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MAY 21 2019

S.C. SUPREME COURT

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May 17, 2019

The Honorable Daniel E. Shearouse
Clerk of Court, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: **Chris A. Liverman v. State of South Carolina**
MOTION FOR APPOINTMENT OF OUTSIDE COUNSEL
Case No.: **2012-CP-40-04870**

Dear Mr. Shearouse:

Please find enclosed for filing, along with certificate of service, the original and seven copies of the Motion for Appointment of Outside Counsel in the above-referenced case. Please return one clocked-in copy to me in the enclosed self-addressed, stamped envelope.

Thank you for your assistance in this matter. If you have any questions or concerns, please do not hesitate to contact me.

[Signature page to follow]

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Chris A. Liverman v. State of South Carolina
MOTION FOR APPOINTMENT OF OUTSIDE COUNSEL
Case No.: **2012-CP-40-04870**
May 17, 2019
Page 2 of 2

With best regards, I am,

Yours Sincerely,



Dayne C. Phillips, Esq.

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Enclosures (noted)

cc: Lindsey A. McCallister, Esq.
Charles Grose, Esq.
Robert M. Dudek, Esq.
Chris A. Liverman

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY 21 2019

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable R. Scott Sprouse, Circuit Court Judge

Case No. 2012-CP-40-04870

Chris A. Liverman,

Petitioner,

v.

State of South Carolina,

Respondent.

MOTION FOR APPOINTMENT OF OUTSIDE COUNSEL

The undersigned Counsel respectfully moves for appointment of outside counsel to represent Petitioner, Chris A. Liverman, based on a conflict of interest with the Appellate Division of the South Carolina Commission on Indigent Defense. In support of this motion, the undersigned Counsel respectfully shows the Court:

- (1) Petitioner has been incarcerated since his arrest on August 27, 2004.
- (2) The Richland County Public Defender's Office represented Petitioner at trial.
- (3) Chief Appellate Defender Robert M. Dudek and former Chief Appellate Defender Joseph Savitz represented Petitioner on his Direct Appeal.
- (4) Petitioner was initially appointed counsel for representation on his application requesting Post-Conviction Relief. Attorney Charles Grose subsequently associated as co-counsel *pro bono*. Petitioner's family retained private counsel five years later, and Charles Grose continued as *pro bono* co-counsel. The undersigned Counsel subsequently filed an *ex parte* motion to declare Petitioner Indigent for Expert Services, and the Honorable Robert E. Hood signed an *ex parte* Order for Expert Services in Eye-witness Identification on August 20, 2018.
- (5) In his application requesting Post-Conviction Relief, Petitioner raised allegations of ineffective assistance of Appellate Counsel. Specifically, Petitioner argued the following claims in support of granting PCR:

- a. Appellate Counsel failed to argue on appeal before the S.C. Court of Appeals that the testimony of the State's gang expert witnesses was entirely inadmissible.
 - b. Appellate Counsel failed to argue on appeal before the S.C. Court of Appeals that the State's gang experts' opinion about the possible meaning of the teardrop tattoos was inadmissible.
 - c. Appellate Counsel failed to argue on appeal before the S.C. Court of Appeals that the State's gang experts' opinions about the possible meaning of hash marks tattoos was preserved for appellate review.
 - d. Appellate Counsel failed to appeal the portion of the S.C. Court of Appeals' Opinion regarding the admissibility of the State's gang expert witnesses' testimony to the S.C. Supreme Court.
- (6) The PCR Court's Order Denying Application for Post-Conviction Relief addressed these allegations in the Findings of Fact and Conclusions of Law section of the Order. Specifically, "VII. Allegation 2(a)-(d): Appellate Counsel was ineffective in his handling of the gang expert testimony on appeal."
- (7) Petitioner has been incarcerated since his arrest on August 27, 2004 and is serving two life sentences.
- (8) The Appellate Division of the South Carolina Commission on Indigent Defense has a conflict of interest because Petitioner alleged numerous claims of ineffective assistance of appellate counsel. Specifically, Petitioner alleged that Chief Appellate Defender Robert Dudek was ineffective.

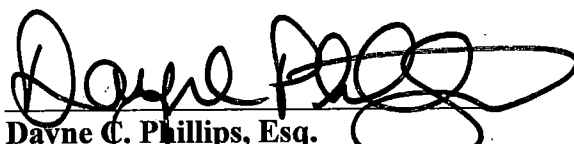
The undersigned Counsel respectfully requests that this Court appoint him to represent Petitioner on this appeal because he is familiar with the lengthy trial, appellate, and PCR records. In other words, Counsel is best suited to represent Petitioner on this appeal in the most expeditious manner.

The undersigned Counsel also moves that the time limits to order the necessary transcripts and prepare the appendix be held in abeyance while this motion is pending before the Court. Based on the foregoing reasons, the undersigned Counsel respectfully requests that this Court appoint him to represent Petitioner on this appeal.

If appointed, undersigned Counsel will confer with the Attorney General's Office to identify and order any outstanding transcripts. Counsel also respectfully requests that time limits governing the requesting of transcripts and assembling the appendix be tolled during pendency of this motion.

[Signature Page to Follow]

IT IS SO MOVED.



Dayne C. Phillips, Esq.

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May 17, 2019

THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
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Chris A. Liverman,

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PROOF OF SERVICE

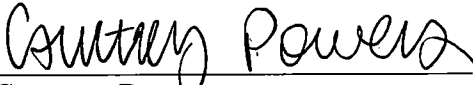
I certify that I have served the Motion for Appointment of Outside Counsel on the Honorable Daniel E. Shearouse, Chief Appellate Defender Robert Dudek, Lindsey A. McCallister, Esq., and Chris A. Liverman, by depositing a copy in the United States Mail, postage prepaid, on May 17, 2019, addressed to the following parties:

Honorable Daniel E. Shearouse, Clerk of Court, Supreme Court of South Carolina
P.O. Box 11330, Columbia, SC 29211

Chief Appellate Defender Robert Dudek
1330 Lady Street, Ste. 401, Columbia, SC 29201

Lindsey A. McCallister, Esquire, South Carolina Attorney General's Office
1000 Assembly Street, Room 519, Columbia, SC 29201

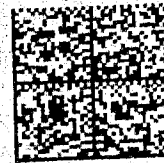
Chris A. Liverman, Lee Correctional Institution,
990 Wisacky Highway, Bishopville, SC 29010


Courtney Powers
Paralegal for Dayne Phillips, Esq.
1614 Taylor Street, Suite D.
Columbia, SC 29201

May 17, 2019

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
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