

State Of South Carolina  
In The Supreme Court

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JUL 08 2013

Appeal from Orangeburg County S.C. SUPREME COURT  
Deandra G. Benjamin, Circuit Court Judge

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Levon Mintz

Petitioner

v.

State of South Carolina,

Respondent

Appellate Case No. 2012-2122938

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Motion to dismiss Johnson Petition  
and  
Relieve and Appoint New Counsel

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Levon Mintz # 203362  
PO Box 205  
Ridgeville S.C. 29472  
Pro se Petitioner

Alan Wilson  
Attorney General  
Megan Harrigan  
Assistant Attorney General  
P.O. Box 11549  
Columbia S.C. 29211  
Attorneys For Respondent

Now comes Petitioner, Levon Mintz pro se., asking this court to dismiss his present Johnson petition filed by appellate counsel. However he moves this court to relieve counsel and appoint new counsel for the foregoing reasons:

On November 4, 2010, petitioner filed a second PCR application with the Orangeburg County Office of the Clerk of Court. (Supp. App. P. 3-20). Petitioner's chief allegation raised was ineffective assistance of P.C.R. appellate counsel in the handling of his belated direct appeal. Katherine H. Hudgins who is employed by the Division of Appellate Defense handled the belated direct which presents a conflict of interest because the petitioner's present counsel, Wanda H. Carter is the deputy Chief Appellate Defender for the Division of Appellate Defense. In essence the petitioner is being represented by the same counsel and agency that he is raising ineffective assistance of counsel claim against. It's clear that it would not

be in the agency's best interest to raise a valid ineffective assistance of appellate counsel claim.

Furthermore, Petitioners Counsel raised in the Johnson petition that Petitioners Second PCR Attorney erred in raising a frivolous claim of ineffective of PCR appellate counsel as the only issue put forth at the second PCR hearing because an Anders belated White v. State direct appeal brief was filed by the P.C.R appellate counsel on the appeal in the case. Alleging that because an Anders brief was filed there was no ineffective assistance of Counsel rendered in the case. However this is a misapplication of state law. In Bennett v. State 680 S.E2d 273 this court dealt with a seminal issue. The court reasoned that, "Appellate counsel filed an Anders brief, as opposed to a brief on the merits. Even in this context when analyzing a claim of ineffective assistance

of appellate counsel we apply the Strickland test. See *Smith v. Robbins*, 528 U.S. 259, 284, 120 S.Ct. 746, 145 L.Ed.756 (2000) (finding that even where appellate counsel believes his clients appeal is without merit and thus files an Anders brief, the appellant may have been entitled to a merits brief and the challenge of appellate counsel's performance should be reviewed under Strickland.)

Surely Petitioner's Counsel was aware of the fact that you can have a valid ineffective assistance of appellate counsel claim even after an Anders brief has been filed.

Petitioner contends that for the above mentioned reasons the Johnson petition filed should be dismissed and new counsel should be appointed because of the obvious conflict of interest that exist.

This 30 day of June 2013.

Respectfully Submitted

Levan D. Moh

Certificat Of Service RECEIVED

JUL 08 2013

I certify that a true copy of the Motion  
to dismiss Johnson Petition and Relieve and Appoint  
New counsel has been served on Megan Hamigan,  
Esquire, at Rembert Dennis Building, 1000 Assembly  
Street, Room 519, P.O. Box 11549 Columbia S.C. 29211  
this 30 day of June 2013

Levon M. Mintz  
Levon Mintz  
P.O. Box 205  
Ridgew. 11e S.C. 29472

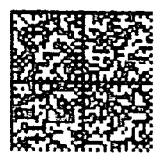
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