

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA,)	
)	
v.)	<u>From Montgomery</u>
)	99 CRS 3818, 3820
SCOTT DAVID ALLEN)	
Defendant.)	
)	

MOTION TO ALLOW WITHDRAWAL
OF MARGARET C. LUMSDEN AS DEFENDANT’S COUNSEL

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

NOW COMES DEFENDANT, Scott David Allen, and respectfully moves this Court for an order allowing Defendant’s co-counsel, Margaret C. Lumsden, to withdraw from this matter. In support thereof, Defendant shows the Court the following:

1. Allen was tried for and convicted of capital murder, felonious larceny, and felonious possession of stolen goods at the October 27, 2003 Criminal Session of Superior Court, Montgomery County. After a capital sentencing proceeding, the jury recommended a sentence of death for the first-degree murder conviction. The

trial court entered judgment in accordance with that recommendation on November 18, 2003.

2. The North Carolina Supreme Court affirmed Allen's conviction and sentence. *State v. Allen*, 360 N.C. 297, 626 S.E.2d 271, *cert. denied*, 549 U.S. 867, 166 L. Ed. 2d 116 (2006).

3. Allen filed his initial Motion for Appropriate Relief ("MAR") with the trial court on or about July 2, 2007, raising ten claims for relief. On or about September 17, 2013, Allen filed his Supplemental Motion for Appropriate Relief ("SMAR"), supplementing MAR Claims 1, 2, 3, 8, and 9, and adding Claims 11 and 12 for a total of twelve claims for relief.

4. On or about September 30, 2014, the State filed an Answer and Motion for Summary Denial. Allen filed a response to the State's motion for summary denial on or about January 26, 2015. The State filed a reply to Allen's response on or about February 24, 2015. Allen filed a "Memorandum in Response to State's Oral Argument" at an April 4, 2016 scheduling hearing on or about May 9, 2016.

5. On August 18, 2016, the trial court entered an order summarily dismissing all of Allen's guilt-innocence claims, except for Claims 3H, 3J, 3K, and the portion of Claim 3I relating to the *in camera* examination of sealed mental health and substance abuse records of key prosecution witness Vanessa Smith.

(August 18, 2016 Order Dismissing Certain Claims of Defendant's MAR and SMAR) By separate order, the trial court reserved the right to conduct a limited evidentiary hearing on the remaining guilt-innocence phase claims. (August 22, 2016 Order on Four Subparts of Claim 3 of Defendant's SMAR for Which Court Has Reserved Ruling) The limited evidentiary hearing was held on August 25, 2017. On January 4, 2018, the trial court entered an order concluding that no further evidentiary hearing on SMAR Claims 3H, 3J, 3K, and 3I was necessary and dismissing those claims. (January 4, 2018 Order Granting State's Motion to Dismiss Claims 3H, 3J, 3K and a portion of 3I of Defendant's SMAR)

6. The trial court granted a full evidentiary hearing on Claims 7, 8, and 9 of his MAR and SMAR, all of which allege ineffective assistance of counsel regarding the sentencing phase of his trial. (August 18, 2016 Order on State's Summary Denial Motion on Claims 7, 8, and 9) The evidentiary hearing was held on February 12 to 15, 2018. The trial court held another hearing on December 19, 2018, addressing Allen's motions to withdraw his sentencing claims and replace counsel. Allen withdrew the motions after extensive discussion with the court. The court also addressed Allen's capacity to represent himself in further proceedings. On February 6, 2019, the trial court entered an order dismissing all three sentencing phase claims.

7. Allen filed a Petition for Writ of Certiorari and Writ of Mandamus from the denial of the claims in his MAR and SMAR on April 29, 2019. This Court allowed the petition in an order entered and certified on September 27, 2019.

8. On June 13, 2019, Defendant's counsel Margaret C. Lumsden filed a Motion to Withdraw as Counsel for Defendant Allen in the Superior Court of Montgomery County. On June 24, 2019, the Honorable V. Bradford Long, Superior Court Judge, signed an order granting Ms. Lumsden's motion and withdrawal from this case. Copies of Ms. Lumsden's motion and subsequent order allowing her withdrawal are attached hereto as Exhibits "A" and "B," respectively.

9. Defendant, who is indigent, is entitled to two appointed counsel in this capital post-conviction case. The Office of Indigent Defense Services has been made aware of the order allowing Ms. Lumsden's withdrawal in Superior Court and is prepared to appoint replacement counsel in this proceeding.

10. Undersigned counsel has conferred with Assistant Attorney General Nicholas G. Vlahos, who does not object to this motion or the appointment of a new co-counsel for Defendant Allen.

WHEREFORE, for the above reasons, Defendant respectfully requests that this Court allow Margaret C. Lumsden to withdraw as co-counsel in this proceeding and to direct the Office of Indigent Defense Services to appoint new co-counsel for the Defendant.

Respectfully submitted, this the 4th day of October, 2019.

By: s/ Michael L. Unti

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Counsel for Defendant

CERTIFICATE OF SERVICE

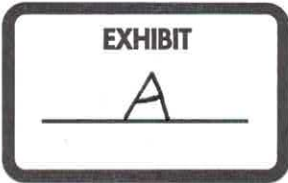
Undersigned counsel hereby certifies that the foregoing **MOTION TO ALLOW WITHDRAWAL OF MARGARET C. LUMSDEN AS DEFENDANT'S COUNSEL** has been duly served upon the parties listed below by depositing copies thereof in a repository of the United States Postal Service, first-class postage prepaid, addressed as indicated:

T. Lynn Codfelter
District Attorney
Prosecutorial District 28
108 East Main St.
Troy, North Carolina 27371

Nicholaos G. Vlahos
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629

This the 4th day of October, 2019.

s/ Michael L. Unti _____



STATE OF NORTH CAROLINA
COUNTY OF MONTGOMERY

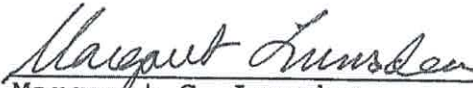
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
99 CRS 3818 & 99 CRS 3820

STATE OF NORTH CAROLINA)
)
 v.)
)
 SCOTT DAVID ALLEN)
 _____)

MOTION TO WITHDRAW AS COUNSEL

Margaret C. Lumsden, court-appointed counsel for Defendant,
seeks an order allowing her to withdraw as counsel pursuant to
Defendant's request.

6-13-19



Margaret C. Lumsden
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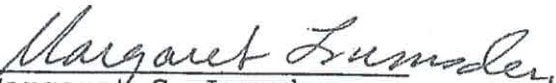
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CERTIFICATE OF SERVICE

I certify that I have served a copy of this document upon counsel for the State, addressed as shown below:

- X By first-class mail, postage prepaid
By hand delivery
By hand delivery in open court
By email with the consent of the parties

6-13-19


Margaret C. Lumsden

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Nicholaos G. Vlahos
Assistant Attorney General
N.C. Department of Justice
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EXHIBIT
B

STATE OF NORTH CAROLINA
COUNTY OF MONTGOMERY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
99 CRS 3818 & 99 CRS 3820

STATE OF NORTH CAROLINA
2019 JUN 24 P 12:11


v. MONTGOMERY CO., C.S.C. ORDER GRANTING MOTION
TO WITHDRAW

BY MO
SCOTT DAVID ALLEN)
_____)

Upon motion of Margaret C. Lumsden, court-appointed counsel for Defendant, to withdraw as counsel pursuant to the Defendant's request, and for good cause shown;

IT IS ORDERED that Margaret Lumsden's motion to withdraw as counsel is allowed.

This the 24th day of June, 2019.



V. Bradford Long
Senior Resident Superior Court Judge