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S.C. SUPREME COURT

In the Supreme Court of South Carolina
Response to Johnson Petition

Honorable G.D. Morgan, Jr.
Circuit Court Judge

John A. Villarreal v. State of South Carolina

Appellate Case No. 2022-001681

MOTION TO OBJECT TO JOHNSON PETITION

There is a procedural violation, South Carolina Post Conviction Relief Act....

NOW, PRESENTING AND OBJECTING respectfully, John A. Villarreal pro se, responding to Johnson Petition, The Appellant in this present case would respectfully object to the Certiorari filed pursuant to Johnson v. State, 294 S.C. 310, 364. S.E. 2d (1988), because of the following reasons:

1. The Appellant is appealing a PCR Application;
2. The Appellant's claims were not properly preserved in Johson Petition - please see Exhibit A: Johnson Petition;
3. The Appellant's Post Conviction Relief Procedures, namely, 71.1(g) appellate review is denied.

FACTS

Appellate Counsel, Wanda H. Carter, Esq., submitted a Johnson Petition on March 23, 2023, and did not raise claims on the original PCR Application, but instead added a new claim, affecting Appellant's appeal and/or appellate review - see Section (g) of 71.1, which reads in importance, 71.1(g) "Appellate review,

continuing representation a final decision entered under the Act should be reviewed according to procedure specified by Rule 243 SCRCP." By the Division of Appellate Defense of the State on Indigent Defense, "The rights and procedures included in the PCR Act shall apply as well"; see Martinez v. Ryan, 132 S.C. t. 1309 (2012), quoting (71.1 SCRCP). Appellate counsel in this case raised a claim that was not adjudicated on its merits; see Aice v. State, 305 S.C. 448, 409 S.E. 2d 395 (1991); (one bite of the apple.) Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991): Applicant is entitled to full adjudication on the merits of the original petition or one bite of the apple, noting never receiving a procedural bite of the apple; and Odom v. State, 337 S.C. 256, 523 S.E. 2d 753 (1999) (prevented from seeking any review of the denial of PCR Application.) Same as here, Martinez v. Ryan, 132 S.C. t. 1309 (2012), where the claim should have been raised was ineffected under the Standards of Strickland v. Washington, 466 U.S. 668, 104 S.C. t. 2052 (1984), (quoting 71.1 SCRCP) Appellate counsel's Johnson Petition claim was not raised in the lower court, quoting Martinez, supra.; see Appellate counsel's claims, Exhibit A. - that was submitted:

> "Trial counsel erred in failing to adequately advise petitioner regarding the sentencing consequences of his guilty pleas."
> Certiorari, pg. 3

The claim presented by Appellate counsel was not adjudicated on its merits at a PCR hearing, nor was it amended according to section (d) of 71.1, nor was it allowed pursuant to section (g) Appellate review. This denies Due Process and Equal Protection of the

Laws, S.C. Const. Art. 1§3 and Appellant's 6th and 14th Amendment by submitting a Johnson Petition. Accordingly, on direct review Appellant's claims are supposed to cite and argue only those claims; see: (71.1 SCRCP section (d)) and (§2254 Habeas Corpus), at a federal level. Also see Martinez v. Ryan, 132 S.C.t. 1309 (2012), where the claim should have been raised but was not, was ineffective under Strickland v. Washington, 466 U.S. 668, 104 S.C.t. 2052 (1984), also the Court noted that 71.1SCRCP is our post conviction relief procedure respectively.

This objection is made in good faith in accordance with statutes under South Carolina Code Ann. and should be enforced accordingly.

CONCLUSION

Appellant seeks and requests equal justice, or one bite of the apple, because he was prevented from seeking any review of the denial of his PCR application and be permitted to file another one or any ruling to allow Appellate review; see 71.1(g).

Respectfully Submitted,

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ARGUMENT

Trial counsel erred in failing to adequately advise petitioner regarding the sentencing consequences of his guilty pleas.

At the plea proceeding, the solicitor apprised the trial judge of the facts of the case. Petitioner was accused of shooting a man and woman with whom he was riding in a car on December 24, 2014. The female died of her gunshot wound, but the male survived his injuries. Ultimately, petitioner was arrested in connection with these shootings. App. 7, l. 18- p. 12, l. 11.

During the PCR hearing held in the case, petitioner testified that trial counsel led him to believe that he would receive a thirty-year sentence if he pled guilty as charged due to his young age (22 years old when arrested), and because he had no prior record. App. 78, l. 11 – p. 79, l.11; App. 84, lines 4-17. Petitioner received a sentence of life imprisonment on his murder conviction instead of the promised thirty-year sentence.

Trial counsel testified during the PCR hearing and admitted that he told petitioner that "due to his youth and due to his lack of [a] record that we had a chance of getting sentence…closer to the minimum…instead of life." App. 85, l. 22 – p. 86, l. 17; App. 62, l. 5 – p. 63, l. 22

In the case at bar, counsel misadvised petitioner about what to expect regarding the length of one sentence, and failed to make clear that the maximum life sentence for a murder conviction was a realistic sentencing possibility in the case. As a rule, a guilty plea is voluntarily and knowingly entered into only if the defendant has full understanding of the consequences of his plea(s). See Dalton v. State, 376 S.C. 130, 654, S.E.2d 870 (2007), and Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999), citing to Boykin v. Alabama, 395 U.S. 238 (2000). Clearly, in the case at bar, petitioner's guilty pleas were not given voluntarily because he was unaware of