

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Union County

Honorable J. Mark Hayes, Circuit Court Judge

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NOV 14 2016

JAMES A. GILES,
S.C. SUPREME COURT

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR APPOINTMENT
OF OUTSIDE COUNSEL

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 James A. Giles was found guilty of first degree burglary, kidnapping, and robbery during the September 2007 term of the Union County General Sessions Court before Judge John C. Hayes, III. Petitioner received an aggregate prison sentence of thirty years. Vanessa Carson represented petitioner at trial and Assistant Solicitor John Anthony appeared on behalf of the state.

Petitioner appealed, but his convictions and sentences were affirmed. Assistant Appellate Defender LaNelle DuRant, of the South Carolina Office of Appellate Defense, represented petitioner on direct appeal. Petitioner's convictions and sentences were affirmed on appeal by the South Carolina Court of Appeals. State v. Giles, 2010-UP-154 (Ct. App. February 23, 2010). The South Carolina Supreme Court granted certiorari and affirmed on appeal. State v. Giles, Op. No. 27353 (January 15, 2014).

2.) Petitioner filed a post conviction relief application on July 22, 2014, with the Union County Office of the Clerk of Court alleging ineffective assistance of trial and appellate counsels in his case. An evidentiary hearing was convened on January 30, 2018 at the York County Courthouse before Judge J. Mark Hayes II. During the PCR hearing, petitioner testified that he received ineffective assistance from appellate counsel. Appellate Counsel testified at the PCR hearing. Previously, in his application for post conviction relief, petitioner made the following allegations of ineffective assistance of appellate counsel:

1. Failed to raise the issue of whether or not there was any error by the trial court in the selection of the jury at trial and an invalid Faretta waiver.

Also, note that on appeal, appellate counsel raised the following:

1. Did the trial court err in quashing the jury without following the procedure for a Batson motion by not requiring the State to prove purposeful racial discrimination?
2. Did the trial court err in not granting Appellant's request for a continuance after the trial court granted appellant's motion to relieve his trial counsel and proceed pro se where he had only been supplied his discovery information the day before trial?

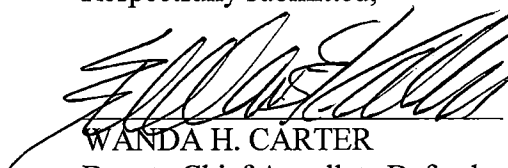
On April 20, 2018, Judge Hayes issued an Order of Dismissal in the case therein denying post

conviction relief to petitioner and finding no ineffective assistance of appellate counsel.

3.) Petitioner appealed Judge Hayes' Order of Dismissal. The undersigned counsel has been assigned to perfect the PCR appeal from Judge Hayes' Order dismissing petitioner's PCR case. Since a portion of the instant PCR appeal concerns the effectiveness of petitioner's appellate counsel, who was LaNelle DuRant, 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 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 14th day of November, 2018.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Union County
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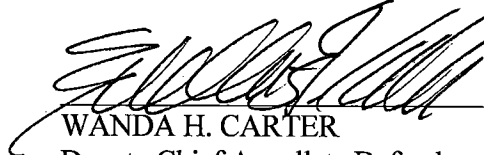
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STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE

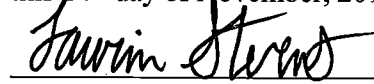
The undersigned attorney hereby certifies that a true copy of the petition for appointment of outside counsel in the above referenced case has been served upon opposing counsel, Janell Gregory, Esquire, this 14th day of November, 2018.



WANDA H. CARTER
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

SUBSCRIBED AND SWORN TO before me
this 14th day of November, 2018.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 5, 2027.