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**Jul 20 2020**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Pickens County  
Court of Common Pleas  
Alexander S. Macaulay, Circuit Court Judge

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Jerry Buck Inman a/k/a Jerry Buck Inmon,

Respondent-Appellant,

V.

State of South Carolina,

Appellant-Respondent.

Appellate Case No. 2020-000881

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RETURN TO MOTION FOR APPOINTMENT  
OF OUTSIDE COUNSEL

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Undersigned counsel, making this Return to the Motion to Appoint Counsel in this case asserts that:

1. The procedural history contained in the motion of Respondent/Appellant (hereinafter "Respondent" for ease of reference) is correct. On November 8, 2006, the Pickens County Grand Jury indicted respondent for murder, first-degree burglary, kidnapping, and first-degree criminal sexual conduct. The state sought the death penalty, and this Court assigned the Honorable Edward W. Miller to preside over the case.

2. On August 9, 2008, Judge Miller accepted respondent's plea of guilty to these charges. Symmes Culbertson, James Bannister, and John DeJong represented respondent. On September 8-11, 2008, Judge Miller convened a sentencing hearing. Judge Miller recessed the hearing after a legal

problem arose involving the solicitor allegedly intimidating respondent's expert witness, Marti Loring. On April 20, 2009, Judge Miller re-convened respondent's sentencing hearing.

3. On April 22, 2009, Judge Miller sentenced respondent 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.

4. Respondent appealed the convictions and sentences to this Court. Initially, Joseph L. Savitz, III, of the Office of Appellate Defense, represented respondent. Upon Mr. Savitz's retirement from the Office of Appellate Defense, Robert M. Dudek began representing respondent.

5. 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).

6. Respondent filed his PCR application on June 21, 2012, and this Court assigned the Honorable Alexander S. Macaulay to preside. Judge Macaulay appointed E. Charles Grose to represent respondent. Counsel Grose has remained counsel for respondent since that date. With the assistance of counsel, respondent amended his PCR application on April 11, 2016 and October 16, 2016.

7. The state filed returns on October 18, 2012, May 16, 2016, and November 7, 2016. Respondent filed a corrected second amended PCR application on August 20, 2018. Respondent's application raised allegations of ineffective assistance of trial and appellate counsel.

8. 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, respondent's application for post-conviction relief. In two written orders dated May 18, 2020, Judge Macaulay denied the parties' cross-Rule 59(e), SCRCP motions.

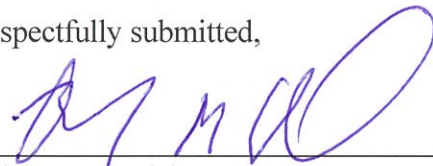
9. On June 16, 2020, the state filed its notice of appeal. The following day, respondent filed his cross-notice of appeal. On appeal, respondent has averred that he plans to raise allegations of ineffective assistance of appellate counsel.

10. Since respondent has raised allegations of ineffective assistance of appellate counsel against counsel employed or formerly employed by the Division of Appellate Defense, and asserts that he will raise those grounds in this appeal, undersigned counsel does not oppose the motion to appoint outside counsel. However, on the final page of the motion to appoint outside counsel, Counsel Grose inserted a footnote stating that respondent would like for both of his PCR lawyers to be appointed on this appeal. The Commission on Indigent Defense, Appellate Division, submits that only one attorney can be appointed as *compensated* counsel on appeal in this PCR case. S.C. Code §17-27-160 (B) provides for the appointment of two compensated attorneys to handle a death penalty *trial level PCR action* if the defendant is indigent. However, state law does not provide for two compensated attorneys to handle a death penalty PCR appeal. Further, S.C. Code §17-27-100 references S.C. Code §16-3-26 as to funding for PCR lawyers. S.C. Code §16-3-26 B)(1) similarly provides that the trial court shall appoint “two attorneys to defend such person in the *trial of the action*” when the death penalty is sought in a murder case. (emphasis added). There is likewise no provision for two attorneys to be compensated for the direct appeal of an indigent person in a death penalty case.

11. Consequently, the Commission on Indigent Defense, Division of Appellate Defense, does not oppose, and consents to the appointment of one *compensated attorney*, either E. Charles Grose, Jr., or Diana Holt to serve as appellate counsel for respondent on appeal. Undersigned counsel does not oppose the non-compensated attorney being appointed to serve *pro bono*, but counsel must and does oppose the motion to appoint two compensated attorneys to represent respondent on appeal.

WHEREFORE, the Commission on Indigent Defense, Division of Appellate Defense does not oppose the motion to appoint *one compensated attorney* to represent respondent on appeal, either E. Charles Grose, Jr. or Diana Holt, but opposes the appointment of both as compensated appellate attorneys. The Commission on Indigent Defense, the Division of Appellate Defense, does not oppose the other attorney serving as *pro bono* counsel.

Respectfully submitted,



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Robert M. Dudek  
Chief Appellate Defender

July 20, 2020