

1982 WL 189122 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 4, 1982

***1 Re: Opinion Concerning an Indigent Post Conviction Relief Applicant's Right to Counsel of his Choice**

The Honorable George F. Coleman

Resident Judge

P. O. Drawer A-300

Winnsboro, S. C. 29180

Dear Judge Coleman:

I am in receipt of your request dated December 10, 1981, for an opinion concerning whether an Applicant for Post Conviction Relief who is in need of appointed counsel has the right to reject the County Bar as a whole. It is the opinion of this Office that the Applicant does not have the right to limit the choice of his appointed counsel.

The Uniform Post Conviction Procedure Act, [Section 17-27-60, Code of Laws](#) (1976) and Rules 5-6 of the Rules Promulgated for the Act by the Supreme Court, 22 [Code of Laws](#) 202 (1976), specifically provide that the Court should appoint counsel to represent an indigent petitioner if there is a hearing to be held or if there is any question within the petition which would require the assistance of counsel. Nevertheless, there is no constitutional obligation on the courts, State or Federal, to appoint counsel for all Post Conviction Relief petitioners. [Wood v. State](#), 257 S.C. 179, 184 S.E.2d. 702 (1971). It is the opinion of the Office that the standards that apply to the selection of appointed counsel in criminal proceedings would apply to Post Conviction Relief proceedings once the Court makes the threshold determination that appointment of counsel is necessary. cf. Rule 8(C), [Rules Governing 28 U.S.C. § 2254 Habeas Corpus Actions](#).

This right to counsel does not incorporate the [right of an indigent petitioner to demand that a particular attorney be appointed to represent him](#). [Annotation](#), 66 ALR.3d 996 (1975). Similarly, the right to counsel does not carry with it the right to have appointed an attorney of a specified color, sex, age, or political affiliation. [U.S. ex rel. Mitchell v. Thompson](#), 56 F.Supp. 683 (N.Y.1944). Clearly, any limitation on court appointments based on race or ethnic factors has no place in the administration of justice. [People v. Fitzgerald](#), 105 Cal. Rptr. 458 (Cal.App.1972). Furthermore, there has never been a constitutional right to an attorney who believes that his client is innocent, that his purported claims are meritorious, or agrees with his trial tactics. [Durham v. Blackenship](#), 461 F.Supp. 492 (W.D.Va.1978), [State v. Jones](#), 270 S.C. 587, 243 S.E.2d. 471 (1968). This Office is of the opinion that it follows that an Applicant does not have the right to demand upon the court that his appointed counsel resides (or does not reside) in a particular geographic area. [Wilson v. U.S.](#), 215 F.Supp. 661 (Va.1963).

While an accused may have the right to reject or discharge court-appointed counsel and conduct his defense or secure his own counsel, he does not have the right, without a showing of satisfactory cause to refuse or dismiss the counsel appointed and have other counsel appointed. [State v. Jones](#), 270 S.C. 587, 243 S.E.2d, 461 (1978). 23 C.J.S. [Criminal Law](#), § 982(5) (1961). cf. [State v. Taylor](#), 255 S.C. 268, 178 S.E.2d 244 (1970). Clearly, if the choice of counsel for indigents accused of a crime were left to the indigent applicant themselves, then an attorney's pre-eminence and reputation at the bar could lead to a disproportionate share of appointments and a reluctance on the part of members of our bar to accept appointments for fear that they might be chosen by other indigent defendants for defense of such causes.

***2** The choice of counsel must be left to the court and not the Applicant and that choice should not be subject to impeachment on the ground of a claimed displeasure with the appointment or lack of confidence in the attorney unless there is good cause, such as an actual conflict of interest, as to why the appointment should not have been made. Even for those who can afford

the luxury of retaining counsel, the power to choose one's counsel is not as broad as the right. The preferred attorney may not be available or his price may be beyond reach or he may be unwilling to undertake the retainer. Therefore, the choice should vest solely with the Court and not be constrained by an Applicant's condition that counsel not be appointed from within the county of his conviction.

I hope this opinion is of some assistance to you.

Sincerely,

Donald J. Zelenka
Assistant Attorney General

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