

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
Alexander S. Macaulay, Circuit Court Judge

Appellate Case No. 2020-000881

Jerry Buck Inman a/k/a Jerry Buck Inmon,Respondent-Appellant,

v.

State of South Carolina,Appellant-Respondent.

Motion to Appoint Counsel

Jerry Inmon moves this Court for an order appointing undersigned counsel because the Appellate Division of the South Carolina Commission on Indigent Defense has a conflict of interest and so Mr. Inmon will have continuity of counsel.

PROCEDURAL BACKGROUND

On November 8, 2006, the Pickens County Grand Jury indicted Mr. Inmon for murder, first-degree burglary, kidnapping, and first-degree criminal sexual conduct in connection with the death of Clemson University student Tiffany Souers. The State sought the death penalty, and this Court assigned the Honorable Edward W. Miller to preside over the case. On August 9, 2008, Judge Miller accepted Mr. Inmon's guilty plea to these charges. On September 8-11, 2008, Judge Miller convened a sentencing hearing. Judge Miller recessed the hearing after an issue arose involving one of Mr. Inmon's expert witnesses. On April 20, 2009, Judge Miller re-convened Mr. Inmon's sentencing hearing.

On April 22, 2009, Judge Miller sentenced Mr. Inmon to death for murder. Judge Miller imposed consecutive sentences of thirty years for first-degree burglary and thirty years for first-degree criminal sexual conduct. In accordance with South Carolina Code Section 16-3-1910, Judge Miller did not impose a sentence for kidnapping.

Mr. Inmon appealed the convictions and sentences to this Court. Initially, Joseph L. Savitz, III, of the Office of Appellate Defense, represented Mr. Inmon. Upon Mr. Savitz's retirement from the Office of Appellate Defense, Robert M. Dudek began representing Mr. Inmon. This Court convened an oral argument on September 21, 2011 and issued a written opinion on December 28, 2011, affirming the convictions and sentences. *State v. Inman*, 395 S.C. 539, 720 S.E.2d 31 (2011).

Mr. Inmon filed his PCR application on June 21, 2012, and this Court assigned the Honorable Alexander S. Macaulay to preside. Judge Macaulay appointed undersigned counsel to represent Mr. Inmon, who have represented him ever since. With the assistance of counsel, Mr. Inmon amended his PCR application on April 11, 2016 and October 16, 2016. The State filed returns on October 18, 2012, May 16, 2016, and November 7, 2016. Mr. Inmon filed a corrected second amended PCR application on August 20, 2018. Mr. Inmon's application raised allegations of ineffective assistance of trial and appellate counsel. From August 20-23, 2018, Judge Macaulay convened an evidentiary hearing. By written order dated April 17, 2020 and April 20, 2020, Judge Macaulay granted, in part, and denied, in part, Mr. Inmon's application for post-conviction relief. In two written orders dated May 18, 2020, Judge Macaulay denied the parties' cross-Rule 59(e), SCRCPC motions.

On June 16, 2020, the State filed its notice of appeal. The following day, Mr. Inmon filed his cross-notice of appeal. On appeal, Mr. Inmon plans to raise allegations of ineffective assistance of appellate counsel.

DISCUSSION

Because this appeal will include allegations of ineffective assistance of appellate counsel, this Court should appoint independent counsel.

This Court should appoint undersigned counsel to represent Mr. Inmon so that Mr. Inmon will have continuity of counsel. South Carolina recognizes the right to appointed counsel in PCR cases. Rule 71.1(d), SCRCP; *see also* S.C. Code Ann. § 17-27-90; *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999). Although an indigent litigant does not have the right to the initial appointment of counsel of his choice, he has a right to continuity of counsel once he has formed an attorney-client relationship. As one court noted:

A superficial response is that the defendant does not pay his [lawyer's] fee, and hence has no ground to complain as long as the attorney currently handling his case is competent. But the attorney-client relationship is not that elementary: it involves not just the causal assistance of a member of the bar, but an intimate process of consultation and planning which culminates in a state of trust and confidence between the client and his attorney. This is particularly essential, of course, when the attorney is defending the client's life or liberty. Furthermore, the relationship is independent of the source of compensation, for an attorneys responsibility is to the person he has undertaken to represent rather than to the individual or agency which pays for the service.

Smith v. Superior Court of Los Angeles County, 68 Cal. 2d 547, 561-62, 440 P.2d 65, 74 (1968).

“The Sixth Amendment provides that [i]n all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense. [The Supreme Court of the United States has] previously held that an element of this right is the right of

a defendant who does not require appointed counsel to choose who will represent him.” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006) (internal quotations omitted). “With respect to continued representation...there is no distinction between indigent defendants and non-indigent defendants.” *Lane v. State*, 80 So. 3d 280, 295 (Ala. Crim. App. 2010), rehearing denied (Apr. 16, 2010), *cert. quashed*, 80 So. 3d 303 (Ala. 2011) *cert. denied*, 132 S. Ct. 1144 (2012). Therefore, “[a]lthough an indigent defendant does not have the right to force a trial court to appoint counsel of his or her own choosing, once counsel is appointed, the trial judge is obliged to respect the attorney-client relationship created through the appointment.... The attorney-client relationship between appointed counsel and an indigent defendant is no less inviolate than if counsel is retained.” *Id.* at 297.

In *Amadeo v. State*, 259 Ga. 469, 470, 384 S.E.2d 181, 182 (1989), the Supreme Court of Georgia considered “the issue of the extent to which a trial court must consider the reappointment of lawyers with whom the defendant has already developed a close relationship.” Amadeo’s prior lawyers had secured *habeas corpus* relief for him in the Supreme Court of the United States, had developed with him a relationship of trust, confidence, and allegiance, and were thoroughly familiar with his case. “[T]he court’s exercise of its discretion is to be reviewed in light of the factors before the court at the time of its decision.” *Id.* The Georgia Supreme Court concluded, “[w]hen that statement of preference [to continue with prior counsel], timely made, is supported by objective considerations of the consequence here involved, and where there are no countervailing considerations of comparable weight, it is an abuse of sound judicial discretion to deny the defendant’s request to appoint the counsel of his preference.” *Id.* 259 Ga. At 470, 384

S.E.2d at 183 (citing *Harris v. People*, 19 Cal.3d 786, 140 Cal.Rptr. 318, 327, 567 P.2d 750, 759 (1977)).

The Supreme Court of Georgia addressed this issue again in *Davis v. State*, 261 Ga. 221, 222, 403 S.E.2d 800, 801 (1991) and concluded the “defendant's choice of counsel is supported by several weighty considerations” including prior counsel were “already familiar with the case, which is both legally and factually complex,” and had “a long-standing relationship with the defendant, who they contend is in a fragile state of mental health.” *Id.* See also *Grant v. State*, 278 Ga. 817, 817, 607 S.E.2d 586, 587 (2005) (reversing trial court for removing existing counsel base on “the strong interest of the defendant and of the court system in sustaining an existing, close relationship between a death penalty defendant and his counsel”).

This Court’s precedent is consistent with *Gonzalez-Lopez*, *Lane*, *Amadeo*, *Davis*, *Grant*, and *Harris*. “[T]he right to be represented by an attorney of one's choosing could, in effect, determine the action, and it is closely related to the right to a particular mode of trial, which is an established substantial right.” *State v. Wilson*, 387 S.C. 597, 602, 693 S.E.2d 923, 925 (2010). The right is so significant that “an order granting a motion to disqualify a party’s attorney in a civil case affects a substantial right and may be immediately appealed.” *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005); see also *State v. Cottrell*, 421 S.C. 622, 634, 809 S.E.2d 423, 430 (2017) (“*erroneous* deprivation of a defendant's counsel of choice is a structural error in violation of the Sixth Amendment” (emphasis supplied by Court)).

CONCLUSION

Because this appeal will include allegations of ineffective assistance of appellate counsel, this Court should appoint independent counsel. This Court should appoint undersigned counsel to represent Mr. Inmon so that Mr. Inmon will have continuity of counsel.¹

IT IS SO MOVED.

Respectfully Submitted,

By



E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
Email: charles@groselawfirm.com

Diana Holt
S.C. Bar Number 7079
Diana Holt, LLC
Post Office Box 6454
Columbia, South Carolina 29260-6454
Phone: 803-782-1663
Email: DianaHolt@dianaholtllc.com

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Attorneys for Jerry Inmon

¹ Mr. Inmon requests this Court appoint both Mr. Grose and Ms. Holt. Mr. Grose and Ms. Holt have worked together on other cases and will take precautions not to duplicate efforts.