

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Honorable William H. Seals, Jr.

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Case Number: 2018-CP-07-01621  
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Trevin Milledge.....Petitioner

v.

State of South Carolina,.....Respondent

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MOTION TO BE RELIEVED AS COUNSEL  
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**RECEIVED**

FEB 21 2020

S.C. SUPREME COURT

**THIS MATTER IS BROUGHT BEFORE THIS COURT** by undersigned seeking an order relieving him of appellate court obligations following his representation of the Petitioner in pursuit of post-conviction relief in the Beaufort County Court of Commons Pleas. Undersigned makes this motion because he was only retained to represent Petitioner in his collateral challenge at the circuit court level. The written fee agreement regarding the scope of this representation expressly indicates the representation does not include any appeals and that any such appellate representation would have to be negotiated at that end of the circuit court proceedings; an event which has not occurred.

The Petitioner is presently confined in the Lee Correctional Institution of the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County.

The Petitioner was represented by Mr. Jared S. Newman in the Court of General Sessions. A jury trial was held from January 26-28, 2015 with the Honorable Carmen T. Mullen presiding. The jury returned guilty verdicts as charged to the offenses of Trafficking Cocaine Base, 10-28 grams, 3<sup>rd</sup> Offense (11-GS-07-01653), Possession with Intent to Distribute Cocaine, 3<sup>rd</sup> Offense (11-GS-07-01654), and Possession of a Scheduled II Substance, 2<sup>nd</sup> Offense (11-GS-07-01656). Petitioner was sentenced to twenty-six (26) years, twenty-six (26) years, and one (1) year, respectively, for these convictions. Petitioner was also convicted of the lesser included charge of Possession of a Schedule IV Substance, 3<sup>rd</sup> Offense (11-GS-07-01655) and sentenced to one (1) year for this conviction. All of these sentences were ordered to run concurrently. Petitioner was found not guilty of the offense of Possession of a Weapon During the Commission of a Violent Crime (11-GS-07-01657).

A timely Notice of Appeal was filed on the Petitioner's behalf. Petitioner was

represented on appeal by Timothy Vitollo, of Vitollo Law Firm, LLC and Chief Appellate Defender Robert Michael Dudek of the South Carolina Office of Appellate Defense. In his brief to the South Carolina Court of Appeals, Petitioner argued three claims. The South Carolina Court of Appeals affirmed the convictions and sentences in an unpublished, *per curiam* opinion, pursuant to SCACR Rule 220(b). See *State v Milledge*, Unpublished Opinion No. 2018-UP-220 (SC Ct App 2018).

Petitioner then sought post-conviction relief by way of an Application for Post-Conviction Relief filed on August 10, 2018. An evidentiary hearing was conducted at the Beaufort County Courthouse on April 1 and April 3, 2019 and at the Florence County Courthouse on June 24, 2019. The Petitioner was present and represented by James A. Brown, Jr. and the State was represented by Benjamin H. Limbaugh of the South Carolina Office of the Attorney General.

Following the submission of proposed orders by both sides and objections to the State's proposed order by undersigned, the circuit court issued an Order of Dismissal which was filed on November 18, 2019. Following the timely submission of a Motion to Alter or Amend, an Order denying this Rule 59 motion was filed on or about January 22, 2020. The Notice of Appeal from this PCR and this Motion follows.

The South Carolina Appellate Court Rules indicate that it is the obligation of retained counsel to protect a client's interest by filing a Notice of Appeal when authorized and as appropriate "until withdrawal is approved and notice is given as provided in this Rule." SCACR Rule 264(a) (formerly SCACR Rule 235). Counsel may only seek to withdraw based upon "justifiable cause, or the consent of his client; and then only after proper written notice to his client, on petition to and by written order of the appellate court, and with notice to the adverse

party.” SCACR Rule 264(b). The Supreme Court of South Carolina has held that “[t]he attorney may be relieved if he shows that he was not hired to represent the non-indigent client on appeal.” *In the Matter of An Anonymous Member of the Bar, Respondent*, 400 SE2d 483 (SC 1991)<sup>1</sup>.

In the case at bar, undersigned and Petitioner entered an agreement for representation in pursuit of post-conviction relief. This agreement was reduced to writing and signed by Petitioner and the third party payor of the fee. Petitioner has been incarcerated since being sentenced on January 28, 2015.

This agreement, attached as an exhibit to this Motion, clearly demonstrates that undersigned was only hired to represent Petitioner at the trial level. Specifically, the agreement indicates the representation “does not include an appeal or petition for certiorari should circuit court deny the post-conviction relief application.” The agreement continued to state that “[i]f an appeal is taken by either side or at the time any subsequent proceeding becomes necessary, [the client] understand[s] that the fee therefore shall be negotiated at the time such subsequent proceeding becomes necessary.”

Undersigned counsel has written Petitioner twice about his decision as to counsel regarding any appeal efforts. Undersigned provided copies of the Affidavit of Indigency for Appeals with both of these letters. Undersigned further has provided copies of all pleadings and rulings in this case to Petitioner. A family member of Petitioner contacted undersigned to verify that the fee agreement was limited to the trial. Undersigned has received no further response to Petitioner.

Nonetheless, undersigned has filed a Notice of Appeal and Proof of Service on behalf of

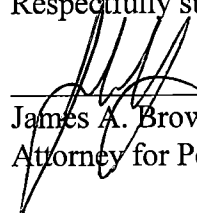
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<sup>1</sup>The Court indicated in a footnote that if an attorney was “hired solely for the purpose of trial, counsel should have this limitation included in a written agreement with his client.” *Id.*, note 3.

the Petitioner contemporaneous with the filing of this Motion. Counsel has copied the South Carolina Office of Appellate Defense on the correspondence with Petitioner as well as in the filings of the Notice of Appeal and this Motion.

Therefore, undersigned requests that this Court honor the terms of the bargained for arrangement between undersigned and Petitioner and find that justifiable cause provides of undersigned to be relieved of further obligations on behalf of Petitioner in pursuit of appellate relief.

Respectfully submitted by,



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James A. Brown, Jr.  
Attorney for Petitioner

February 19, 2020  
Beaufort, SC

Law Offices of Jim Brown, PA  
1600 Burnside St, Suite 100  
P.O. Box 592  
Beaufort, South Carolina 29901  
(843) 470-0003

**AUTHORITY TO REPRESENT AND FEE AGREEMENT**

I, Trevin Millidge (CLIENT), hereby retain The Law Offices of Jim Brown, P.A. as my attorney to represent me in the following case:

Post Conviction Relief challenge to convictions and sentences for indictments numbered 2011-GS-07-01653 through-01656. This does not include an appeal or petition for certiorari should circuit court deny the post-conviction relief application. This does not include a retrial should one be ordered.

As compensation for his services, I agree to pay my attorney in the manner prescribed below:

To be billed at the hourly rate of \$250.00 per hour, plus costs and expenses:

Other arrangement: A flat fee of \$10,000.00, plus costs and expenses.

The downpayment of \$5,000.00 has been paid in full at the time of the signing of this agreement. The remaining \$5,000.00 is to be paid in monthly installments of \$500.00 due on or before the 1<sup>st</sup> of each month. These payments are to begin on February 1, 2016 and end with a final payment due on or before November 1, 2016.

The Attorney Fees are considered **EARNED WHEN PAID** and are **NON-REFUNDABLE**. This fee may not necessarily be held in trust. Should the Client terminate representation, he may be entitled to a refund. However, any dispute over fees shall be evaluated, in part, by resort to actual benefit derived by client, any actions taken by the client which thwart the Attorney's performance, and by consideration of a quantum meruit analysis considering hours expended and the hourly rate listed above. This list of factors to be considered are not limited to these stated factors.

Should the I terminate the relationship with the Law Offices, I understand that I may be entitled to a refund of fees. However, if these fees are paid by a third party payor, any refund will be provided solely to that third party.

**I understand and agree to accept responsibility for all actual expenses incurred in the prosecution of this claim, regardless of its outcome.**

Out of pocket expenses. I agree to pay all out of pocket expenses incurred in connection with this representation. These expenses include, without limitation, filing fees, travel, long distance telephone transactions, facsimile transmission, courier, photocopying, depositions of witnesses (including expert witnesses as necessary), and out of state counsel expenses.

If any appeal is taken by either side or at the time any subsequent proceeding becomes

Initials as to page: T.M.

J.M. by TM

[Signature] by LOJBPA

necessary, I understand that the fee therefore shall be negotiated at the time such subsequent proceeding becomes necessary. Furthermore, it is my understanding that, should this proceeding be dropped at my request, the fee for similar or additional legal services in the same matter at some later date must be negotiated at the time such services become necessary.

I understand and agree that all work and documentation prepared on my behalf by my attorney shall be and remain the sole and exclusive property of such attorney. In the event that the services of my attorney are withdrawn or terminated, a copy of my file will be made available to me upon payment of all outstanding expenses which have been incurred by my attorney on my behalf, a reasonable sum representing the fair value of all work performed on my behalf by such attorney, in accordance with his normal hourly rate, and copying costs incurred in duplicating said file at the rate of \$.20 per page. I understand that the only documents to be duplicated from said file are those which are not considered work product of the attorney.

I understand that any and all attorney's fees and expenses incurred on my behalf are due and payable to the Law Offices of Jim Brown, P.A. upon presentment of billing statements to me, and should I default in payment, I fully understand that the Law Offices of Jim Brown, P.A. may bring an action to recover said attorney's fees and expenses against me and shall have the right to seek reimbursement for all fees and expenses incurred in association with collection of said debt. I also understand that the Law Offices of Jim Brown, P.A. retains the right to withdraw from representation for failure to pay attorney's fees and expenses. This withdraw may be initiated by the filing of an affidavit with the proper Court.

I HAVE READ THIS CONTRACT FOR LEGAL REPRESENTATION AND AGREE TO THE TERMS, DUTIES AND CONDITIONS CONTAINED THEREIN. THERE ARE NO OTHER AGREEMENTS, ORAL OR OTHERWISE, BETWEEN CLIENT AND ATTORNEY.

Dated: 2/05/16

Trevin Millidge  
Trevin Millidge, Client

Dated: 2/22/16

JMB  
Law Offices of Jim Brown, P.A.

Dated: 2/05/2016

Torrie Millidge  
Torrie Millidge, Third Party Payor

Initials as to page: T.M.

JMB by TM

JMB by LOJBPA