

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
James R. Barber, III, Circuit Court Judge

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MAY - 7 2014

S.C. Supreme Court

DEMARCO JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000935

SUPPLEMENTAL APPENDIX

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RESPONSE TO MOTION TO DISMISS.....1

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	
DEMARCO JOHNSON, #241438)	CASE# :2012-CP-40007764
Applicant,)	
)	
)	
v.)	MOTION RESPONDING TO
)	CONDITIONAL ORDER OF
)	DISMISSAL
State of South Carolina,)	
)	
Respondent.))	

2013 FEB 12 AM 10:34
 FILED
 RICHLAND COUNTY
 JAHETTE
 C.C.P.

This matter comes before this court by way of an application for post-conviction relief filed November 21, 2012. Applicant having received and reviewed the Conditional Order of Dismissal, Dated: January 2, 2013, and signed by The Honorable James R. Barber, III., Fifth Judicial Circuit, respectfully presents in this motion his reasons why the Conditional Order of Dismissal should not become final, and in support Applicant states as follows:

The issue that Respondent claims that Applicant in the current case fails to prevail is that: This post-conviction action should be summarily dismissed because it is successive to the Applicant's prior post-conviction relief action, in violation of S.C. Code Ann. 17-27-45(a), in which, read as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of the judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Respondent further asserts that successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E. 2D 732 (1980). S.C. Code Ann. 17-27-90(1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “**sufficient reason**” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E. 2d. 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that “Could not have been raised in the previous application”. [Emphasis in original]. In .., 305 S.C. At 450, 409 S.E. 2D at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise these grounds in successive applications. Id. The applicant bears the burden of showing that

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that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E. 2D 735(1980).

Applicant in the present case as indicated in his Post-conviction Relief Application (2012-CP-4007764), pursues this current (PCR) action pursuant to newly established Constitutional Substantive Standards announced by the United States Supreme Court, not previously recognized that are intended to be applied retroactively, holding, "If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it, if the right is denied, prejudice can be shown, under the prejudice prong of the Strickland test for ineffective assistance of counsel, if loss of the plea opportunity led to trial resulting in a conviction on more serious charges or imposition of a more severe sentence. U.S.C.A., Const. Amend.6. Lafler v. Cooper, 132 S.Ct. 1387(2012), and further the companion case to Lafler holding, "Defense counsel has the duty to communicate formal offers from the prosecution, and to accept a plea on terms and conditions that may be favorable to the accused. Missouri v. Frye, 132 S.Ct. 1399 (2012).

Further, applicant pursues this action pursuant to Miller v. Alabama, 567 U.S.(2012). Holding, "The Eighth (8th) and Fourteenth(14th) Amendments to the United States Constitution forbids life without parole for defendants below eighteen (18) at the time of their crimes.

Each of the allegations raised by applicant in the current Post-Conviction Action (2012-CP-4007764), are clearly derivatives of newly declared Constitutional Substantive Standards announced by the United States Supreme Court, and further the vehicle that applicant utilizes to pursue relief pursuant to the allegations raised is the S.C. Code Ann. 17-27-45(B), Uniform Post-Conviction Procedure Act, in which holds:

“When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon State criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.”

It's explicitly clear that applicant could not have raised any of the allegations raised in the current (PCR) action:(2012-CP-4007764) in his prior (PCR) action because each of the new Constitutional substantive standards he relies on in the current (PCR) action:(2012-CP-4007764), were not announced until (2012): See Lafler v. Cooper (2012), Missouri v. Frye,(2012), and Miller v. State (2012).

The General Assembly affords applicant in the current case the option, pursuant to S.C. Code Ann. 17-27-45(B) (Supp.2009), the remedy to pursue relief under newly declared Constitutional Substantive Standards by pursuing a (PCR)

action pursuant to: S.C. Code Ann. 17-27-45(B), in which, applicant has taken.

Clearly, applicant has established sufficient reasons for why he could not have raised his current allegations in his previous application for (PCR) relief.

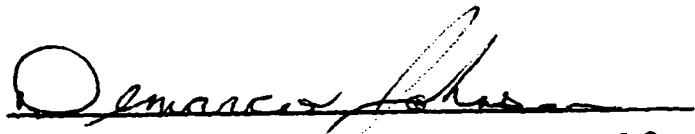
Respondent alleges that applicant had the opportunity to litigate all allegations in his prior (PCR). Apparently, Respondent misapprehends or overlooks the fact that, applicant's recent (PCR) action:(2012-CP-4007764) is entirely a derivative of newly declared Constitutional Substantive Standards announced by the United States Supreme Court in: Lafler, Frye, and Miller.

In situations such as these, the General Assembly has afforded applicant, and those similarly situated a remedy to litigate pursuant to these newly declared Constitutional Standards by initiating a (PCR) action pursuant to the Uniform Post-Conviction Action pursuant to the Uniform Post-Conviction Procedure Act. See. S.C. Code Ann. 17-27-45(B).

Wherefore. Applicant moves to have Post-Conviction Relief

Action: (2012-CP-4007764) not summarily dismissed, also applicant asks this Honorable Court to grant any other relief that the Court deems necessary and proper.

This 30 Day of January, 2013.


Demarco Johnson # 241438

State of South Carolina
County of Richland
Demarco Johnson, 241438
Applicant.

v.

State of South Carolina.
Respondent,

In The Court of Common Pleas
For The Fifth Circuit

Case NO: 2012-CP-4007764

Motion Responding to
Conditional Order of
Dismissal

FILED
RICHLAND COUNTY
FEB 12 AM 10:34
JEANETTE M. McBRIDE
C.C.P. & G.S.

Certificate of Service

I Demarco Johnson (Applicant), here by certify that I mailed a Motion Responding to Conditional Order of Dismissal in the Above Captioned matter by placing same in the U.S. mail with proper postage having been affixed this 30th day of January, 2013, and addressed as follows:

Jeanette McBride
Clerk of Court, Richland County
P.O. Box 2766, Columbia S.C. 29202

Assistant Attorney General
Robert O. Carney
Office of the Attorney General
P.O. Box 11549, Columbia S.C. 29211

Demarco Johnson
Demarco Johnson, Applicant

signed and sworn to before me this 30th day of January, 2013

Eugene Keet
Notary Public for South Carolina

My Commission Expires: _____
My Commission Expires April 4, 2016