

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

RECEIVED
MAR 17 2020
SC Court of Appeals

NATHANIEL JOHNSON, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2020-000110

RETURN TO MOTION
TO APPOINT STANDBY APPELLATE COUNSEL

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

1. Petitioner Nathaniel Johnson, Jr. was indicted at the September 2006 term of the Beaufort County Grand Jury for kidnapping, criminal sexual conduct in the first degree, burglary – 1st degree, and use of a firearm during commission of a violent crime. On March 12–14, 2007, Petitioner stood trial in Beaufort County before the Honorable Howard P. King and a jury. Stephanie Smart represented Petitioner. Gail Lovell was the solicitor. The jury found Petitioner guilty of kidnapping and criminal sexual conduct and not guilty of burglary – 1st degree and use of

firearm during commission of violent crime. The judge sentenced Petitioner to thirty (30) years for kidnapping and thirty (30) years for criminal sexual conduct.

2. A timely Notice of Appeal was filed on Petitioner's behalf and an appeal was perfected. After final briefing by the parties, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence State v. Johnson, Op. No. 2008-UP-690 (S. C. Ct. App. Filed December 11, 2008). Remittitur was issued on December 30, 2008.

3. Petitioner filed an application for post-conviction relief on March 9, 2009. An evidentiary hearing into the matter was convened on August 30, 2011 at the Beaufort County Courthouse. The Petitioner was represented by Timothy M. Wogan, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the State.

4. Petitioner alleged he is being held in custody unlawfully for the following reasons:
- a. Prosecutorial misconduct in that prosecutors may conceal evidence or mispresent or influence juries by impugning the character of witnesses.
 - b. Violation of due process of law.
 - c. Ineffective assistance of counsel in that counsel did not object in a timely manner or represent best interest of client.

At the hearing, Petitioner only proceeded on the issue of ineffective assistance of counsel.

5. The Court found and concluded the Petitioner did not establish any constitutional violations or deprivations before or during his trial or sentencing proceedings. Counsel was not deficient in any manner, nor was the Petitioner prejudiced by counsel's representation, therefore the application for PCR was denied and dismissed with prejudice on October 6, 2011 by the Honorable

D. Craig Brown.

6. Petitioner filed an application for DNA testing in the Court of General Sessions in Beaufort County on September 9, 2016. Petitioner had a hearing on his request for DNA Testing on November 15, 2018 before Carmen Mullen.

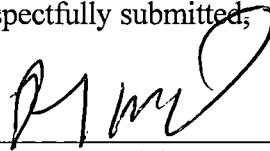
7. Petitioner filed a pro-se “Notice of Belated Appeal” on January 21, 2020.

8. Petitioner requested the “appointment of standby appellate counsel” in his letter to the Court dated January 21, 2020.

9. Undersigned counsel asserts that there is no right to proceed pro se on appeal in a criminal case, much less the right to standby appellate counsel on appeal. See State v. Roberts, 364 S.C. 583, 614 S.E.2d 626 (2005) (No federal or state constitutional right to proceed pro se on appeal from a criminal conviction). This DNA case is criminal in nature as it goes to challenging an underlying criminal conviction. This office has never served as standby counsel on appeal to a defendant allowed to proceed pro se, and undersigned would respectfully, but vehemently oppose such a standby counsel appointment as it would be disruptive to this office which already has a very heavy caseload. This office has represented defendants on appeal from an order denying DNA testing under the statute, but not as standby appellate counsel.

WHEREFORE, undersigned counsel opposes the request to appoint the Office of Appellate Defense as standby counsel to the pro-se petitioner on his appeal from the denial of DNA testing in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

March 17, 2020

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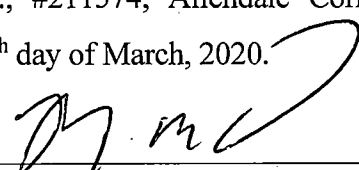
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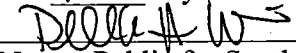
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the return to the motion to appoint standby appellate counsel in the above-referenced case has been served upon opposing counsel, Isaac McDuffie Stone III, Esquire, Fourteenth Circuit Solicitor's Office, PO Box 1880, Bluffton, SC 29910, William M. Blicht, Jr., Esquire, S. C. Attorney General's Office, PO Box 11549, Columbia SC 29211, and Nathaniel Johnson, Jr., #211574, Allendale Correctional Institution, PO Box 1151, Hwy 47, Fairfax, SC 29827, this 17th day of March, 2020.



Robert M. Dudek
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me
this 17 day of March, 2020.



Notary Public for South Carolina

My Commission Expires: March 10, 2025



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

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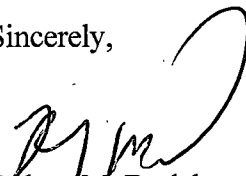
The Honorable Jenny Abbott Kitchings
Clerk, S. C. Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Nathaniel Johnson, Jr. v. The State - Appellate Case No. 2020-000110

Dear Ms. Kitchings:

Enclosed please find an original and six copies of the return to the motion to appoint standby appellate counsel.

Sincerely,


Robert M. Dudek
Chief Appellate Defender

RMD/mab
Enclosures

cc: Isaac McDuffie Stone III, Esquire
William M. Blicht, Jr., Esquire
Nathaniel Johnson, Jr., # 211574