

THE SUPREME COURT OF S.C.
DANIEL E. SHEAROUSE, CLERK
P.O. BOX 11330
COLA, S.C. 29211

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JUL 22 2013

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S.C. SUPREME COURT

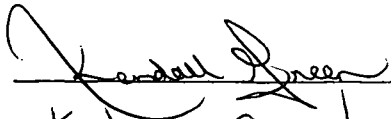
RE: GREEN v. STATE, 2012-206206

DEAR MR. SHEAROUSE,

PLEASE FIND ENCLOSED MY MOTION FOR ~~RECONSI-~~ RECONSI-
DERATION ATTACHED WITH NECESSARY EXHIBIT. COULD YOU
PLEASE FILE THIS COPY WITHIN YOUR OFFICE AND SEND
ME A "CLOCK-STAMPED" COPY FOR MY FILE. THIS WILL
HELP ME WHEN GOING TO ~~HABEAS~~ HABEAS CORPUS, IF NECESSARY.

YOUR TIME AND ASSISTANCE IS APPRECIATED.

PLEASE GET BACK WITH ME WITHIN YOUR EARLIEST
CONVIENCE.

(s) 
KENDALL GREEN
PCI DX-3
430 OAKLAWN RD.
PELZER, S.C.
29669

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

KENDALL GREEN,
PETITIONER.

CASE No. 2012-206204 JUL 22 2013

v.

MOTION FOR RECONSIDERATION **S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA,
RESPONDENT.

ON JULY 11, 2013 PETITIONER'S PETITION FOR A WRIT OF CERTIORARI WAS DENIED BY THE COURT. PETITIONER RECEIVED THIS ORDER ON JULY 15, 2013.

DUE TO THE SERIOUSNESS AND NATURE OF PETITIONER'S CLAIMS HE COME BEFORE THIS HONORABLE COURT AND ASK IT TO RECONSIDER GRANTING HIS PETITION FOR A WRIT OF CERTIORARI.

PETITIONER CONTEND THAT HIS CASE HAS MERIT AND THAT HE CAN SUCCEED ON HIS WRIT OF CERTIORARI, DUE TO THE FACT THAT HE WAS COMPELLED TO STAND BEFORE A JURY AT TRIAL IN SHACKLES, BELLY CHAINS/COMPLETE WITH HANDCUFFS DURING THE ENTIRE PROCEEDING. TRIAL COUNSEL REFUSED TO REQUEST A CAUTIONARY JURY INSTRUCTION TO BE READ TO THE JURY IN REGARDS TO ME BEING RESTRAINED. APP. 385, LL. 8-13. THEREFORE, PETITIONER'S SIXTH AMENDMENT RIGHT WAS VIOLATED.

MOREOVER, EVEN PETITIONER'S COUNSEL AGREED THAT HIS CASE HAD MERIT. THE ONLY REASON A JOHNSON PETITION WAS EVEN FILED IN PETITIONER'S CASE WAS DUE TO THE FACT THAT HIS COUNSEL DID NOT WANT TO BRIEF ISSUES THAT PETITIONER WANTED HIM TO BRIEF. SO DO TO THIS DISAGREEMENT BETWEEN THE TWO, PETITIONER REQUESTED COUNSEL TO FILE

A JOHNSON PETITION SO THAT HE COULD BRIEF HIS OTHER ISSUES AS WELL. SEE ATTACHED LETTER FROM COUNSEL.

HOWEVER, PETITIONER NEVER GOT A OPPORTUNITY TO BRIEF THOSE ISSUES WITHIN THE TIME FRAME THAT WAS ALLOWED, DUE TO THE FACT THAT HE WAS PLACED ON SMU (SPECIAL MANAGEMENT UNIT) AND HIS PROPERTY WAS MISPLACED AT THE TIME. PETITIONER WROTE TO THE ATTORNEY GENERAL'S OFFICE ASKING COULD HE FILE ~~HE~~ ^{HIS} PRO SE BRIEF (AS MY COUNSEL HAD ADVISED ME TO) BUT I NEVER RECEIVED A RESPONSE. IF I WOULD'VE KNOWN THE AFFECT OF THE JOHNSON PETITION THEN I WOULD HAVE NEVER REQUESTED. I SAW NO OTHER WAY TO BRIEF MY ISSUES.

PETITIONER'S ~~ASSURE~~ ^{ASSURE} IF THE COURT WILL RECONSIDER THEN IT WILL SEE THAT PETITIONER HAVE A COGNIZABLE ISSUE. THIS IS TRUE, BECAUSE TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST AN INSTRUCTION FROM THE ~~COURT~~ JUDGE THAT THE JURY WAS NOT TO DRAW AN ADVERSE INFERENCE OR AN INFERENCE OF GUILT FROM THE FACT THAT PETITIONER WAS RESTRAINED IN SHACKLES AND BELLYCHAINS/HANDCUFFS DURING TRIAL. PCR COURT ERRED IN NOT FINDING HIM DEFICIENT. THE PCR COURT ALSO ERRED IN FINDING THAT THE FAILURE TO ASK THE JUDGE FOR SUCH AN INSTRUCTION DID NOT PREJUDICE PETITIONER. SEE ILLINOIS V. ALLEN, 397 U.S. 337, 344 (1970) (ACKNOWLEDGING THE STRONG POSSIBILITY THAT "THE SIGHT OF SHACKLES AND GAGS MIGHT HAVE A SIGNIFICANT EFFECT ON THE JURY'S FEELINGS ~~AND~~ ABOUT THE

DEFENDANT").

THE TRIAL COURT HAD EVEN SAID THAT IT WOULD GIVE APPROPRIATE INSTRUCTIONS TO THE JURY (THOUGH IT DIDN'T) APP. 64, LL. 1-5. COUNSEL WAS DEFICIENT FOR FAILING TO REMIND THE JUDGE TO GIVE SUCH ~~THE~~ INSTRUCTIONS. THIS REMOVED PETITIONER'S PRESUMPTION OF INNOCENT.

FINALLY, THIS COURT ITSELF RECOGNIZED THE IMPORTANCE OF PETITIONERS NOT BEING BROUGHT BEFORE THE JURY IN PRISON GARB OR ~~IN~~ RESTRAINTS. SEE HUMBERT V. STATE, 548 S.E.2d 862, 865 (2001).

IN CONCLUSION, PETITIONER ASK THAT THE COURT PLEASE RECONSIDER GRANTING HIS PETITION FOR A WRIT OF CERTIORARI.

7.16.13

(s) Kendall Green
KENDALL GREEN



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 5, 2012

Mr. Kendall Green #315971
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Your appeal

Dear Mr. Green:

As you requested, enclosed please find a copy of the Johnson petition for writ of certiorari and a copy of the appendix in your case, which I have filed with the South Carolina Supreme Court. As we discussed, I briefed the issue regarding trial counsel's failure to obtain a curative instruction regarding the restraints you were required to wear at trial. This will allow you to brief the impeachment issue and any other issue you wish to raise. The Court will write to you in the future eliciting any **written memorandum** you may want to submit for the Court's consideration of your case. That memorandum should be sent to the South Carolina Supreme Court, and **not to me**. The petition to be relieved is a standard part of the Johnson procedure, it does not mean that I do not wish to represent you.

Should you have any questions concerning this matter, please contact me.

Sincerely,

David Alexander
Appellate Defender

DAA/lec

Enclosures

KEDDYL GREEN #315971
P.C.# - DX #3
430 OKLAHMA RD.
PEZZER, S.C. 29669

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JUL 17 2013

P.C.I. MAIL ROOM

SUPREME COURT OF S.C.
DAVID E. SHEAROUSE, CLERK
P.O. BOX 11330
COLLA, S.C. 29211

LEGAL MAIL

LEGAL MAIL

THE DEPARTMENT OF CORRECTIONS HAS NOT CENSORED THIS
ITEM. THEREFORE, THE DEPARTMENT DOES NOT ASSUME
RESPONSIBILITY FOR ANY OPINIONS OR COMMENTS - S.C. DEPARTMENT
OF CORRECTIONS.

Agency
mail