

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

RECEIVED

Jul 20 2020

S.C. SUPREME COURT

Appellate Case No. 2020-000881

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

v.

State of South Carolina, .....Appellant-Respondent.

**Reply to the Appellate Defense Division’s  
Return to Mr. Inmon’s Motion to Appoint Counsel**

This appeal is capital post-conviction relief case (“PCR”). On July 10, 2020, Jerry Inmon moved this Court for an order appointing his circuit court PCR counsel to represent him in the cross-appeal of the order granting, in part, and denying, in part, his PCR application. By letter dated July 16, 2020, the South Carolina Attorney General’s Office informed this Court the State takes no position on Mr. Inmon’s motion. On July 20, 2020, the Appellate Defense Division of the South Carolina Commission on Indigent Defense filed a return to Mr. Inmon’s motion, acknowledging its conflict-of-interest and consenting to the appointment of both of undersigned counsel, but arguing only one of us should be compensated. This reply follows.

Appellate Defense’s return, at 3, ¶ 10, cites S.C. Ann. §§ 16-3-26 and 17-27-100 and argues, “[S]tate law does not provide for two compensated attorneys to handle a death penalty PCR appeal.” This argument is legally inaccurate for four reasons. First, sections 16-3-26 and 17-27-100 are silent on the appointment and compensation of counsel for capital appeals. Normally, appellate defense is automatically appointed in capital appeals.

S.C. Code Ann. § 17-3-360; Rule 602, SCACR. The automatic appointment allows Appellate Defense to determine which and how many inter-agency attorneys to assign to a capital case. The statutes do not restrict the number of attorneys this Court or Appellate Defense may assign to a capital case, and, as will be discussed below, the agency’s current practice is to assign multiple attorneys to a capital case.

Second, “[n]othing [] contained [in the Indigent Defense Act] is designed to limit the discretionary authority of a judge to appoint counsel in any case and any such counsel shall be entitled to remuneration and reimbursement as provided in §§ 17-3-50 and 17-3-80 hereof, so long as funds appropriated herein are available therefor.” S.C. Code Ann. § 17-3-100; *and see Ex Parte Brown*, 393 S.C. 214, 711 S.E.2d 899 (2011) (services of court-appointed counsel was property that implicated takings clause and required just compensation). Our General Assembly expressly “empowered [this Court] to establish such rules and regulations as are necessary for the proper administration of the Indigent Defense Act,” S.C. Code Ann. § 17-3-110, and Rule 602, SCACR expressly contemplates appointed counsel in PCR cases and “case[s] in which more than one attorney is appointed.”

Third, Appellate Defense’s return overlooks this Court’s inherent authority. The “adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.” *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012) (internal quotations omitted). Thus, this Court has the inherent authority to appoint two attorneys in a capital case.

Fourth, Appellate Defense’s return overlooks the standard of care in capital cases, which is evidenced by its own custom and practices. Although acknowledging sections

16-3-26 and 17-27-100 require appointment of two lawyers in the circuit court, Appellate Defense overlooks its own current practice of assigning multiple lawyers to represent a client on a capital appeal. *E.g. State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017) (“Chief Appellate Defender Robert Michael Dudek and Appellate Defender David Alexander, both of Columbia, for Appellant.”); *State v. Jerome Jenkins, Jr.*, Appellate Case No. 2019-001280 (Chief Appellate Defender Robert M. Dudek, Appellate Defender Katherine H. Hudgins, and Appellate Defender Adam Sinclair Ruffin, Attorneys for the Appellant). In fact, Appellate Defense assigned five attorneys to represent the client in *State v. Timothy Ray Jones, Jr.*, Appellate Case No. 2019-001008, which is an appeal of a Lexington County death sentence. Exhibit A.

The current internal practice of Appellate Defense is consistent with the national standard of care. The *American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, reprinted in 31 Hofstra L. Rev. 913 (2003) (ABA Guidelines”), is recognized and the prevailing professional norms in capital cases. *E.g. Wiggins v. Smith*, 539 U.S. 510 (2003); *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008); *Ard v. Catoe*, 372 S.C. 318, 332, 642 S.E.2d 590, 597 (2007). The ABA Guidelines contemplate “[q]uality representation” in state collateral review proceedings. 31 Hofstra L. Rev., at 932-35. ABA Guideline 3.1 contemplates a “responsible agency,” such as the Commission on Indigent Defense, to “ensur[e] that each capital defendant in the jurisdiction receives high quality legal representation.” *Id.*, at 944. ABA Guideline 4.1 contemplates “[t]he defense team should consist of no fewer than two attorneys.” *Id.*, at 952; *and see, id.*, at 955 (ABA Guideline 4.1, Commentary, stating, “It is critically important, therefore, that each jurisdiction authorize sufficient funds to enable

counsel in capital cases to conduct a thorough investigation for trial, sentencing, appeal, post-conviction and clemency.”).

In addition, Appellate Defense’s return, at 2, ¶ 6, acknowledges the court below appointed co-counsel Grose to represent Mr. Inmon, and he “has remained counsel for [Mr. Inmon] since that date.” The return, however, overlooks that co-counsel Holt’s professional relationship with Mr. Inmon began prior to the filing of the PCR application. During the direct appeal, Mr. Inmon contemplated waiving his direct appeal and volunteering for execution. After Ms. Holt met with Mr. Inmon in 2011, with the permission of then counsel, he withdrew his request to waive his direct appeal. Mr. Inmon and Ms. Holt have maintained a relationship of trust ever since. At the same time it appointed Mr. Grose to represent Mr. Inmon, the court below also appointed Ms. Holt, though it is unclear why Appellate Defense did not include that fact in its filing. Both have remained counsel for Mr. Inmon since that date.

Finally, as pointed out in the Motion to Appoint Counsel, at 6, fn. 1, Mr. Grose and Ms. Holt have worked together before and will take precautions not to duplicate efforts.<sup>1</sup> This Court, therefore, should appoint both of undersigned counsel to represent Mr. Inmon on this capital PCR appeal.

(signature on next page)

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<sup>1</sup> Significantly, both of undersigned counsel have already read the trial, direct appeal, and post-conviction record. The parties obtained the transcript of the PCR evidentiary hearing prior to submitting proposed orders to the court below.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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July 20, 2020

*Attorneys for Jerry Inmon*

# Exhibit A

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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RECEIVED

Jul 15 2020

S.C. SUPREME COURT

Certiorari to Lexington County

Eugene C. Griffith, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

TIMOTHY RAY JONES, JR.

APPELLANT

Appellate Case No. 2019-001008

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PETITION FOR EXTENSION TO FILE  
INITIAL BRIEF OF APPELLANT AND  
DESIGNATION OF MATTER

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The undersigned counsel respectfully requests a **thirty-day extension, from the due date July 17, 2020 until August 17, 2020**, in which to file the initial brief of appellant and designation of matter in the above-referenced case. In support of this motion, counsel would respectfully show the Court the following extraordinary circumstances:

1. The initial brief of appellant and designation of matter in this case are due to be served and filed Friday, July 17, 2020. Counsel filed the seven-issue, ninety-one-page initial brief of appellant and designation of matter in the death penalty case of The State v. Jerome Jenkins, Jr. with this Court on Monday, July 13, 2020 with co-counsel Kathrine Hudgins and Adam Ruffin. Thee total number of transcript pages involved in this death penalty case is 7,422.

2. Counsel is currently working on the Petition for Writ of Certiorari to the Court of Appeals in the case of The State v. Justin Jamal Warner, which is due to be filed with this Court on Monday, July 20, 2020. In addition, counsel must file his Brief of Respondent in the case of The State v. Joseph Bowers, which is due to be filed with this Court on Wednesday, July 22, 2020. As stated above, Counsel just filed the seven-issue, ninety-one-page initial brief of appellant and designation of matter in the death penalty case of The State v. Jerome Jenkins, Jr. with this Court on July 13, 2020. Counsel filed the petition for rehearing in the case of The State v. Arsenio D. Colclough with the Court of Appeals on June 25, 2020. Counsel filed the petition for writ of certiorari to the Court of Appeals and accompanying appendix in The State v. Timiya Rashad Massey with this Court on June 24, 2020. Counsel filed the initial brief of appellant and designation of matter in the murder case of The State v. Malette Denise Kimbrough with the Court of Appeals on June 23, 2020. Counsel filed the brief of appellant and designation of matter in the case of The State v. Brian David Walls with the Court of Appeals on June 18, 2020. Counsel had a WebEx oral argument before the Court of Appeals on June 3, 2020 in The State v. John Ernest Perry. Counsel filed the brief of appellant and designation of matter in the case of The State v. Gabriel Joyner with the Court of Appeals on May 29, 2020. Counsel had a WebEx oral argument before the Court of Appeals on May 27, 2020 in The State v. James Caleb Williams. **Counsel has extensive administrative duties as the Chief Appellate Defender, including Phase II management of the Covid-19 office readjustment, training four less experienced Appellate Defenders and reviewing all of their filings in advance, and oversight of the Appellate Project.** Appellate Defenders Susan Hackett, David Alexander, Lara Caudy, and Taylor Gilliam are co-counsel on this case.

Co-counsel Susan Hackett

Counsel Hackett filed the petition for writ of certiorari, the brief of appellant pursuant to White v. State, and accompanying appendix in the case of Rodney C. Bryan v. State in this Court on July 13, 2020. She also filed a petition for rehearing in the case of State v. Arthur Jason Bowers in the Court of Appeals on July 9, 2020. Counsel filed the initial reply brief of appellant in the case of State v. Gabrielle Oliva Lashane Davis Kocsis in the Court of Appeals on July 2, 2020. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Kenneth Lamont Robinson in the Court of Appeals on June 30, 2020. Counsel filed the brief of petitioner in the case of State v. Steve Young in the Court of Appeals on June 16, 2020. Counsel filed a petition for rehearing in the case of State v. Ronald Hakeem Mack in the Court of Appeals on June 4, 2020. Counsel filed the initial brief of appellant and designation of matter in the case of State v. Tony Orlanda Singleton in the Court of Appeals on May 18, 2020.

Co-counsel David Alexander

Counsel Alexander filed the petition for a writ of certiorari and appendix in the case of Tyrel Rashone Collins v. The State with this Court on June 26, 2020. On June 25, 2020, he filed the brief of appellant in the case of The State v. Randy Chestnut with the Court of Appeals. On June 25, 2020, counsel filed the brief of appellant in the case of The State v. Diondrae Emanuel Jackson with the Court of Appeals. On June 16, 2020, counsel had an oral argument in In the Matter of the Care and Treatment of Micah Allen Bilton before the Court of Appeals. On June 10, 2020, counsel had an oral argument in The State v. Billy Lemurces Taylor before this Court. Counsel filed the return to petition for a writ of certiorari in the case of The State v. Kenneth Strother Collins with this Court on June 4, 2020. On May 27, 2020, counsel had an oral argument in The State v. Antwuan Levon Nelson before the Court of Appeals. Counsel filed the

brief of appellant and record on appeal in the case of The State v. Alvin Gregory Mitchell, Jr., with the Court of Appeals on May 22, 2020.

Co-counsel Lara Caudy

On July 15, 2020, Counsel Caudy filed a brief of petitioner in The State v. Jonathan Donell Rhodes with this Court. On July 13, 2020, she filed the initial brief of appellant and designation of matter in The State v. Samuel Hawkins, Jr. with the Court of Appeals. On June 26, 2020, counsel filed the brief of appellant and designation of matter in The State v. Marquille Rondale Livingston with the Court of Appeals. On June 19, 2020, counsel filed the petition for writ of certiorari and accompany appendix in Bobby Joe Arflin v. The State with this Court. On May 22, 2020, counsel filed the petition for writ of certiorari and accompany appendix in Marcus Shearin v. The State with this Court. On May 20, 2020, counsel had an oral argument in The State v. Felix Kotowski before this Court. On May 6, 2020, counsel filed the initial brief of appellant and designation of matter in The State v. Michael Breyan with the Court of Appeals. On May 1, 2020, counsel filed the initial brief of appellant and designation of matter in The State v. Traivon Young with the Court of Appeals.

Co-counsel Taylor Gilliam

Counsel Gilliam filed the brief of respondent in the case of The State v. Ontario Makins with this Court on July 2, 2020. He filed the initial brief of appellant and designation of matter in the case of The State v. Yolanda Shatten with the Court of Appeals on June 25, 2020. Counsel filed the initial brief of appellant and designation of matter in the case of The State v. Michael Strother with the Court of Appeals on June 25, 2020. Counsel filed the initial brief of appellant and designation of matter in the case of The State v. Risheen Rich with the Court of Appeals on June 25, 2020. Counsel filed the petition for writ of certiorari and accompanying appendix in the

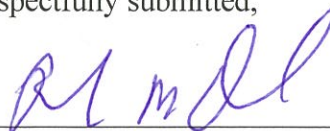
case of Quincy McCants v. The State with this Court on June 22, 2020. Counsel filed the brief of petitioner in the case of Michael Rogers v. The State with the Court of Appeals on May 28, 2020. Counsel filed the initial brief of appellant and designation of matter in the case of The State v. Martin Pittman with the Court of Appeals on May 27, 2020. Counsel filed the petition for writ of certiorari and accompanying appendix in the case of August Kreis v. The State with this Court on May 14, 2020.

3. Opposing counsel, the Attorney General's Office, has graciously consented to this extension request by way of the thirty-day general consent granted by Deputy Attorney General Donald J. Zelenka for all Appellate Defense extensions through July 31, 2020. That emailed general consent was dated June 23, 2020.

This request of all counsel is made in good faith, and not for purposes of delay. Each attorney intends to continue to work on the cases with more than three extensions first so that their caseload will hopefully become more manageable in the near future, and less extensions will need to be requested.

WHEREFORE, the undersigned counsel would respectfully request a **thirty-day extension from Friday, July 17, 2020 until August 17, 2020**, in which to file the initial brief of appellant and designation of matter. Counsel respectfully requests that the time limits for filing the brief of appellant and designation of matter be held in abeyance pending a ruling on this motion.

Respectfully submitted,



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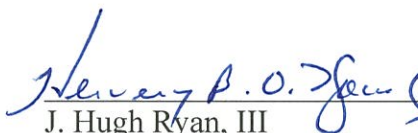
Robert M. Dudek  
Chief Appellate Defender

Taylor D. Gilliam  
Appellate Defender

Lara M. Caudy  
Appellate Defender

David Alexander  
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Susan B. Hackett  
Appellate Defender



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J. Hugh Ryan, III  
Executive Director/  
Hervery B. O. Young  
Deputy Director and General Counsel/  
W. Lawrence Brown  
Deputy General Counsel and Training  
Director

This 15th day of July, 2020