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MAY 28 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable R. Scott Sprouse, Circuit Court Judge

CHRIS A. LIVERMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2019-000839

RETURN TO MOTION
TO APPOINT OUTSIDE COUNSEL

Undersigned counsel, makes the following return to the motion to relieve Appellate Defense and to appoint outside counsel:

1. Petitioner Chris Liverman was indicted at the April 20, 2005 term of the Richland County Grand Jury for two counts of murder. On October 30, 2006 through November 9, 2006, petitioner stood trial in Richland County before the Honorable James W. Johnson, Jr. and a jury. Elizabeth Franklin-Best represented petitioner. Barney Giese was the solicitor and Margaret Fent was the assistant solicitor. The jury found petitioner guilty of both counts of murder. The judge sentenced petitioner to two consecutive life sentences.

2. Petitioner was represented on appeal in the Court of Appeals by Senior Appellate Defender Joseph L. Savitz, III. He raised two issues on direct appeal to the South Carolina Court of Appeals, including the following:

The trial judge committed reversible error by refusing to conduct an *in camera* hearing pursuant to Neil v. Biggers, 409 U.S. 188 (1972), and Rule 104(c), SCRE, on the reliability of Tyrone Smith's identification of Liverman as the shooter, especially since Smith had incorrectly identified Liverman as a participant in an earlier incident shortly before the shooting and his identification of Liverman as the triggerman was the product of an inherently suggestive show-up conducted by the police after Liverman was arrested.

The Court of Appeals affirmed petitioner's convictions. State v. Liverman, 286 S.C. 223, 687 S.E.2d 70 (Ct. App. 2009). A petition for rehearing was filed on December 17, 2009. App. 22-25. The Court of Appeals denied rehearing by its order dated January 20, 2010. App. 26-27. This Court subsequently granted the petition for a writ of certiorari on this Neil v. Biggers, 409 U.S. 188 (1972) issue filed by Senior Appellate Defender Joseph L. Savitz, III., in his certiorari petition dated March 17, 2010.

3. A brief of petitioner was then filed by undersigned Chief Appellate Defender Robert M. Dudek on this issue following the retirement of former Chief and Senior Appellate Defender Joseph L. Savitz, III. Following oral argument before this Court on February 23, 2012, this Court affirmed the Court of opinion holding the failure of the trial court to hold a fully compliant Neil v. Biggers, 409 U.S. 108 (1972) hearing was harmless error. See State v. Liverman, 398 S.C. 130, 727 S.E.2d 422 (2012).

4. In his motion for appointment of outside counsel Dayne C. Phillips, Esquire correctly asserts that petitioner alleged "appellate counsel" failed "to argue on appeal before the

South Carolina Court of Appeals” three different legal issues, and also “failed to appeal” a portion of the opinion of the Court of Appeals pertaining to the admission of gang expert testimony.

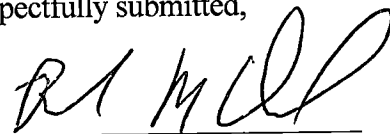
Motion for Appointment of Outside Counsel at 2.

5. Petitioner asserts a conflict of interest exists with Appellate Defense representing him on his PCR appeal before this Court because he alleged the undersigned Chief Appellate Defender was ineffective in his, albeit limited, representation of petitioner on appeal.

6. Because petitioner has asserted a conflict of interest exists because he alleged the undersigned Chief Appellate Defender was ineffective in his representation of petitioner on appeal, and also that prior Appellate Defense counsel was ineffective, undersigned counsel does not oppose the motion for the appointment of outside counsel in this matter since appellate counsel in this case will seemingly be asserting the PCR erred in finding appellate counsel was not ineffective.

WHEREFORE, undersigned counsel does not oppose the motion for the appointment of outside counsel in this case, and he leaves the matter to the sound discretion of this Court.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

May 28, 2019

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Honorable R. Scott Sprouse, Circuit Court Judge

CHRIS A. LIVERMAN,

PETITIONER,

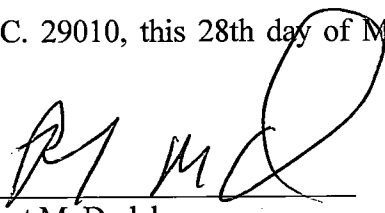
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the return to the motion to appoint outside counsel in the above-referenced case has been served upon opposing counsel, Lindsey A. McCallister, Esquire and W. Edgar Salter, III, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and upon Dayne C. Phillips, Esquire, at 1614 Taylor Street, Suite D, Columbia, SC 29201, and also upon Chris Liverman at Lee Correctional Institution, 900 Wisacky Highway, Bishopville, S.C. 29010, this 28th day of May, 2019.


Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 28th day of May, 2019.

Heidi Hevitz (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023