

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

L. Casey Manning, Circuit Court Judge

GARY A. WHITE, # 309726

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PRO. SE. BRIEF
PURSUANT TO JOHNSON V. STATE

GARY A. WHITE, # 309726

M^cC. I. F. 4 - 229 - B

386 REDEMPTION WAY

M^cCORMICK, SC 29899

- PRO. SE. PETITIONER

RECEIVED

FEB 28 2014

S.C. Supreme Court

ISSUES PRESENTED

I. - Whether Appellate Counsel Alexander's Petition To Be Relieved As Counsel should be Denied due to a meritorious claim which PCR Court ruled on is properly preserved for Review sub judice ?

II. - Whether the PCR Court erred in denying relief on Ground 10(c), Application For Post-Conviction Relief ("APCR"), where Trial Counsel Stacey Owings never testified in PCR contrary to 'Petitioner White's' testimony in PCR regarding Trial Counsel's failure to pursue Ruling on Objection claim ?

STATEMENT

Petitioner Gary A. White ("White") assents to
the STATEMENT of Appellate Counsel Alexander.

ARGUMENT I.

Appellate Counsel Alexander's Petition To Be Relieved As Counsel should be Denied due to a meritorious claim which PCR Court ruled on is properly preserved for Review sub judice.

White's Appellate Counsel clearly stated that "In his opinion seeking certiorari from the order of dismissal is without merit" < see PETITION TO BE RELIEVED AS COUNSEL, no. 2 (quoted in part) >.

Presuming the validity of deference this Court may extend to Appellate Counsel's decisive opinion, in light of Johnson, supra, White submits that the "one bite at the apple" < see Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (S.C. 1999) > incorporating the entitlement "to the assistance of counsel in seeking review of the denial of PCR." < see Williams v. Ozmint, 380 S.C. 473, 477, 671 S.E.2d 600, 601 (S.C. 2008) (citing Bray v. State, 366 S.C. 137, 139-40, 620 S.E.2d 743 (2005)) >, cannot evince regarding White's PCR appeal, when Appellate Counsel did not brief the one claim that White testified to in PCR, which the PCR Court denied without the Respondent proffering testimony from White's Trial Attorney to contradict White's PCR testimony [see ARGUMENT II, infra].

It follows that, as there is a meritorious claim

which this Court may review, as well as grant relief upon
← compare Jackson v. State, 355 S.C. 568, 570, 586
S.E.2d 562, 563 (S.C. 2003) ("... the Supreme Court
will not uphold the findings of the PCR court if
no probable evidence supports those findings.")
→, Appellate Counsel Alexander's Petition To Be
Relieved should be denied.

ARGUMENT II.

The PCR Court erred in denying relief
on Ground 10(c), APCR, where Trial
Counsel Owings never testified in PCR
contrary to White's testimony in PCR
regarding Trial Counsel's failure to
pursue Ruling on Objection claim.

· Stated simply in reference to APPENDIX before
this Court, White's APCR contained the claim that "
Trial Counsel was ineffective by failing to pursue
objection of Jury Charge Hand of one Hand of All"
and "Counsel Allowed the Judge to give the Charge
without making a ruling on objected charged" issues [
see APPENDIX, Pg. 614 (quoted in part, originally)] ;

White clarified the claim during his sworn PCR testimony [APPENDIX 641, ln. 18 to 642, ln. 20], and, as Trial Counsel Owings testified in the PCR hearing [see APPENDIX 649, ln. 22 to 665, ln. 6], she did not testify contrary to White's testimony in PCR hearing noted. The PCR Court, however, held this factually-based claim to be "without merit" [APPENDIX 693, ln. 11], among other claims; White, relying on Jackson, supra, submits that there is no PCR record evidence contradicting his testimony to support the 'without merit' finding of PCR Court.

As South Carolina law has clearly directed that Trial Counsel should pursue rulings on objections < see State v. Pierce, 263 S.C. 23, 28-29, 207 S.E.2d 414, 417 (S.C. 1974) >, and White's Trial Counsel was not proven to have so pursued the ruling, contrary to White's testimony, the PCR Court erred in denying relief on Ground 10(c), APCR.

CONCLUSION

Based on the above-said, White submits that this Court should Deny Appellate Counsel Alexander's Petition To Be Relieved As Counsel, and Order him to formally draft the asserted Argument II for this Court's consideration.

Respectfully Submitted,

/s/ Gary White

Gary A. White, # 309726

McC.I. F.4 - 229 - B

386 Redemption Way

McCormick, SC 29899

2 - 24 - 2014
DATE

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

L. Casey Manning, Circuit Court Judge

GARY A. WHITE, # 309726,

PETITIONER **RECEIVED**

V.

FEB-28-2014

STATE OF SOUTH CAROLINA,

RESPONDENT **S.C. SUPREME COURT**

CERTIFICATE OF SERVICE

I certify in the presence of below-signed Notary Public that I have served a True & Exact Copy of my 'Pro-Se Brief Pursuant To Johnson v. State' on Respondent's attorney of record, Robert D. Corney, Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing said material into custody of M.C.I. Mail Room Clerk (below Notary Public) to be immediately forwarded to address through sufficient U.S. Postage, on same date I likewise forwarded said material to South Carolina Supreme Court.

Sworn and Subscribed to before me this 24th day of February, 2014

15/ Austhane Marshall
Notary Public, South Carolina

* My Commission Expires: May 12 2021

15/ Gary A. White
Gary A. White, # 309726
M.C.I. F. 4-229-B
386 Redemption Way
McCormick, SC 29899

GARY WHITE 309726

McCORMICK C.I. F4B.229

386 REDEMPTION WAY

McCORMICK S.C. 29899

S.C. SUPREME COURT
P.O. BOX 11330
COLUMBIA, S.C. 29211