

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM EDGEFIELD COUNTY
COURT OF GENERAL SESSION

RECEIVED

'JUL 03 2014

S.C. Supreme Court

William P. Keesley, Chief Administrative Judge

Appellate Court No #: 2014-001283;
Lower Court No: # 2005-GS-19-00273-457

STATE OF SOUTH CAROLINA, RESPONDENTS

VS

STEVEN LOUIS BARNES, PETITIONER

NOTICE OF PETITIONER SEEKING THIS COURT ORIGINAL
JURISDICTION REGARDING APPOINTMENT OF COUNSEL

TO: The 11th Circuit Solicitor Donnie V. Myer; and the South Carolina Commission on Indigent Defense, Hugh Ryan.

You're hereby notified that you have 30 days from the date of service to file a return to the petition for this court original jurisdiction in which is attached to this motion.

Date: 7/2/14

Steven Barnes
STEVEN LOUIS BARNES
124743
Aiken County Detention Center
Aiken SC

1).

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM EDGEMOND COUNTY
COURT OF GENERAL SESSION

William P. Keesley, Chief Administrative Judge

Appellate Court No #: 2014-001283;
Lower Court No: # 2005-GS-19-00273-457

STATE OF SOUTH CAROLINA, RESPONDENTS

VS

STEVEN LOUIS BARNES, PETITIONER

NOTICE OF PETITIONER SEEKING THIS COURT ORIGINAL
JURISDICTION REGARDING APPOINTMENT OF COUNSEL

TO: The 11th Circuit Solicitor Donie V Myer; and the South Carol-
ina Commission on Indigent Defense, Hugh Ryan.

You're hereby notified that you have 30 days from the date of
service to file a return to the petition for this court or-
iginal jurisdiction in which is attached to this motion.

Date: 7/21/14

Steven Barnes
STEVEN LOUIS BARNES
124743
Edgemond County Detention Center
Edgemond SC

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM EDGEFIELD COUNTY
COURT OF GENERAL SESSIONS

William P. Reesley, Chief Administrative Judge

Appellate case no #: 2014-001283;
lower case no # 2005-GS-19-00273-457

STATE OF SOUTH CAROLINA, Respondent

✓

STEVEN LOUIS BARNES, Petitioner

PETITION FOR THIS COURT ORIGINAL JURISDICTION
CONCERNING PETITIONER APPOINTMENT AS CAPITAL ATTORNEYS

STEVEN LOUIS BARNES #104743
Aiken County Detention Center
435 Wire Rd
Aiken, SC.

FACTS

This court granted the petitioner a new trial in his capital case. see State v Barnes 753 S.E.2d 545 (2014) Two capital trial attorneys, one, Mr. William Mcquire of the South Carolina Commission of Indigent Defense, chief attorney for the Capital Trial Division (hereafter state wide public defender and/or Mr. Mcquire) and two, private attorney, Elizabeth Franklin-Best (hereafter Ms. Elizabeth) had sought General session judge William P. Keesley (hereafter General session judge) to appoint them to petitioner's capital case. Instead of doing this, the general session judge scheduled an appointment of counsel hearing for April 23, 14, to determine whether or not the 11th circuit solicitor Donnie v Myers (hereafter solicitor) were going to reseek the death penalty. Before the appointment of counsel hearing, private attorney, Ms. Elizabeth tried to get the general session judge to appoint at least one counsel before the hearing. The general session refused to do so. At the April 23, 14, appointment of counsel hearing, the petitioner had found out one hour before the hearing that the state-wide public defender boss, South Carolina Commission of Indigent Defense General Counsel, Hugh Ryan (hereafter General Counsel Ryan) were going to stand-up at the appointment of counsel hearing to object to private counsel, Ms. Elizabeth (or any other private counsel) being appointed to this case because of financial reasons. During the appointment of counsel hearing it became adversarial because

not only during the hearing the solicitor both sought the death penalty and objected to counsel not being appointed period, but also General Counsel Ryan, the state-wide public defender boss, was/is being adverse to the petitioner position of having one private attorney appointed to this case as the mandatory language of SC Code 16-3-26 provides him. Despite two state officials taking both an adversarial position to petitioner appointment of counsel (and one of them, General Counsel Ryan, had caused a conflict of interest in this case because the petitioner had told his state-wide public defender before and during the hearing to object to his boss, General Counsel Ryan, taking an adverse position to petitioner case (regarding counsel), the General session judge failed to appoint capital counsels during the hearing. Because of the multiple objections during the appointment of counsel hearing, General session judge ordered the interested parties at the hearing to brief whether or not private counsel should be appointed to this case. On June 3, 14, the General session judge issued an order, adopting one of the solicitor arguments in his brief in which he did not serve to the petitioner, that it lacked jurisdiction to hear the appointment of counsel issues in the petitioner case because the supreme court chief judge Jean Toal issued an order in January 25, 10, giving exclusive jurisdiction to Circuit Judge R. Knox McStation.

ARGUMENTS - STATE LAW DOES NOT TRUMP FEDERAL LAWS - SUPREMACY CLAUSE

Normally, when a capital murder defendant get his case overturned by a state court, if the solicitor decides to reseek the death penalty, upon information and belief, it's a state wide custom and practice for South Carolina circuit judges, upon a request from either a capital murder defendant or his attorney that he needs capital attorneys appointed, see Brewer v Williams 430 U.S. 367, 404 (1977) ("The right to counsel does not depend upon a request by the defendant"); see also Carrley v Lochran 369 U.S. 506, 513 (1966) (where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request), to appoint two capital attorney to his case. Notwithstanding this, SC Code § 16-3-26 uses the word "the court" and mandatory language instructing "the court" on what to do regarding capital cases. According to SC Code 16-3-26 words "the court"; it "appears" that any circuit judges that a petition for two capital attorneys are in front of in open court, after a capital defendant get his case overturned, has jurisdiction in appointing capital attorneys in capital cases. petitioner two capital attorneys sought general session judge for appointment. At the April 23, 14 appointment of counsel hearing the general session judge heard both the interested parties objections and the parties brief regarding

appointment of Capital attorneys. The General session Judge issued on June 3, 14, an order, adopting the solicitor side's brief, that it lacked jurisdiction to hear the appointment of counsel hearing because this Court Chief Justice January 25, 2010, order, in which its order is valid under state law, giving exclusive jurisdiction to this case to the Honorable J. Corbett Maddox, Jr. see Stipes v Danforth 128 sct. 1029 (2008) (... states are independent sovereigns with plenary authority to make and enforce their own laws as long as they do not infringe on federal constitutional guarantees. The fundamental interest in federalism that allows individual states to define crimes, punishments, rule of evidence, and rules of criminal procedure in variety of different ways — so long as they do not violate the federal constitution) Despite this, under these limited circumstances when the court, General session Judge Keesley, invokes jurisdiction under SC Code § 16-3-26 to appoint after a capital defendant have been granted a new trial two capital trial attorneys, and when the hearing had become adversarial because the state interference with the petitioner right to counsel, and when arguments in open court and by the parties' briefs were heard in front of the General session Judge, federal constitutional law trumps state law at this juncture. see Margaret Health Care Center, INC. v Brown 132 sct. 1201 (2012) (when the United States Supreme Court has fulfilled its duty to interpret federal law, state court may not contradict or fail to implement rule so established)

6TH AMENDMENT VIOLATION IN GOVERNMENT INTERFERENCE IN BOTH THE PETITIONER APPOINTMENT OF COUNSEL HEARING AND APPOINTMENT OF COUNSEL THAT HE DEVELOPED AN ATTORNEY CLIENT RELATIONSHIP IN WHICH THOSE COUNSELS ARE DEATH QUALIFIED UNDER SLIDE § 16-3-26

FACTS

The petitioner crave reference to and incorporate the above facts above that are not herein mentioned in this section of his petition.

Before the appointment of counsel hearing, the petitioner original intent was to go to the appointment of counsel hearing with state-wide public defender, Mr. Mcquire, private attorney, Ms Elizabeth, and private attorney, Jeff Blom to see whether or not the petitioner can get all three attorneys appointed to his case because of the complexity of it such as it allegedly occurring in two states, Georgia and South Carolina. At the April 23, 14, appointment of counsel hearing, the petitioner was informed by his state-wide public defender one hour before the hearing started that his boss, General Counsel Ryan, was going to address the hearing regarding not appointing private counsel in the petitioner case because of funding in capital cases. During the start of the hearing General session Judge first asked the solicitor whether or not he was going to seek the death penalty against petitioner.

The solicitor said yes. Next, the General session judge proceeded with the formalities under SC Code § 16-3-26 in appointing counsel in capital cases. The General session judge asked the petitioner whether he was happy with the two counsel with him at the hearing. The petitioner said yes. After this, the General session judge turned his attention to the two counsel with the petitioner. General session judge then asked them their qualifications under SC Code § 16-3-26 regarding whether or not they was death qualified and so on; they said yes they were qualified and so under the statute in question. General session judge then gave permission for General Counsel to stand-up regarding funding in capital cases; and regarding this, it'll be better for the court to recommend appointing two counsel from the Capital Trial Division instead of private counsel. Private attorney, Ms. Elizabeth and petitioner immediately objected to this on various grounds during the hearing. Missing in action during the hearing was state-wide public defender, Mr. Mcquire. Before the hearing, when the state-wide public defender, Mr. Mcquire, had informed the petitioner that his boss, General Counsel was going to stand-up against the petitioner interest to one private attorney according to SC Code § 16-3-26, the petitioner informed the state-wide public defender to object to this during the appointment of counsel hearing. The state-wide public defender failed to do so. Also, during the end of the hearing the solicitor objected to appointed

Counsel being appointed ~~period~~ to petitioner case because the petitioner got his case overturned because he wanted to represent himself.

Argument

Upon information and belief, General Counsel has the power to hire and fire either state-wide public defenders and any public defenders in South Carolina. Surely this incentive alone will cause any public defender not to go against his boss interest. see e.g. Monti v Finzel 445 U.S. 507 (1980) (public defender under color of state law acted when making hiring and firing decisions on the behalf of the state) not only this, General Counsel's actions has caused a total break down between the petitioner and the state-wide public defender regarding his guiding hand to petitioner during the court proceedings. see Becker v United States 425 U.S. 80 (1976) (The right to be heard would in many cases of little avail if it did not comprehend the right to be heard by counsel ... [a defendant] is unfamiliar with the rules of evidence ... He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one against him). Plus, General Counsel actions in standing up against the petitioner interest of one private counsel had caused a conflict of interest between the petitioner and the state wide public defender for failure to object against his boss, General Counsel, at the hearing.

See Cuyler v Sullivan 446 U.S. 335 (1980) (prejudiced presumed if counsel actively represents conflicting interests in manner affecting adequacy of representation) In addition to this, by the state-wide public defender not objecting to his boss, General Counsel, standing up regarding funding and appointment of two counsels from his office against the petitioner interest of one private counsel is similar to the petitioner did not have counsel at all at the court proceeding. U.S. v Cronk 446 U.S. 648 (1984) (The Court has uniformly found constitutional error without any showing of prejudice when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding) Also, contrary to SC Code 16-3-26, General Counsel went after the petitioner private counsel who is not only death certified by this court but also on the death qualified list that are maintained by the Office of Indigent Defense. In a nut shell, the General Counsel "killed two birds with one stone": private counsel and state-wide public defender at the petitioner appointment of counsel hearing. Tag teaming the General Counsel effects in destroying whatever attorney client relationship that the petitioner had with those counsels, the solicitor got into the action and told the General session Judge that petitioner should not be appointed counsel at all. See Person v Ohio 488 U.S. 75, 84-85 (1988) (The right to be represented by counsel, on direct appeal from a conviction as well as at the criminal trial, is among the most fundamental of rights) on top

of this, the solicitor filed a brief regarding the April 27, 14 appointment of counsel hearing. The solicitor failed to serve the petitioner, and upon and information and belief, the other parties as well. To add fuel to the fire; After it heard all the facts at the appointment of counsel hearing, and after it heard all the facts and arguments filed in the parties' brief regarding the hearing, and because it read the solicitor brief despite because the parties was not served the solicitor brief, the General session Judge disposed of the appointment of counsel issue on the grounds of lack of jurisdiction.

Assuming Arguendo that there was no government involvement or government interference at the April 23, 14 hearing in front of the General session Judge, according to SL Code § 16-3-26 the petitioner would have been appointed those counsels. This record in this case shows that the General session Judge asked both the petitioner and the petitioner attorneys with him the proper questions for appointment of counsels before the General session Judge allowed both the General counsel and the solicitor to speak concerning appointment of counsel. The only thing that was missing during the hearing was the General session Judge appointing the petitioner counsels with him. The State, General counsel and the solicitor stop the Judge from this by their erroneous interpretation of state and federal law. It's

obvious from this case that prejudice is presumed by the government interference in the petitioner being appointed capital murder attorneys. see United States v Morrison 449 U.S. 361, 365 (1986) (our approach has thus been to identify and then neutralize the taint by tailoring relief appropriate in the circumstances to assure the defendant the effective assistance of counsel and fair trial. The premise of our prior cases is that the constitutional infringement identified has had or threatens some adverse effect upon the effectiveness of counsel's representation or has produced some other prejudice to the defense. Absent such impact on the criminal proceeding, however, there is no basis for imposing a remedy in that proceeding, which can go forward with full recognition of the defendant's right to counsel and to a fair trial.)

42 USC § 1983

FACTS

When state-wide public defender informed petitioner one hour before the appointment of counsel hearing that his boss, General Counsel Ryan, was going to object to private counsel being appointed to this case, he informed the state-wide public defender to object to his boss standing up against

the petitioner interest in having private counsel appointed to this case. During the hearing, the statewide public defender in which was portraying the petitioner advocate did not object to Mr. Mcquire boss during the hearing when the petitioner told him to do so. In the meantime of this, the petitioner had made numerous objections that the general counsel actions standing up in the petitioner capital case adverse to the petitioner interest was state action. The general session judge denied the petitioner objections on this and allowed the general counsel to address the court adverse to petitioner. Based on the numerous objections at the appointment of counsel hearing, in which had become adversarial, the general session judge ordered the interested parties to brief whether or not private counsel should be appointed to this case. All parties timely filed their brief. In the state action part of the petitioner brief, he requested the general session judge to convert that section of his brief into a 42 USC § 1983 suit. Too, the petitioner requested the general session judge the following relief: to amend or file a new complaint; to appoint counsel, and other reliefs.

GENERAL SESSION JUDGE HAS JURISDICTION IN 42 USC § - 1983 SUIT

~~states and federal courts has concurrent jurisdiction over 42 U.S.C. § 1983 suits. what this mean is that the petitioner~~

can file a § 1983 suit in either court in which the petitioner in his appointment of counsel brief had converted the state action part of his brief into a § 1983 suit in which then gives the general session judge jurisdiction over his § 1983 claims, see Felder v Casey 487 U.S. 131 (1988) in determining whether or not the general counsel action is insinuating itself into the professional judgment of the state-wide public defender in petitioner case. General counsel Ryan under the color of state law is using sc code § 16-3-26 contrary to the liberty interest meaning in dictating, in disguise of financial concerns, petitioner rights under the statute in question: one public defender, and one private attorney in which the petitioner had met when he went to the appointment of counsel hearing.

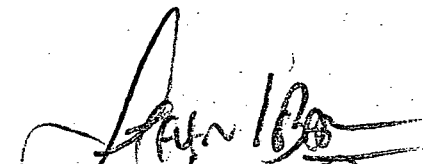
For the above reasons, and the record fully reflect this that the general session judge has jurisdiction on whether or not to dismiss the petitioner § 1983 claim that petitioner is trying to use two of his fundamental rights to petition the government for grievances and access to the courts.

Due to this, the supreme court should remand the § 1983 claims issue back to the general session judge because he had heard the arguments of all parties concerning state action in petitioner case. It'll be so redundant to let a new stage to hear this issue. That's why it's so important for this court to use

if original jurisdiction in this case to address all the petitioner's claims in this petition and complaint attached to this petition.

WHEREFORE, the petitioner pray that this court grant this petition and such other and further relief it seem just.

Date 7/2/14


STEVEN LOUIS BARNES
124743
Green County Detention Center
Green St.