

THE STATE OF SOUTH CAROLINA

COURT OF APPEALS

THE HONORABLE STEPHANIE P. McDONALD, JUDGE

**RECEIVED**

JUL 15 2020

SC Court of Appeals

NATHANIEL JOHNSON, JR., #211574, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent,

Appellate Case No: 2020-000110

PETITIONER'S RESPONSE TO ORDER

PLEASE TAKE JUDICIAL NOTICE, that the Petitioner, NATHANIEL JOHNSON, JR. #211574, an pro-se litigant who hereby move with his response and objections to the Order filed on July 07th, 2020, granting the Petitioner, twenty (20) days in which to notify the Court, as to whether or not he wishes to proceed pro-se and then the Court, will determine if it will allow him to do so. Petitioner, would show the Court, the following:

To the Honorable Stephanie P. McDonald, Judge, the Petitioner, would like to clarify the record. The Petitioner, did not move to relieve Appellate Defense Counsel. They moved to relieve themselves on March 17th, 2020. Please observe the letterhead from the South Carolina Court of Appeals, dated March 09th, 2020, directed to the Office of Appellate Defense, requesting that they must response and file an original return to the Petitioner's Motion for Appointment of Standby Appellate Counsel, no later than ten (10) days from the date of this letter. See Petitioner's Exhibit#795. On March 17th, 2020, Appellate Defense Counsel, filed its return to the motion to appoint standby counsel and moved to be relieved of Appellate Defense, due to heavy caseload, and requested that the Court, appoint outside counsel to represent. Please observe the Petitioner's Exhibit#796-801 p.1-4. On April 1st, 2020, the Petitioner, received from the South Carolina Court of Appeals, an Order denying the Petitioner's request for standby counsel and stated that there is no federal or state constitutional right to proceed pro-se or right to standby counsel on appeal from a criminal conviction in pursuant to \* State v. Roberts, 364 S.C. 583, 614 S.E.2d. 626 (2005). Please observe Petitioner's Exhibit#802. On April 06th, 2020, Petitioner, moved and filed an Motion for Leave to Proceed Pro-Se in response to the Order received dated April 1st, 2020 and objecting to being denied the right to proceed pro-se in regards to the case of \* State v. Roberts, asserting that this case does not apply to the case of the Petitioner, because it only applies to death sentences. Petitioner's Motion to Proceed Pro-Se, is in pursuant to the S.C. Code Ann §40-5-80, and the following cases in reference to knowingly, and intelligently, waiving his rights to counsel, in pursuant to \* State v. Barnes, 407 S.C. 27, 35, 733 S.E.2d 545, 550 (2014), A South Carolina Defendant has the constitutional right to represent himself under both the federal and state constitutions. Also, See \* U.S. v. Isaac, 655 F.3d. 148, 153 (3rd. Cir. 2011), It is well settled that the Sixth Amendment guarantees a criminal defendant the right to proceed pro-se equal to its guarantee of the right to counsel. Please observe the Petitioner's Exhibit#803-806.

Petitioner, moves and wishes to proceed pro-se in this matter, as the Appellate Defense Counsel, moved to be relieved as Standby Appellate Counsel due to heavy caseload on March 17th, 2020, and requesting that this Court appoint outside counsel. For all reasons shown, and for good cause shown, Petitioner's Motion to Proceed Pro-Se should be granted, as justice is so required, as a matter of law.

Dated: Fri July 10, <sup>th</sup>, 2020.

Respectfully submitted,

1st Mr. Nathaniel Johnson Jr. #211574

Mr. NATHANIEL JOHNSON, JR. #211574

ACI. Bamberg Unit F-4 B#26

P.O. Box 1151

1057 Revolutionary Trail Hwy47

Fairfax, S.C. 29827

Pro-Se Petitioner



Exhibit #

795

# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11829  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1880  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

March 09, 2020

Nathaniel Johnson, Jr., #211574  
Allendale Correctional Institution  
P. O. Box 1151, Hwy 47  
Fairfax SC 29827

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

Dear Mr. Johnson:

This will acknowledge receipt of your application to proceed In Forma Pauperis.

By copy of this letter, the Office of Appellate Defense is requested to file an original return to this motion no later than ten (10) days from the date of this letter.

The time limits for perfecting the appeal will be held in abeyance pending the Court's decision.

Very truly yours,

*J. A. Kitchens*  
CLERK

cc: Isaac McDuffie Stone, III, Esquire  
William M. Blitch, Jr., Esquire  
Robert Michael Dudek, Esquire

Exhibit # 796



Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

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

March 17, 2020

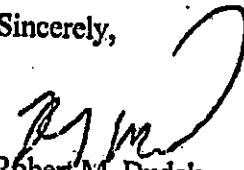
The Honorable Jenny Abbott Kitchings  
Clerk, S. C. Court of Appeals  
PO Box 11629  
Columbia, SC 29211

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. Blich, Jr., Esquire  
Nathaniel Johnson, Jr., #211574

Columbia, South Carolina

cc:  
William M. Blitch, Jr., Esquire  
Robert Michael Dudek, Esquire  
Nathaniel Johnson, Jr., #211574

Exhibit # 797  
1-4

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Beaufort County  
Honorable Carmen T. Mullen, Circuit Court Judge

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 - 1<sup>st</sup> 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 - 1<sup>st</sup> 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.

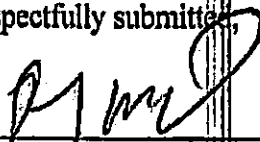
7. Petitioner filed a pro-se "Notice of Belated Appeal" on January 21, 2020.

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

 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,



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Robert M. Dudek  
Chief Appellate Defender

March 17, 2020

Exhibit # 801

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Beaufort County  
Honorable Carmen T. Mullen, Circuit Court Judge

NATHANIEL JOHNSON, JR.,

PETITIONER,

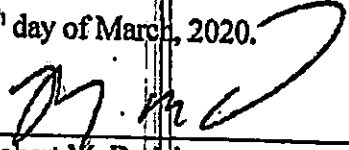
v.


STATE OF SOUTH CAROLINA,

RESPONDENT

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. Blitch, 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 17<sup>th</sup> day of March, 2020.

  
Robert M. Dudek  
Chief Appellate Defender

SUBSCRIBED AND SWORN TO before me  
this 17 day of March, 2020.  
 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: March 10, 2025

# The South Carolina Court of Appeals

Nathaniel Johnson, Jr., Petitioner,

v.

State of South Carolina, Respondent.


Appellate Case No. 2020-000110

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## ORDER

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Petitioner has filed a motion to proceed without costs and also requests that this court appoint standby counsel. As to Petitioner's motion to proceed without costs, this court will not assess filings fees in this case because this petition stems from a hearing before the Court of General Sessions. Petitioner's request for standby counsel is denied as there is no constitutional right to proceed pro se or right to standby counsel on appeal from a criminal conviction. *State v. Roberts*, 364 S.C. 583, 614 S.E.2d 626 (2005).

  
\_\_\_\_\_  
FOR THE COURT

Columbia, South Carolina

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

**FILED**

April 1, 2020

Dated: Thurs July 9<sup>th</sup> 2020

The Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

RE: Nathaniel Johnson Jr. #211574 v. State of South Carolina  
Appellate Case No: 2020-000110

Dear Ms. Kitchings,

On April 1<sup>st</sup> 2020, I received from the South Carolina Court of Appeals, an order denying the Petitioner's motion for standby counsel and that there is no constitutional right to proceed pro-se on appeal from a criminal conviction, in pursuant to \*State v. Roberts, 364 S.C. 583, 614 S.E.2d 626 (2005). On April 6<sup>th</sup> 2020, the Petitioner, file with the South Carolina Court of Appeals an Motion for Leave to Proceed Pro-Se, along with certificates showing proof of studies.

Petitioner, a motion stating that the case of  
\* State v. Roberts, (2005), did not apply to his  
case but did apply to death sentence cases only.

Petitioner asserted that he did have a State and  
Federal Constitutional right to Proceed Pro-Se in  
pursuant to the cases of \* State v. Barnes, 407 S.C.  
27, 35, 733 S.E.2d 545, 550 (2014), where a  
defendant of ~~the~~ State of South Carolina has an  
Constitutional right to represent himself under  
both federal and state constitutions on appeals  
of a criminal conviction. Also see \* U.S. v. Isaac,  
655 F.3d. 148, 153 (3<sup>rd</sup> Cir 2011), It is well settled  
that the Sixth Amendment guarantees a criminal  
defendant the right to Proceed Pro-Se equal to  
its guarantee of the right to counsel. This is the  
third request to receive back from the Court, an  
checked stamped copy of its original date that  
the Court received the Petitioner's motion.

HAM JAC:11

I am providing the Court with another duplicate copy to be checked stamped for the original dated that courts received the first motion and sent back for my records. Please provide checked stamped back to me at your earliest convenience. Thank you kindly!

Dated: 7/9/20

Respectfully submitted,  
~~by Mr. Nathaniel Johnson Jr. #211574~~  
Mr. Nathaniel Johnson Jr. #211574  
ACI. Bamberg Unit F-4 B216  
P.O. Box 1151  
Fairfax, SC. 29827

Exhibit # 803

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM BEAUFORT COUNTY COURT  
HONORABLE CARMEN T. MULLEN, CIRCUIT COURT JUDGE  
Lower Case No's #2006-GS-07-01640, & 01641

Appellate Case No: 2020-000110

Nathaniel Johnson, Jr. #211574, ..... Petitioner,

V.

State of South Carolina, ..... Respondent,

MOTION FOR LEAVE TO PROCEED PRO-SE

Dated: Mon. April 6<sup>th</sup> 2020.

/s/ Nathaniel Johnson #211574

Mr. Nathaniel Johnson, Jr. #211574  
ACI, Bamberg Unit F-4 B#26  
1057 Revolutionary Trail Hwy 47

Other Counsel Of Record:  
Mr. Isaac McDuffie Stone, III, Esq.  
Fourteenth Judicial Circuit Solicitor  
P.O. Box 1880  
Bluffton, S.C. 29910  
Attorney for Respondent

P.O. Box 1151  
Fairfax, S.C. 29827  
Pro-Se Petitioner

MOTION FOR LEAVE TO PROCEED PRO-SE

Comes now, Nathaniel Johnson, Jr. #211574, the Petitioner, who hereby moves, with an "Motion to apply for leave to proceed as an advocate for himself", in this matter, as justice is so required, as a matter of law, in pursuant to the S.C. Code of Laws Ann. §40-5-80, and upon the showing of the Petitioner's certificates. Petitioner, makes his move based upon the Return to Motion to Appoint Standby Counsel, the response from the Appellate Defense Counsel. Appellate Defense Counsel, moved to be relieved and requested that the Court, appoint outside Counsel. Appellate Defense Counsel, also moved with his opinion in regards to the case of \* State v. Roberts, 364 S.C. 583, 614 S.E.2d 626 (2005). Petitioner, asserts that after a careful consideration and the facts of this case, as it pertains to death sentences, where the Petitioner, may not have an federal or state constitutional right to proceed pro-se on an direct appeal of capital cases only! Petitioner, further understands that he has an "Human Right", or an "God Given Right", along with "STANDING", to protect his legal interest. According, to §40-5-80, of the S.C. Code of Laws Ann., the Petitioner, may apply for leave upon the showing of an certificate, he may asks for permission to proceed pro-se, to challenge the underlying conviction and sentence on a direct appeal if granted by the Court.

After, careful consideration and the importance of protecting the constitutional rights of the Petitioner's interest with regards to justice, Petitioner, respectfully waives his rights to appointment of outside counsel, and seeks to advocate for himself.

CONCLUSION

WHEREFORE, undersigned Petitioner, respectfully wishes to proceed pro-se in this denial of his DNA Testing Application appeal from the Beaufort County Court of General Sessions, before the Honorable Carmen T. Mullen, Circuit Court Judge. Petitioner, filed an Petition for a Writ of Certiorari, and in pursuant to §40-5-80, Petitioner, is applying for leave to proceed pro-se, as justice is so required, as a matter of law.

Dated: Mon. April 6<sup>th</sup>, 2020

Respectfully submitted,

*1s/ Nathaniel Johnson Jr. #211574*

Mr. Nathaniel Johnson Jr. #211574  
ACI. Bamberg Unit F-4 B#26  
1057 Revolutionary Trail Hwy47  
P.O. Box 1151  
Fairfax, S.C. 29827  
Pro-Se Petitioner

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM BEAUFORT COUNTY  
HONORABLE CARMEN T. MULLEN, CIRCUIT COURT JUDGE  
Lower Court Case No's #2006-GS-07-01640, & 01641

Appellate Case No:2020-000110

Nathaniel Johnson, Jr. #211574, .....Petitioner,  
v.  
State of South Carolina, .....Respondent,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of his "Motion to Apply For Leave To Proceed Pro-Se", in the above-referenced case has been served upon the opposing counsels Isaac McDuffie Stone, III, Esq., Fourteenth Judicial Circuit Solicitor's Office, P.O. Box 1880, Bluffton, S.C. 29910, and William M. Blich, Jr., Esq. S.C. Attorney General's Office P.O. Box 11549, Columbia, S.C. 29211.

Dated: Mon. April 6<sup>th</sup>, 2020

Respectfully submitted,  
Is Nathaniel Johnson, Jr. #211574  
Mr. Nathaniel Johnson, Jr. #211574  
ACI. Bamberg Unit F-4 B#26  
1057 Revolutionary Trail Hwy47  
P.O. Box 1151  
Fairfax, S.C. 29827  
Pro-Se Petitioner

SUBSCRIBED AND SWORN to before me this 06  
day of April, 2020.  
Kmya Green (L.S.)  
NOTARY PUBLIC

My Commission Expires: 10/28/29

# The South Carolina Court of Appeals

Nathaniel Johnson, Jr., Petitioner,

v.


State of South Carolina, Respondent.

Appellate Case No. 2020-000110

## ORDER

Petitioner moves to relieve counsel and proceed pro se in this matter. Petitioner may proceed pro se in this matter only after knowingly and intelligently waiving the right to counsel. *See Faretta v. California*, 422 U.S. 806 (1975); *State v. Brewer*, 328 S.C. 117, 492 S.E.2d 97 (1997). We take this opportunity to warn Petitioner that this Court requires pro se parties to fully comply with all applicable rules. Petitioner is certain to be unlearned in other aspects of the law as well. Representation by an attorney trained in the law would be highly beneficial, and we strongly encourage Petitioner to continue with representation by the Division of Appellate Defense.

After considering this information, Petitioner shall, within twenty days of the date of this order, notify this Court whether he wishes to proceed pro se or continue to be represented by the Division of Appellate Defense. If Petitioner notifies this Court that he wishes to proceed pro se despite the dangers and disadvantages of doing so, this Court will then determine if it will allow him to do so. *Cf. State v. Roberts*, 364 S.C. 583, 614 S.E.2d 626 (2005) (providing there is no right to proceed pro se on appeal). If Petitioner fails to notify this Court within twenty days, the Division of Appellate Defense will continue to provide representation in this matter.



FOR THE COURT

**FILED**  
**Jul 07 2020**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
THE HONORABLE STEPHANIE P. McDONALD, JUDGE

NATHANIEL JOHNSON, JR. #211574, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent,

Appellate Case No: 2020-000110

**RECEIVED**

JUL 15 2020

SC Court of Appeals

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a true copy of the Petitioner's Response to the Order, in the above reference case has been served upon opposing counsels by placing into the U.S. mail postage prepaid addressed to: Issac McDuffie Stone, III. Fourteenth Circuit Solicitor's Office, P.O. Box 1880, Bluffton, S.C. 29910, William M. Blich, Jr. Esq., S.C. Attorney General's Office, P.O. Box 11549, Columbia, S.C. 29211, and Robert M. Dudek, Esq., Division of Appellate Defense, P.O. Box 11589, Columbia, S.C. 29211-1589.

On this 10<sup>th</sup> day of July, 2020.  
Allendale Correctional Institution

Respectfully submitted,  
1st Mr. Nathaniel Johnson, Jr. #211574  
Mr. NATHANIEL JOHNSON, JR. #211574  
ACI. Bamberg Unit F-4 B#26  
P.O. Box 1151  
1057 Revolutionary Trail Hwy47  
Fairfax, S.C. 29827  
Pro-Se Petitioner

Mr. Nathaniel Johnson Jr. #211574

ACI Bamberg Unit F-4 B#26

P.O. Box 1151

1057 Revolutionary Trail Hwy 47

Fairfax, SC. 29827

RECEIVED  
JUL 13 2020  
MAIL ROOM  
ACI

The Honorable Stephanie P. McDonald

South Carolina Court of Appeals

P.O. Box 11629

Columbia, SC. 29211

RECEIVED  
JUL 15 2020  
SC Court of Appeals