, having only been retained less than a week before trial when Petitioner became aware of the conflict, it is clear from his statements to the judge that he was seeking a continuance in order to have more time to prepare due to the complicated nature of the case. Private counsel told the judge:

If it pleases the Court, my name is Jared, J-A-R-E-D, Newman. I have been contacted by Mr. Wright's family. I still maintain that Mr. Wright is indigent, but I had a family member who has contacted me mid last week. I think the Court was aware of that because we had a conference call with the solicitor and the Court and myself. I am holding funds in trust. I am able to be retained by Mr. Wright.

I told you my concern. I don't think that I could represent anybody here that I can come into a fairly complicated –it's complicated due to the fact of the number of witnesses and conflicting testimony and things like that—case. I don't think I could do a proper investigation of the case or get up to speed in a couple of days. I have reviewed materials. I have talked with the public defender, but I would not feel that I would be able to –

(R. p. 31, line 19 – p. 32, lines 1-9). The judge responded, "All right." (R. p. 32, line 10). Counsel then finished his statement, "— take over a murder case immediately." (R. p. 32, line 11).

The judge then asked private counsel, "I question to you is what's your role in the case here today? We're going forward. What's your role?" (R. p. 32, lines 12-13). Based on the

above exchange it is clear that private counsel was seeking more time to prepare for trial. The judge's comment, "**We're going forward**" is a clear indication that the judge was not going to allow more time for private counsel to prepare. It would have been futile for private counsel to continue to move for a continuance at this point. In State v. McDaniel, 320 S.C. 33, 37, 462 S.E.2d 882, 884 (Ct. App. 1995), the South Carolina Court of Appeals wrote, "So long as the judge had an opportunity to rule on an issue, and did so, it was "not incumbent upon defense counsel to harass the judge by parading the issue before him again." Dunn v. Coca-Cola Bottling Co., 311 S.C. 43, 46, 426 S.E.2d 756, 758 (1993); see also State v. Pace, 316 S.C. 71, 447 S.E.2d 186 (1994) (counsel's failure to object did not waive issue where trial judge's remarks were such that any objection would have been futile). The trial judge in the present case had the opportunity to grant a continuance but erroneously refused to do so. The issue is preserved for appellate review.

Private counsel asked to serve as co-counsel only after it became clear that the trial judge was not going to continue the case. Private counsel indicated that he needed to talk with Petitioner but suggested that he could possibly act as co-counsel. (R. p. 32, lines 14-19). After talking with Petitioner, private counsel advised the judge that Petitioner wanted private counsel only to represent him. (R. p. 32, lines 20-25). The judge then stated, "Well, that's not going to happen because --" (R. p. 33, line 1). The judge then stated, "Number one, you're not -- you're not willing to do that and the public defender is indeed representing him by order of this Court and I found that the rules don't mandate that she be conflicted out. So once again, I ask you, what do you want to do?" (R. p. 33, lines 3-7). The judge allowed private counsel to serve as co-counsel. (R. p. 33, lines 8-10). The judge erred in refusing to grant a continuance.

In State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51–52 (1996), the South Carolina

Supreme Court wrote:

The trial court's refusal of a motion for continuance in a criminal case will not be disturbed absent a clear abuse of discretion. State v. Tanner, 299 S.C. 459, 385 S.E.2d 832 (1989). Reversals of the refusal of a continuance are about as “rare as the proverbial hens' teeth.” State v. Lytchfield, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957). Where there is no showing that any other evidence on behalf of the Petitioner could have been produced, or that any other points could have been raised had more time been granted for the purpose of preparing the case for trial, the denial of a motion for continuance is not an abuse of discretion. State v. Squires, 248 S.C. 239, 149 S.E.2d 601 (1966).

Again, an abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). As discussed in issue one, the trial judge's refusal to relieve the public defender office because of conflicts of interest constituted an error of law. If the public defender office had been properly relieved from representing Petitioner, a continuance would have been necessary to allow new counsel to prepare for trial. This is not a case where Petitioner simply waited until the last moment to hire counsel. Instead, as soon as Petitioner learned of the conflicts within the public defender office, his family hired private counsel. The present case is the proverbial hen's tooth. The trial judge abused his discretion in not allowing a continuance so that private counsel could prepare when the public defender office operated under actual conflicts of interest.

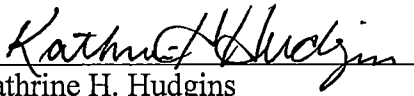
Addressing the request for a continuance, the Court of Appeals wrote, “Wright asserts the trial court erred in failing to grant him a continuance based on his argument the public defender's office should have been conflicted out. As we have already discussed, the trial court properly declined to release the public defender's office, and no continuance was necessary because Wright's attorney had been given adequate time to prepare his defense. Therefore, we can discern no clear abuse of discretion by the trial court to warrant reversal.” State v. Wright, 424 S.C. 335,

818 S.E.2d 236, 238–39 (Ct. App. 2018). The continuance motion challenged on appeal depends on a proper finding by this Court that the trial judge erred, as a matter of law, in refusing to relieve the public defender based on conflicts of interest. The trial judge erred in refusing to relieve the public defender and grant a continuance to allow substitute counsel time to prepare.

CONCLUSION

Based on the above arguments, this Court should grant the petition for writ of certiorari to allow further briefing on the issue.

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of October, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County
Honorable Michael G. Nettles, Circuit Court Judge

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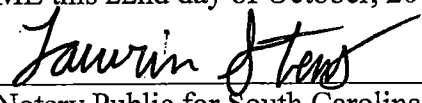
PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Nathaniel Wright, #345376, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 22nd day of October, 2018.


Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 22nd day of October, 2018.



Notary Public for South Carolina
My Commission Expires: July 5, 2027.