

To: Daniel E. Shearman, clerk of court
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED

JUL 03 2014

S.C. Supreme Court

From: STEVEN LOUIS BARNES # 124243
Aiken County Detention Center
435 Wire Road
Aiken SC 29801

RE: STATE V BARNES
Appellate case no: # 2014-001253;
lower case no #: 2005-65-19-00273-457

Dear Mr. Shearman

Please see enclosed from me to be filed in your office the following documents: MOTION TO REINSTATE APPEAL; PETITION FOR THIS COURT TO SEEK ITS ORIGINAL JURISDICTION AND ORIGINAL JURISDICTION COMPLAINT, and NOTICE OF PETITION FOR THIS COURT ORIGINAL JURISDICTION; and WRIT OF HABEAS CORPUS AND/OR EXTRAORDINARY WRIT

DATE: 7/2/14

NEEDFULLY SUBMITTED
STEVEN LOUIS BARNES
124243

To: Daniel E. Shearman, Clerk of Court
The Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

From: STEVEN LAUIS BARNES #124743
Aiken County Detention Center
435 Wire Road
Aiken SC 29801

RE: STATE V BARNES
Appellate case no: # 2014-001283;
lower case no #: 2005-GS-19-00273-457

Dear Mr. Shearman

Please see enclosed from me to be filed in your office the following documents: MOTION TO REINSTATE APPEAL; PETITION FOR THIS COURT TO SEEK ITS ORIGINAL JURISDICTION AND ORIGINAL JURISDICTION COMPLAINT; and NOTICE OF PETITION FOR THIS COURT ORIGINAL JURISDICTION; and WRIT OF HABEAS CORPUS AND/OR EXTRAORDINARY WRIT

Date: 7/2/14

Respectfully Submitted
STEVEN LAUIS BARNES
#124743

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 #: 2005-65-19-00273-457

STATE OF SOUTH CAROLINA, Respondent

STEVEN LOUIS BARNES, PETITIONER

MOTION FOR THIS COURT TO REINSTATE THE PETITIONER INTER-
LOCUTORY APPEAL REGARDING THE LOWER COURT APPOINTMENT OF
COUNSEL

STEVEN LOUIS BARNES #124743
Aiken County Detention Center
435 Wire Rd
Aiken SC

pursuant to Rule 200(A) of the Appellate Court Rules, the state supreme court clerk, Daniel E. Shearous dismissed the petitioner appeal on the ground that the petitioner can not appeal issues dealing with his capital case until sentenced. Since any legal matter addressed in the lower court dealing with both petitioner fundamental right to counsel and his fundamental rights under both his right to access to the court and to petition the government in regards to his 42 USC § 1983 suit, the petitioner states good cause in the following facts below as why this court should reinstate the petitioner appeal and/or such other and further reliefs this court seem just?

FACTS

GOVERNMENT INTERFERENCE WITH COUNSEL

This court granted the petitioner a new trial in his capital case - see State v Barnes 753 SE2d 545 (2014). Two capital 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 Frensin-Best, and the General session Judge William P. Keesley (hereafter General session Judge) to appoint them to petitioner 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 solici-

itor (Donnie v Meyers (hereafter solicitor) were going to review 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 judge refused to do so. 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. McGuire, 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, South Carolina Commission on Indigent Defense General Counsel Hugh Ryan (hereafter 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 counsels in capital cases. The general session judge asked the petitioner whether he was happy with the two counsels with him at the hearing. The petitioner said

yes. After this, the General session Judge turned his attention to the two counsels with the petitioner. General session Judge then asked them their qualifications under SL Code § 16-3-24 regarding whether or not they were qualified and so on; they said yes they were qualified and so on under the statute in question. General session Judge then gave permission for General Counsel Ryan to stand-up regarding funding in capital cases; and regarding this, it'll be better for the court to recommend appointing two counsels 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 SL 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 IN SUPPORT OF GOVERNMENT INTERFERENCE WITH COUNSEL

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. Brent v Finkel 445 U.S. 507 (1980) (public defender [under the color of state law] acted when making hiring and firing decisions on the behalf of the state) not only this, General Counsel actions had caused a total break down between the petitioner and the state-wide public defender regarding his guiding hard to petitioner during the court proceedings. See Geders v United States 425 U.S. 80 (1976) (The right to be heard would in many cases be 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 Coyler v Sullivan 446 U.S. 335 (1980) (prejudiced presumed if counsel actively represents conflicting interest in manner affecting adequacy of representation). In addition to this, by 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 Cron 446 U.S. 648 (1980) (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 efforts 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 23, 14 appointment of counsel hearing. The solicitor failed to serve the petitioner, and upon information and belief the other parties as well. To add fuel to the fire, the General session judge after it heard all the facts at the appointment of counsel hearing and all the facts and arguments stated in the parties brief regarding the hearing,

disposed of this appointment of counsel issue, exparte, by reading the solicitor brief because the other parties was not able to respond to it either, for lack of jurisdiction. see Burgess v Stern 428 S.E.2d 880 (1993); Joint Anti-Fascist Committee v. McClatchy 341 U.S. 123 (1951) (Due process entitles a person to an impartial and disinterested tribunal in both civil and criminal cases)

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 SC Code § 16-3-26 the petitioner would had 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 stopped the judge from this by erroneous interpretation of state and federal law or better said the abuse of both laws to fit their egregious means in interfering with the petitioner right to counsel that he at least developed an attorney client relationship with. It's obvious from the record of this case that prejudice is presumed by the government interference in the petitioner

being appointed capital murder attorneys that he then thought they had the petitioner interest at heart. 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).

FUNDAMENTAL FAIRNESS DOCTRINE

Also, the general session judge June 3, 14 order for lack of jurisdiction to hear the petitioner appointment of counsel issues, see Kimmelman v Morrison 477 U.S. 365 (1986) (The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries but it is in our), violated the petitioner due process under the fundamental fairness doctrine in regards to not having capital counsel after the judge June 3, 14 order, so they can file a motion for reconsideration under rule 29 of the South Carolina Rules of

Criminal procedure in order for them to preserve any Government errors starting from the April 23, 14 appointment of counsel, hearings to the June 3, 14 the general session judge order for lack of jurisdiction. Any reasonable minded attorney will know that further delay in this case is or will be prejudicial for the petitioner capital case in general. see Lisenba v California 314 U.S. 219 (1941) (& The fundamental fairness doctrine) applied to a criminal trial denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial) The petitioner contends that without competent counsel there is no fair trial period. see Simmetman v Morrison, supra 477 U.S. at 374 (The right to counsel is a fundamental right of criminal defendants; it assures the fairness, and thus legitimacy, of our adversarial process); for example, the petitioner can only assume that due to the conflict of interest or state interference at the April 23, 14 appointment of counsel hearing that the state-wide public defender have an ethical duty to refrain from any contact with the petitioner after the general session judge June 3 order for lack of jurisdiction. see Simmetman v Morrison supra 477 U.S. at 378 (the sixth Amendment mandates that the state bear the risk of constitutionally deficient assistance of counsel)

ABANDONMENT OF COUNSEL

Without an appointment of counsel order, the General session judge June 3, 14 order for lack of jurisdiction to hear the petitioner appointment of counsel issue have the appearance of government interference in the form of causing the abandonment of not only capital attorneys but also it guiding hand in preserving appellate court errors, for appeal, through a motion for reconsideration under Rule 29 of the SCR CRIM.P., in regards to both the April 23, 14 appointment of counsel hearing and the General session judge June 3, 14 order. Money from SC Code § 16-3-26 are essential in a private attorney representing an indigent capital defendant in all forms or stages of the criminal process leading up to trial. Assuming Aquendo that private counsel, Ms Elizabeth representing the petitioner from the April 23, 14 appointment of counsel hearing to the General session judge June 3, 14 order without payment for it (petitioner doesn't know whether or not she was paid for this) can be discouraging for private counsel to continue representing petitioner in his capital case when the judge holds the power of the purse; for example, concerning the state-wide public defender and private counsel; Ms Elizabeth coming to speak to the petitioner after the General session judge June 3, 14 order about whether or not a motion for reconsideration should be filed with the General session judge in regards to grounds in this motion

OR those grounds in the petitions attached to this motion and so on, but this did not happen. see Holland v Florida 130 S.Ct 2549, 2568 (2010) (when an agent acts in a manner completely adverse to the principal's interest, the principle is not charged with [the] agent's misdeeds.) Despite this, said counsel not pursuing the petitioner interest in regards to either a motion for reconsideration regarding the grounds in this motion, or the petitions attached to this motion, in at least preserving the June 3, 14 order for appeal if the petitioner is convicted in this case violates the petitioner six amendment right to competent counsel. see Castellanos v United States 26 F.3d 717, 718 (7th Circuit 1994) (a lawyer's abandonment of his client is ineffective per-se)

STATE PROCEDURAL LAW DOES NOT TRUMP FEDERAL LAW

After the petitioner was granted a new trial by the state court or at the initial appearance hearing stage of the criminal process, Kirby v Illinois, 406 U.S 682, 689-90 (1972) (plurality opinion) (the initiation of judicial criminal proceedings... marks the commencement of the criminal prosecutions to which alone the explicit guarantees of the sixth Amendment are applicable) the sixth Amendment right to counsel kicks in regardless of the state procedural rules in play. see Brewer v Williams 430 U.S 367, 404 (1977) (the right to counsel does not dep-

end upon a request by the defendant.) Technically, once the general session judge had entertained the petitioner's motion for appointment of counsel, the counsel, private attorney, Ms. Elizabeth and state-wide public defender present with petitioner, at the April 23, 14 appointment hearing, was his appointed counsel. Regardless of what state procedural rules are at play, the petitioner, from the time he invoked his right to counsel, is suffering a continuous prejudice by the state using procedural means in denying the petitioner both amendment right to counsel or the common law privilege of attorney-client relationship in which is rooted in the substantive due process clause of the United States Constitution.

RELIEF

The petitioner requests this court to reinstate this appeal and for it to seek its original jurisdiction in this case. (The petition for this court to seek its original jurisdiction and complaint and writs of mandamus and/or extraordinary writ in which the petitioner have reference to and incorporate the facts and arguments in those motions in this motion to reinstate.) In addition to this, the petitioner requests this court to entertain the facts and arguments in said petitions and this motion, regarding the lower court

actions concerning appointment of counsel in this case - the petitioner request for permission to pick one private attorney and one public defender from the death qualified list that are maintained by the office of indigent defense.

WHEREFORE, the petitioner pray that this court grant this motion and/or such other and further relief that this court seem just and proper.

Date: 7/2/14

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