

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Stephanie McDonald, Circuit Court Judge

Appellate Case No: 2012-209449

STATE OF SOUTH CAROLINA,

Respondent,

vs.

LLOYD J. DRAYTON,

Appellant.

**RETURN TO MOTION TO WITHDRAW AS COUNSEL
AND
STATE'S MOTION TO DISMISS APPEAL**

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APR 11 2013

SC Court of Appeals

Respondent, by and through undersigned counsel, making Return to the Motion to

Withdraw as Counsel would respectfully show unto this Court:

1. On March 1, 2012, Appellant entered a guilty plea to the charge of threatening a public official. He was sentenced by the Honorable Stephanie McDonald to imprisonment for a period of four (4) years suspended upon the service of two (2) years and two (2) years probation.
2. Appellant filed and served Notice of Appeal and the appeal is presently pending before the Court.
3. Guilty plea counsel for Appellant now moves this Court for permission to withdraw as counsel for Appellant on appeal. In the motion, guilty plea counsel indicates that she was retained to represent Appellant in the Court of General Sessions. Counsel also indicates that,

upon conviction, she advised Appellant that she does not handle appellate cases and provided forms to Appellant to file a pro se Notice of Appeal. She also states that she later filed a Notice of Appeal for Appellant and asserts that Appellant did not retain her to handle the appeal nor request that she represent him in this appeal.

4. Respondent was not served with the Motion to Withdraw but this Court requested a Return to the motion.

5. Respondent submits that Rule 264(a), SCACR, provides that an attorney for the party in the Court below is deemed the attorney in the appellate court unless and until a withdrawal from representation is approved and proper notice is provided. Respondent also submits that Rule 264(b), SCACR, provides an attorney of record in a matter pending before the appellate court may not withdraw from representation without justifiable cause or consent of the client and then only after proper written notice to Appellant and opposing counsel as well as written order of the appellate court. Further, Respondent submits that Rule 602, SCACR, provides that when a defendant who desires to appeal asserts that he is indigent at the conclusion of its trial or plea, his retained counsel must serve and file a Notice of Appeal as required by Rule 203, SCACR. Rule 602, SCACR, also indicates that, with the assistance of retained counsel, the defendant shall then request a determination of his indigency status from the Office of Appellate Defense and, if that office determines that the defendant is not indigent, retained counsel shall continue representation of the defendant during the appeal unless granted permission to withdraw. If the South Carolina Office of Appellate Defense concludes the defendant is indigent, it will represent him on appeal.

6. Respondent has no information respecting Appellant's indigency status or the steps

taken to establish Appellant's indigency, if applicable, so that other counsel can assume representation of Appellant during the appeal. Respondent also has no information respecting the terms of representation between counsel and the defendant. Therefore, Respondent must leave the request to withdraw as counsel to this Court's discretion.

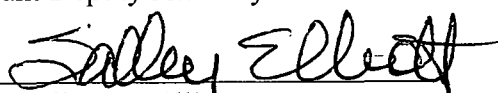
7. Further, the State moves to dismiss this appeal pursuant to Rule 203(d) (B) (iv), SCACR, because Appellant entered a guilty plea and Respondent is not in receipt of any indication from Appellant or his attorney that any issue was preserved for appellate review despite an order of this Court dated October 3, 2012 and requests from this Court for a written explanation.

WHEREFORE, having made Return, Respondent leaves to the Motion to Withdraw to this Court's discretion. The State also moves to dismiss this appeal pursuant to Rule 203(d) (B) (iv), SCACR because there is no indication that any issue was properly preserved for appeal during Appellant's guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

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By: 
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ATTORNEYS FOR RESPONDENT

April 11, 2013

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LLOYD J. DRAYTON,

Appellant.

CERTIFICATE OF SERVICE

I, Angela Bennett, certify that I have today served the Return Motion to Withdraw as Counsel and State's Motion to Dismiss on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Sharon Capers, Esquire
6650 Rivers Avenue
Charleston, South Carolina 29406

I further certify that all parties required by Rule to be served have been served.

This 11th day of April, 2013.



Angela Bennett
Administrative Assistant
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