State of South Carolina
County of Charleston

Tarone D. Johnson, 260921

Applicant,

vs.

State of South Carolina,

Respondent,

South Carolina Supreme Court

'Court of Appeals'

Case No. 2013-000953

Rule 59(e), SCRCP, Motion to Alter or Amend and Rule 52(b)(c) SCRCP and Memorandum / exhibit

1.) Purpose: Now Comes Applicant upon receiving Respondent 'final order' of dismissal filed April 2, 2013. In support of this Motion, the Applicant would show unto this Honorable Court the following. 59(e) Motion

2.) How the Supreme Court Justice adopting Respondent's 'final order' of dismissal is in error. According to Rule 52(c) (defense that can not under the Controlling law be Maintain) is in error. Because the Controlling law being Truitt vs. State, 423 S.E. 2d 127 (S.C. 1992) expresses that Applicant is required to file a 59(e) Motion, on the matter of the individual issues not being adjudicated seperately from each other issue incorporated with-in petition, is violating that controlling Law.

3.) In McCray vs. State, 408 S.E. 2d 241 (S.C. 1991), States that (Reversing order denying Applicant's relief and remanding for a new P.C.R. hearing where P.C.R. Courts failed to make specific findings of facts and conclusions of law sufficient for appellate review.)

1.) When viewing Respondent's remarks in 'Conditional and final' order' of dismissal. Respondent in neither order, is attempting to address the point of wether Applicant Trial Counsel is ineffective for not objecting to the Trial Judge's inferenee Charge given to Applicant's jury?

2.) or (2.) wether Trial Counsel was ineffective for failing to object to the Trial Judge's Coercive Allen Charge?

3.) and (3.) wether that Allen Charge was proper in form when it excluded the Trial Judge's failure to admonish language with in it?

4.) and (4.) was Trial Counsel ineffective for not Motioning for a Mistrial upon Applicant's jury second proclamation to the Courts that they were hung, and ask to deliberate a third time upon his guilt or innocense, violating Statute § 14-7-1330?

5.) or (5.) was the Trial Judge brady law, hands of one, is the hands of all theory Charge proper to be read to Applicant's jury?

6.) and (6.) with the record shaving that applicant initially retained Counsel to perfect his Appeal / and or P.C.R. and Counsel perform neither due to his inability to obtain Applicant's files. Could the proceedings be considered fair to applicant in a court of law, even though it shaws applicant desired not to be represented by a Court appointed Counsel?

7.) or (7.) was applicant 2007 P.C.R. petition 2007-CP-10-2058 dismissal proceeding fair when Court appointed Counsel Ms. Gruber Stated on record that she have yet to obtain applicant's files for this case, was ignored, and the proceeding Continued?

1.) And (8.) could issues incorporated with-in petition be rightfully considered successive when Respondent have yet to render a clear over-standing interpretation of them according to Applicant's interpretation ?

2.) or (9.) how is Respondent using Character witnesses Mary Mathews and neighbor Mary Miles testimony to place Applicant at the crime scene, when neither is making an eye witness identification of Applicant ?

3.) and (10.) Did Respondent ever send the 21 pennies faundt in neighbor Mary Miles yard to the lab to see if there was some matching type of particles to the pennies Applicant collected from the North Charleston property control room ?

4.) Respondent have yet to clear these matters up for the preservat-ion of the lower courts record. Which Applicant is entitled to know being that his liberty is at state. And the 14th amend-ment prohibit / forbid that a person, place or thing, liberty be taken custody of, with-out proper due process of law.

5.) also, Respondent's interpretation of these matters would bring about a clarity of mind to how applicant's conviction is said to be just even in the face of a Defense attorney Ms. Shealy for Gourdine (the only suspect) case in 2000. And appellate Defense (para-legal) Aileen F. Clare for Applicant in his 2002 appeal hearing, both proclaim that there is no evidence in the case what-so-ever. While Respondent them-selves proclaim that applicant conviction primarily rest on the allege and statement confession.

6.) Let's now examine the words of both Defense attorneys involved in this case and the evidence involve. Starting with Ms. Shealy for Gourdine (the principle first) January 2000 acquittal, and then Ms. Clare for applicant (the principle second) September 2002 appeal hearing.

Ms. Shealy, January 2000

1.) Let's now think about what we have learned from the police in this case. There's no gun. There are no-finger prints except on the Mitsubishi. Well, obviously, that's explainable. It's his car. There are no finger-prints on Sabrina's car. There are no-finger prints on Jasper's car. There are none on the air conditioning unit. There are none on the power switch. There are no fibers, there are no-foot prints. None of the clothing of Jason was sent out to sled to make any-Kind of Comparison that night.

2.) Also Ms. Shealy
There is (no) evidence in this case as to what time that 9.1.1. came in. So who Knows how long Jason was sitting in the parking lot waiting for an officer.

3.) Now Ms. Clare, September 2002
The State was required to prove that appellant participated in the crime. There was no physical evidence what so ever: no gun, no traced bullets, no gun powder residue, no finger prints, no foot prints. Jason did not testify, and he is the only one who could have placed appellant at the scene. In fact, Jason was fully exonerated on the same facts alleged against appellant -- except the tainted confession discussed below.

4.) The Court of Appeals affirmed on the basis that the evidence was sufficient to find petitioner guilty under our "hand of one is the hands of all" theory. Petitioner submits that the State did not produce competent evidence to convict him of Murder under any theory. Aside from his coerced confession, there was no evidence that even placed him at the scene.

5.) When we attach applicant's indictment for Murder to this equation. What we would see is that the incident for which Applicant is accuse of Transpired June 8, 1997. How-ever, Applicant was not indicted for Murder until June 7, 1999 exactly 2 years later. Which entails that the State did not possess

1.) any evidenee up until that period in time. And if we examine that so call evidence, We would plainly see that even then, the State of South Carolina still did not poss--ess any [redacted] evidence against Appellant. This fact can be proven by [redacted] reviewing the words of both Defense attorneys Ms. Shealy and Ms. Clare.

2.) Not only is the Court decision violating the Controlling law of Pruitt vs. State. It also violates various other Controlling laws such as Yates vs. Evatts, 500 U.S. 391, 403, (1991) Which States, (With respect to an unconstitutional presumption in a jury instruction. This Means the Court must make a judgement about the significants of the presumption to the jury, measured against the other evidence considered by the jury independently of the presumption. Id.

Now see Trial Judge's Malice Charge in Comparison

3.) If a person using a deadly weapon deliberately and intentially and with-out just cause or legal excuse takes the Life of another, "Malice" may be "inferred".

4.) See, Houston vs. Dutton, 50 F.3d 381, 385-386 (6th Cir.) instruetions telling jury to infer Malice from Un-law-ful act or use of a deadly weapon unconstitutionally shifted the prosecutor's burden of proof.

5.) Now see Trial Judges coercive statement rendered in the Allen Charge.

(Quote) Hence; "and we will go through this entire process again. So, I'm going to ask ya, at this time, to deliberate further and see if you can not write a verdict in this case."

Applicant provides the previous five pages for the following findings of facts order of the Honorable Roger M. Young dated April 2, 2013. As to provide that Respondent have falsely represented to the P.C.R. Courts and South Carolina Supreme Court Statement of facts record. Which have been grossly mis-leading in its sum total. Respondent falsified facts of their ability to contest the allegations incorporated with in said P.C.R. petition 2011-CP-10-7095

Support for the above facts is based upon the documents filed with-in action and other evidence presented in applicant's 2007-CP-10-2058 P.C.R. petition, 2/CR file 10253-20080124. In that proceeding conducted by Counsel Ms. Gruber, who declares before the Honorable Roger M. Young. that Counsel have yet to acquire Applicant's files in the above case, was fully ignored and the proceeding continued having full Knowledge of Ms. Gruber in-ability to retain the files. Rendering her represent-ation to fall greatly short of the Strickland vs. Washington Standard 466 U.S. at 685.

To include as a finding of facts in the order of the Honorable Roger M. Young dated April 2, 2013. As to Confirm that applicant Sept 9, 2002 Appeal and P.C.R. was grossly affected by circumstances beyond his control. Applicant invites this Court to witness the cause of his failure to Comply with procedures. With in exhibits Memorandum. Counsel Douglass Truslow was originally retained Nov, 13, 2001. in the amount of $5000 to perfect Applicants Appeal hearing. How-ever from Correspondence dated May 27, 2003. We can see that Counsel was un-able to perform that duty being that it is 9 months well after Applicant's appeal Hearing and Counsel Still had not acquired the files in this case from Trial Attorney Harry Shaw, Esquire. Proof of this fact can also be Seen in Applicant-'s exhibit labeled, The State of South Carolina, In the Court of Appeals. There we will see that Appellate Defense (para-legal)

Aileen P. Clare is the sole representer for Applicant in that hearing. Also, attorney Douglass Truslaw never once came to visit applicant at Leiber Correctional Inst. [redacted] as his Nov 20, 2001 correspondence had promise. Which applicant was hoping to give to him the more important transcript in that visit.
So with the appeal hearing gone. Counsel was then ask and did agreed to represent applicant in the P.C.R. Stage. As Counsel's Correspondence dated Nov 20, 2001 states Appeal and/or P.C.R. Counsel's May 27, 2003 correspondence made applicant believe that he had representation to proceed.
Support for the above fact is based upon documents filed with in actions, and other evidence presented in the P.C.R. dismissal hearing on Feb 28, 2008. Ineluding Applicant's Counsel's introduction of case law, Austin vs. State, 409 S.E. 2d 395 (1991) Which should had given Applicant an opportunity to be heard in an evidentiary hearing. As these were facts, which were undisputed and acknowledge by Respondent through out that P.C.R. proceeding.

Before dismissing applicant's petition. Which confirms that the Constitutional requirement order must meet the following criteria

1. a Statement of the relevant facts
2. Said order <u>must</u> set forth the various reasons why Applicant's interpretation of those laws pertaining to his is incorrect.
3. That it is not sufficient for the order that Respondent merely state the rules governing procedures to why Applicant's petition might have been in error coming forth, the <u>order</u> must set forth various reasons according to law.

It is applicant desires that this court reconsider its position on the intricate matters involve in this case. And possibly grant the much needed Rule 59(a) "Motion for a New Trial" on the pleadings. As it is very much evident from the Documents presented. That the record of the lower Courts is quite distorting and Applicant's situation is unique in and of it-self. And to allow the pleadings to continue as is, would be a grave Mis-carriage of justice, that is shocking to the universal Sense of justice.

Also, Applicant ask that this court make a ruling on the request for a Rule 60(b) Motion. To possibly relieve Applicant from the harsh verdict of his undeserve life Sentence.

Where-fore, Applicant respectfully request of this Honorable Court to amend the findings of facts to include these following pages before and enter a ruling consistent with said findings of facts and grant relief as set forth in Applicant's submitted proposed order.

South Carolina Rules of Civil Procedures

Rule 11 Certification

I certify that consultation with opposing Counsel on the Subject with-in Motion would serve no useful purpose.

Respectfully Submitted

6/17/13

Tarone Johnson
260921
L.C.I.
990 Wiseacky Hwy
Bishopville S.C. 29010
D-A-2145
East-Yard

8 of 8

97-06-WPB-02296

WITNESSES

JOHN BURNETT AND/OR

KEITH HAIR

PERRY, NCPD

ARREST WARRANT NUMBER

F-340570

JUNE 10, 1997

ACTION OF GRAND JURY

TRUE BILL

Shirley Hooper

Foreperson of Grand Jury JUN 09 1999

VERDICT

Guilty.

[signature] 9/3/99

Foreperson of Petit Jury *Date:*

DOCKET NO. 1999-GS-10- 3890

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JUNE TERM 1999

THE STATE

vs.

TARONE DEVALE JOHNSON

Indictment for

MURDER

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
BY [signature] DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on June 7, 1999 the Grand Jurors of Charleston County present upon their oath:

That Tarone Devale Johnson did in Charleston County on or about June 8, 1997 while acting in concert with another, feloniously, willfully and with malice aforethought murder one Charles Bennett, to wit: did shoot the victim two times in the chest area with an unknown caliber semi-automatic pistol, and that Charles Bennett did die in Charleston County as a proximate result on or about June 8, 1997. This is in violation of §16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

W. Peter Bank
ASSISTANT SOLICITOR

Exhibit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. : 07-CP-10-2058
	)	
Tarone D. Johnson #260921,	)	
Plaintiff,	)	MOTION TO AMEND THE APPLICATION FOR POST-CONVICTION RELIEF FILED MAY 14, 2007
v.	)	
	)	
State of South Carolina,	)	
Defendant.	)	
	)	

TO: **The Honorable Henry McMaster, S.C. Attorney General;** and **Douglas N. Truslow, Esquire.**

PLEASE TAKE NOTICE that the undersigned Attorney for the Plaintiff does hereby move that this Court leave to amend the Application for Post-Conviction Relief filed by the applicant on May 14, 2007. The basis for this Motion is as follows:

ONE: I am the Attorney appointed to represent Tarone D. Johnson, the Plaintiff, by Order of Appointment of Counsel filed September 27, 2007, and received October 1, 2007.

TWO: That a preliminary review of the pleadings reflected that the Plaintiff had prepared his own brief in support of this Post-Conviction Relief action.

THREE: That page 12 of the Plaintiff's Post-Conviction Relief Application indicated that at some point he had retained an attorney to perfect and file a Post-Conviction Relief Application for him, and that the attorney apparently failed to do so in a timely manner.

FOUR: That the undersigned has not yet been able to obtain a copy of the record, however, has obtained from the Plaintiff's father, what was represented to be the file maintained by the Plaintiff's attorney whom the Plaintiff believed was retained to represent him in the Post-Conviction Relief Application.

FIVE: That it appears that Douglas N. Truslow, Esquire, was retained to represent

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DOUGLAS N. TRUSLOW
ATTORNEY AT LAW
P.O. BOX 1465
COLUMBIA, S.C. 29202
PHONE: (803) 256-6276
FAX: (803) 256-7659

CONTRACT OF EMPLOYMENT

The undersigned hereby employ(s) and retain(s) Attorney Douglas N. Truslow as it relates to:

Appeal of Johnson adv. State.

The terms of employment are;

1. RETAINER: $500 ✓ pd. 11/14/01 MA
2. HOURLY RATE: See Letter dated of to follow
3. CONTINGENCY: N/A

(Court Awarded Fees Are Deemed Part of Gross Recovery)

N/A It is agreed and understood that if employment of Mr. Truslow is on a contingency basis, no fee will be due unless recovery is made, notwithstanding the client's obligation for costs. If employment is terminated prior to the conclusion of the case, the undersigned agrees to immediately reimburse Mr. Truslow for costs advanced and pay him for the reasonable value of services performed to date, or the appropriate percentage of the last settlement offer, at the agreed upon rate, whichever is greater. Contingency fees are based on the gross recovery achieved. N/A.

4. Part of Retainer In addition to fees, the client is responsible for all costs associated with representation including but not limited to long distance telephone calls, depositions, photographs, copies, paralegals, travel, and expert witness fees. Mr. Truslow may advance costs from time to time and the undersigned agrees to reimburse him within fifteen days of request for reimbursement.

5. N/A **Recovery:** The client expressly grants power to the attorney to endorse and deposit into his trust account any checks in the client's name, and authorizes the attorney, at his option, to deduct fees, costs, and expenses, and to pay all bills, including but not limited to medical expenses from client's share of the recovery. Any unpaid bills for medical care shall remain the obligation of the client.

6. N/A. Client agrees to pay interest at the rate of 1 ½% per month on any outstanding balance over 30 days past due.

EMPLOYMENT ACCEPTED:

Douglas N. Truslow

Date: 11/13/01

CLIENT: Ora Johnson

.5 of 6.

DOUGLAS N. TRUSLOW, P.A.
ATTORNEY
914 RICHLAND STREET, SUITE B-102
POST OFFICE BOX 1465
COLUMBIA, SOUTH CAROLINA 29202

(803) 256-6276

November 20, 2001

Mr. Tarone Johnson
#260921
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472

RE: Johnson adv. State

Dear Mr. Johnson:

Your father has retained me to assist relative to your appeal and/or PCR. Please sign the enclosed authorization for me to obtain your file from Mr. Shaw and return it in the envelope provided. I will come see you as soon as I get Mr. Shaw's file.

Sincerely,

Douglas N. Truslow

DNT/mjh

Enclosure

cc: Essau Johnson

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Tarone Devale Johnson, Appellant.

Appeal From Charleston County
Daniel F. Pieper, Circuit Court Judge

Unpublished Opinion No. 2002-UP-574
Heard September 9, 2002 – Filed September 17, 2002

AFFIRMED

Assistant Appellate Defender Aileen P. Clare, of Columbia; for Appellant

Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General S. Creighton Waters, all of Columbia; and Ralph E. Hoisington, of Charleston; for Respondent.

DOUGLAS N. TRUSLOW, P.A.
ATTORNEY
914 RICHLAND STREET, SUITE B-102
POST OFFICE BOX 1465
COLUMBIA, SOUTH CAROLINA 29202

(803) 256-6276
FAX (803) 256-7659

May 27, 2003

RE: Tarone Johnson adv. State

Tarone Johnson
Lieber Correctional Institute
P.O. Box 205
Ashley A-55
Ridgeville, SC 29472

Dear Mr. Johnson:

In order to review your case further, I need to obtain a copy of your file. I would appreciate it if you would sign the enclosed authorization and send it back to me in the envelope provided. I will then attempt to obtain your file from your trial attorney, Mr. Shaw. Please note that I have talked to him – but I still do not have his file, despite the fact that I have made many requests for it.

Sincerely,

Douglas N. Truslow
DNT/adh
enclosure

cc: Essau Johnson

Laurane Johnson 260921
L.C.I.
990 Wisacky Hwy
Bishopville S.C. 29010
D-N-2145
East Yard

The Supreme Court of
South Carolina
Daniel E. Shearhouse, Clerk
Post office Box 11330
Columbia, South Carolina 29211

LEGAL MAIL ONLY