

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Union County
Edgar W. Dickson, Circuit Court Judge

LUTHER BERNARD PERASON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001116

PETITIONER'S REPLY TO JOHNSON PETITON

Luther B. Pearson, Petitioner
SCDC # 327560
RCI / SB-51
P.O. Box 2039
Ridgeland, SC 29936

RECEIVED

OCT 27 2014

S.C. SUPREME COURT

State of South Carolina)
County of Union)
)
Luther B. Pearson, # 327560)
Petitioner,)
Vs.)
)
State of South Carolina)
Respondent.)

In the Court of Common Pleas
Sixteenth Judicial Circuit

Case No.: 2013-001116

Petitioner's Pro Se Brief
In Response to Johnson Petition

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S.C. SUPREME COURT

Now comes the Petitioner, Luther B. Pearson, #327560, submitting to this Honorable Court for consideration his timely response to the Johnson Petition filed by David Alexander, Esq., of the South Carolina Commission on Indigent Defense, Appellate Counsel of record in the above-captioned matter.

Procedural History

On April 5, 2007, Petitioner was indicted for second-degree criminal sexual conduct with a minor and later (after jury selection and the beginning of the trial), lewd act upon a child. App. 535-37. On February 12, 2008, Petitioner was tried before the Hon. R. Knox McMahon and a jury. App.1. John Anthony and Misty Horton represented the State. App. 1. N, Douglas Brannon and David Collins represented the Petitioner. App. 1. The Jury acquitted Petitioner of the criminal sexual conduct. App. 453, 11. 18-22. However, convicted the Petitioner on the later included indictment of lewd act. App. 453, 11 23-25. Judge McMahon sentenced the Petitioner fifteen (15) years' imprisonment. App. 476, 11. 13-18. The Petitioner's conviction was affirmed on appeal. App. 525. State v. Pearson, 2010-UP-216 (S.C. Ct. App. Mar. 15, 2010).

On November 8, 2010, Petitioner filed a timely PCR application. On October 8, 2012, a hearing was held before the Hon. Edgar W. Dickson. App. 494. J Rutledge Johnson represented the State. App. 494. Shawn Campbell represented the Petitioner. App. 494. On May 9, 2013, Judge Dickson denied Petitioner's application. App. 524. Appellate Counsel's Johnson petition for writ of certiorari followed.

Petitioner's Issues for Consideration

Question of Error:

Did the PCR court err in failing to grant relief where the Petitioner clearly established both prongs required under Strickland v. Washington?

The Petitioner states numerous allegations regarding his counsel's ineffective assistance during the trial were presented to the PCR court, to include but not limited to:

1. Counsel failure to object to the delayed indictment for lewd act;
2. The failure to object to the delayed indictment causing inadequate pre-trial preparation;
3. Failure to request a directed verdict;
4. Failing to object to the double jeopardy violation stemming from the duplicitous indictment;
5. Failing to object to the Allen Charge;
6. Failure to adequately prepare an affirmative defense;
7. Counsel's conduct at trial was so egregious as to be ineffective that counsel failed to use or present important testimonial evidence at trial;

A Petitioner's claim of ineffective assistance of counsel must ordinarily show actual prejudice. He may be relieved of the burden if counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary.

The Petitioners counsel's actions and inactions in this case were objectively unreasonable, and resulted in substantial prejudice. As such, the Petitioner maintains that the right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray v. Carrier, 477 U.S. 478 (1986)

Conclusion

Because finality within the doctrine of *res judicata* does not attach to every ruling upon law made by a judge upon the decision of a motion, the Petitioner is entitled to a review of the facts addressed in the before stated issues.

The Supreme Court of South Carolina stated that an allegation in a petition for post conviction relief, that a petitioner did not have the effective assistance of counsel in violation of his civil rights under the Sixth Amendment of the Constitution of the United States set forth a "*prima facie*" violation of the petitioner's constitutional rights and raises a question of fact that can only be determined by evaluating the facts.

This is especially true in cases where ineffective of counsel issues are raised, and as such are often not able to be determined merely upon the record and must therefore rely upon evidence developed during an evidentiary hearing. Delany V. State, 238 SE2d 679 (1977)

Petitioner is also adherently aware that some rules promote order by emphasizing the need for efficiency, including the need for efficient management of the judicial system. Other rules are employed in the service of protecting individual fundamental rights and are designed so that individuals receive the Due Process rights that are guaranteed by the constitution. U.S. Const. Amends. VI, XIV. Yet far too often in recent years, concerns for efficiency and procedure have overshadowed concern for basic

fairness, and has transformed our fidelity to “process” into an undue obsession with formalism and technicalities.

In short, a concern for procedure has far too often obscured or eclipsed the equally important if not greater role to be played by our dedication to justice. It was, after all, in order to “establish Justice” that our Constitution was written.

A fundamental right triggers strict scrutiny to determine whether a state’s procedure or decisions violate the Due Process or Equal Protection guarantees encompassed the Fourteenth Amendment. If the violation occurred, then the Court must act.

Entered this 8th day of October, 2014,

Respectfully Submitted,

S/ Luther B. Pearson
Luther B. Pearson, # 327560
RCI / SB-51
P.O. Box 2039
Ridgeland, SC 29936

Sworn to and subscribed before me
this 8 day of October, 2014

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 20, 2021

State of South Carolina)
County of Union)
Luther B. Pearson, # 327560)
Petitioner,)
Vs.)
State of South Carolina)
Respondent.)

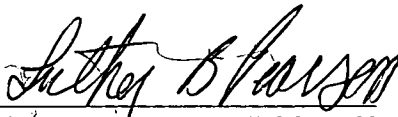
In the Court of Common Pleas
Sixteenth Judicial Circuit

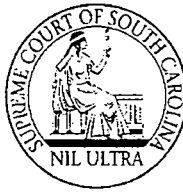
Case No.: 2013-001116

CERTIFICATE OF SERVICE

I Certify that a true copy of the Petitioner's Pro Se Brief in Response to his Counsel's Johnson Petition in this case has been served on J. Rutledge Johnson, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and to the Attorney for the Petitioner, David Alexander, Appellate Defender, Division of Appellate defense, P.O. Box 11589, Columbia, SC 29211-1589;

This 8 day of October, 2014

S/ 
Luther B. Pearson, # 327560
RCI / SB-51
P.O. Box 2039
Ridgeland, SC 29936



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA
29211

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October 10, 2014

Mr. Luther B. Pearson, 327560
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland SC 29936

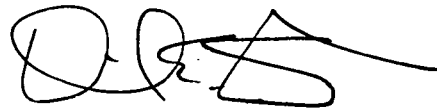
Re: Luther Bernard Pearson, Jr. v. State
Appellate Case No. 2013-001116

Dear Mr. Pearson:

In light of your letter of September 30, 2014, and its attachment, I will hold the remittitur until November 24, 2014, for you to file a *pro se* response to the petition filed by your counsel pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). I have also enclosed a copy of the prior letter that you indicate that you did not receive.

Please note that your *pro se* response must be *actually received* by this Court on or before November 24, 2014. Therefore, you should mail it well in advance of that date.

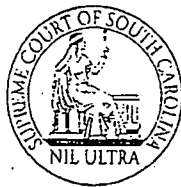
Very truly yours,



CLERK

Enclosure (letter dated January 8, 2014)

cc: James Rutledge Johnson, Esquire (with copy of letter and attachment)
David Alexander, Esquire (with copy of letter and attachment)



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
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January 08, 2014

Luther B. Pearson, #327560
Ridgeland Correctional Institution
P.O. Box 2039
Ridgeland SC 29936

Re: Luther Bernard Pearson, Jr. v. State
Appellate Case No. 2013-001116

Dear Petitioner:

-Your counsel has submitted a petition for writ of certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition and Appendix.

You may, within forty-five (45) days of the date of this letter, file with this Court a *pro se* response to the petition filed by your counsel. In this response, you may raise and argue any issues you believe the Court should consider in this appeal. Upon receipt of your *pro se* response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

If you do decide to file a *pro se* response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides.

Further, you will need to only submit one copy of your response, and this copy should not be stapled or bound in any manner.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a series of loops and a long horizontal stroke extending to the right.

CLERK

cc: James Rutledge Johnson, Esquire -
David Alexander, Esquire

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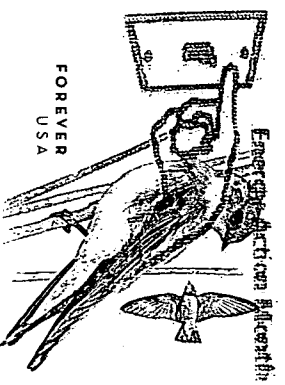
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CHARLESTON SC 294

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