

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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FEB 07 2019  
SC Court of Appeals

\_\_\_\_\_  
Appeal from Greenville County

Honorable Roger L. Couch, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDANT,

V.

JOSEPH CHAPPELL,

APPELLANT

APPELLATE CASE NO 2018-000716  
\_\_\_\_\_

PRO SE BRIEF OF APPELLANT  
\_\_\_\_\_

JOSEPH CHAPPELL  
Pro Se Appellant

Lee Correctional Institution  
990 Wisacky Hwy.  
Bishopville, S.C. 29010

## STATE OF ISSUE ON APPEAL

Whether the trial court erred in violating my constitutional rights, Sixth Amendment and Fourteenth Amendment, the right to effective assistance of counsel and due process of the law.

## STATEMENT OF THE CASE

Appellant was indicted for carjacking by a Greenville County jury. He proceeded to trial on April 11, 2018 before Honorable Roger L. Couch and jury. Brian Fowler served as the assistant solicitor, and Rodney Richey represented Appellant. The jury found Appellant guilty, and Judge Couch sentenced him to fifteen (15) years of incarceration.

## STANDARD OF REVIEW

The proceeding at which a petitioner has a right to counsel under the Sixth Amendment, the state bears the responsibility to ensure that the petitioner was represented by effective assistance of counsel, conflict-free counsel, or to retain counsel of choice (*Coleman v. Thompson* 501 U.S. at 754).

In the proceedings at which the Sixth Amendment right to counsel applies judges have an “independent duty” to safeguard a criminal defendant’s right to a conflict-free counsel in order to ensure [the defendant] receives a trial that is fair and does not contravene the Sixth Amendment (*Wheat v. United States* 486 U.S. 153, 161-62 (1988)). If a judge is alerted to [a possible conflict] of interest [and fails to] take adequate steps to ascertain whether conflict warrants separate counsel (*Id.* At 160) the judge has unconstitutionally forced the defendant to choose between proceeding with a lawyer who has an apparent conflict or is giving up the right to be

represented by counsel (Smith v. Lockhart, 923 F.2d 1314 (8th Cir. 1991), trial judge violated petitioner's right to representation... unimpaired by conflicts of interest or divided loyalties (Id. At 1320) when judge gave petitioner choice of either accepting lawyer who had apparent conflict of interest or proceed pro se, thereby causing petitioner to elect to proceed pro se.

Opinions of the court designate the rights listed below as "structural" constitutional rights that are so basic to a fair trial that their infraction can never be treated as harmless error, or as so prone to prejudice when violated that prejudice already has been proved or should be presumed.

The right to counsel (including counsel of choice) at critical stages of the proceeding before and at trial and on appeal, including the right to effective assistance of counsel.

(Brecht, 507 U.S. at 629) (Fulminante, 499 U.S. at 294) (Opinion of White J.) (Denial of counsel at trial or preliminary hearing can never be a harmless error.)

### ARGUMENT

The trial court erred denying Appellant of Sixth Amendment and Fourteenth Amendment, the right to have effective assistance of counsel, conflict-free counsel, thus depriving Appellant of a fair trial.

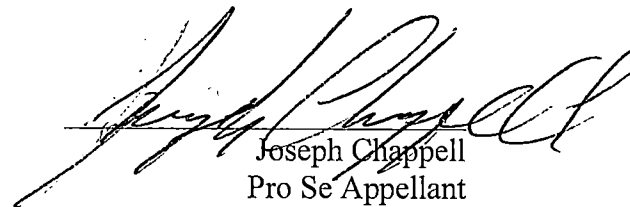
### RELEVANT FACTS

Trial court denied Appellant motion for dismissal of counsel. Appellant stated substantial reason why counsel should be dismissed (P. 8,9, Lines 10-25). Appellant was then allowed to dismiss Mr. Richey and was told that the trial will go forward this morning, and you will have to proceed with whatever attorney you have. Appellant stated he didn't have an attorney. The court said then you will proceed without one, if you wish to do that. Now you can

discuss the matter with Mr. Richey further if you like to, however you would like to handle that, but the court will not appoint another attorney for you, and I will not grant a continuance for that purpose (P. 13, Lines 4-14).

**CONCLUSION**

Appellant respectfully requests this court reverse his conviction based upon the trial court's error in violating the Constitutional Rights of the Sixth and Fourteenth Amendments and remand for new trial.

  
Joseph Chappell  
Pro Se Appellant

Sworn To And Subscribed Before Me

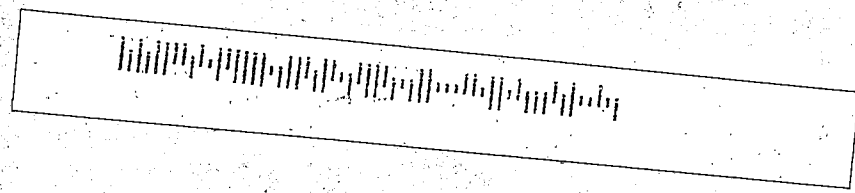
This 30 day of Jan 2019

Debra Eastledge

Notary Public for South Carolina

My Commission Expires: 3/3/2020

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