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SC Court of Appeals

THE SOUTH CAROLINA COURT OF APPEALS
APPEAL FROM SALUDA COUNTY

The Honorable Walton J. McLeod IV circuit court Judge

Appellate case No: 2021-000795

Lower court case No: 2019-CP-41-00156

Frank Tolen Jr. Petitioner

VS.

State of South Carolina Respondent

WRITTEN EXPLANATION

Pursuant to Rule 243(c) SCACR

Date: 8/11/2021,

SI *Frank Tolen Jr.*
Frank Tolen Jr. # 246966
Pro se Marion 261
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S.C. SUPREME COURT

TABLE OF AUTHORITIES

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WRITTEN EXPLANATION

Pursuant to Rule 243 (c) SCACR this written explanation and Brief should be granted as to why the PCR court determination was improper.

(A) The PCR court erred in not finding Applicant counsel ineffective.

Applicant argues he should have never been retried by the same prosecutor who previously had actual conflict of interest issue in applicant's prior case. (See App. p. 402 line 15 p. 404 line 1.) on the ground that the co-defendant's counsel was the law partner for the prosecuting solicitor (Julius H. Baggett) an actual conflict of interest exists where an Attorney owes a duty to a party whose interest are adverse to the defendant's Jackson v. State, 329 S.C. 345, 495 S.E. 2d 768 (1991).

This conflict of interest still exists (Julius H. Baggett) was the "former" judge in 1990 who sentence the applicant to a consecutive 3 to 6 YOA that was used by the prosecutor office to enhance applicant current sentence pursuant to 17-25-45. In applicant first trial January 26-27 (1998), and retrial November 7, 9 (2006).

A constitutionally intolerable probability of bias exists when the same person serves as both accused and adjudicator in a case Williams v. Pennsylvania, 136 S.Ct. 1899, 195 L.Ed. 2d 132. Supreme court of the United States (2016). Also in Caperton v. A.T. Massey Coal Co., S.Ct. 2252 173 L.Ed. 2d 1208.

Respondent's never refuted that this prejudice conflict of interest never happened throughout the whole proceeding that (Julius H. Baggett) was the sentencing judge of applicant YOA in 1990 and was the prosecutor in applicant's prior and current case Applicant trial counsel was ineffective and applicant should be granted a Resentencing or a new trial.