

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Greenwood County  
Donald B. Hocker, Circuit Court Judge

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**RECEIVED**  
**Jun 09 2020**  
S.C. SUPREME COURT

EARNEST EDWARD VAUGHN, SR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2020-000750

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RETURN TO THE MOTION  
TO APPOINT OUTSIDE COUNSEL

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Undersigned counsel files this return to what this Court has construed as a Motion to Appoint Outside Counsel, and would show the Court the following:

- 1) On October 31, 2016, Petitioner Vaughn proceeded to a jury trial before the Honorable Donald B. Hocker in Greenwood County South Carolina on drug and unlawful neglect of a child indictments. Jane Merrill, Esquire, represented petitioner. The overwhelming amount of information in this Return is taken from the post-conviction relief order of dismissal of the Honorable J. Mark Hayes, II in this case.
- 2) The jury convicted petitioner of trafficking methamphetamine and unlawful neglect of a child. The jury found petitioner not guilty of a possession with intent to distribute charge.
- 3) Judge Hocker sentenced petitioner to consecutive terms of thirty years' imprisonment

for trafficking methamphetamine and ten years' imprisonment for unlawful neglect of a child.

4) Subsequently, petitioner timely appealed his convictions. Appellate Defender Taylor D. Gilliam of the Appellate Division of the South Carolina Commission on Indigent Defense represented petitioner in his direct appeal, and he submitted a final brief on behalf of petitioner.

5) On December 11, 2017, Assistant Attorney General J. Scott Matthews filed a final brief on behalf of the state.

6) The Court of Appeals affirmed petitioner's convictions in State v. Earnest Edward Vaughn, Sr., 2028-UP-409 (November 7, 2018).

7) In his application for post-conviction relief, petitioner alleged, inter alia, that Appellate Defender Gilliam provided ineffective assistance of counsel for failing to raise a Fourth Amendment argument on appeal, and for failing to seek certiorari from the South Carolina and the United States Supreme Court after his convictions were affirmed on direct appeal. Appellate Defender Gilliam testified at the post-conviction relief hearing before the Honorable J. Mark Hayes, II, that he raised what he considered the most meritorious issue on appeal:

The Trial Court erred in failing to declare a mistrial upon the mention of an active arrest warrant in Applicant's name which was unrelated to his trial and improperly influenced the jury to decide the case on prejudice instead of the evidence presented.

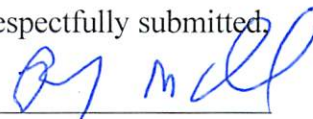
8) Appellate Defender Gilliam also testified that he did not see any meritorious reason to seek certiorari from the Supreme Court in petitioner's case. The PCR court ruled that Appellate Defender Gilliam was not ineffective, and therefore, with the denial of all other PCR grounds, it denied petitioner's application for post-conviction relief.

9) Since petitioner: (a) raised the issue of ineffective assistance of counsel in his post-conviction relief application, and, (b) because Appellate Defender Gilliam testified during the post-conviction relief hearing, and, (c) since the PCR judge made findings of fact and conclusions of law regarding Appellate Defender Gilliam's performance, albeit that appellate counsel was not

ineffective, undersigned counsel leaves the matter of whether outside counsel should be appointed to the sound discretion of this Court. If the motion for outside counsel is denied, undersigned counsel will assign the present PCR appeal to an appellate defender other than Appellate Defender Taylor Gilliam, and Counsel Gilliam would have no contact with any aspect of the petitioner's appeal.

WHEREFORE, undersigned counsel leaves the issue of whether outside counsel should be appointed for petitioner on his appeal from the denial of post-conviction relief to the sound discretion of this Court.

Respectfully submitted,



Robert M. Dudek  
Chief Appellate Defender

June 9, 2020