

State of South Carolina  
in The Supreme Court

Certiorari to Greenville County  
Letitia H. Verdin, Circuit Court Judge

CASE NO. 2015-000123

Brandon Jabar Christian, # 350508

Petitioner

V.

Respondent

State of South Carolina,

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Pro-Se Johnson Petition For  
Writ of Certiorari

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DEC 04 2015

S.C. SUPREME COURT

Brandon Christian #350508  
SCDC

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## ISSUES Presented

The Appointed Appellate Counsel was Ineffective for Presenting This Court with an inadequately Drafted Johnson Petition That Denies Petitioner Full and Proper Consideration By This Court!

Did the PCR Judge Err in Allowing the State to reconstruct the entire record of the Guilty Plea Proceeding held on May 16, 2011?

Did the PCR Judge Err in Denying the Applicants PCR Application with lack of investigating the Juvenile Jurisdiction?

## Statement of Case

For the sake of this brief, Petitioner  
adopts The statement of facts as cited  
in Counsels Petition \_\_\_\_\_

# ARGUMENT

The Appointed Appellate Counsel was Ineffective for Presenting This Court with an inadequately Drafted Johnson Petition that Denies Petitioner full and Proper Consideration By this Court!

## FACTS

The Johnson Petition Presented before this Court by Appointed Appellate Counsel Fails to Present [Not] only the Proper Questions in the Right Forum for Consideration by this Court, but the Johnson Petition Also Lacks any legal argument or Point of law Supporting Petitioner's Standing Position.

## Discussion

Petitioner asserts that he is being denied the effective assistance of Appellate Counsel in the instant matter, as is seen by the presentation of the Johnson Petition that is so inadequately and insufficiently placed before this Court that denies Petitioner his right to the effective assistance of Appellate Counsel, yet further denied Petitioner his "one and only full bite at the apple." This Court has recognized that a PCR Litigant is entitled to the assistance of Appellate Counsel on Appeal from the denial of Post Conviction relief. See (Austin v. State) 305 S.C. 453 at 454, 409 S.E. 2d 395, 396; Rule 71.1(9) SCRCP, (1991)

While Petitioner does not seek an Austin review, he is entitled to the effective assistance of Appellate Counsel on review from the denial of a PCR Application. See Rule 71.1(G)

The Proper question(s) that should have been raised before this honorable Court is as presented:

Did the PCR Judge Err in allowing the State to reconstruct the entire record of the guilty plea proceeding held on Mar. 16, 2011?

## FACTS

On October 21, 2014 The PCR Court Allowed the state to reconstruct the entire record.

State attorney Ration Confesses that the state failed entirely to Preserve any Record of a transcript of the May 16 2011 Proceeding, PCR Tr. Pg. 5 L 1-11.

"where Portions of Stenographic notes are Lost Prior to transcription, it is appropriate for The Judge To accept affidavits from Counsel and The court reporter To determine What What Transpired. China v. Parrott 251 S.C. 329, 333 334 162 S.E. 2d 276, 278 (1968) in Wolfe v. State 485 S.E. 2d 367 S.C. (1997) This court held "in determining guilty Plea issues on motion for Post-Conviction relief, Guilty Plea Transcripts as well as evidence at PCR may be considered. Therefore it is appropriate to apply that atleast a Portion of The transcript is needed To have been Properly Presented for the PCR Court To reflect on" The Reconstructed record must Allow for meaningful appellate review. State v. Ladson, 373 S.C. 320, 321, 644 S.E. 2d 271 (Ct App 2007).

In Dover v. State our Supreme Court held "we find Dovers guilty Plea was not Volun- Tarily and knowingly giving and therefore, Dover is entitled To a new trial. The court went on to say, "It was never established that Dover understood the severity of the crimes OR The sentences they carried The extent of the inquiries made by The trial Judge at The time of the Plea are more than less than not Conclusive because they do not even exist in factual form.

Surely The Petitioners life, Liberty and Pursuit of happiness Cannot rest solely on the memory of his adversary Solicitor and a State appointed Attorney who the Petitioner is claiming To be ineffective.

Did The PCR Judge Err in denying The Applicants PCR Application with Lack of Investigating The Juvenile Jurisdiction?

## FACTS

The Petitioner brought To the Attention of The PCR Court that his Constitutional Right to a due Process of law was blatantly violated In as much as The

Petitioner explained To The court and showed multiple stamped, signed, and approved documents from the South Carolina Department of Juvenile Justice Showing that even after the 25 Year sentence was imposed in general sessions, family court still obtained jurisdiction over the applicant. See PCR Exhibits- TR 79-106, 107, 108. and that BY LAW, family court has exclusive and original jurisdiction that cannot be disregarded at the whim of a solicitor when a defendant is already committed by an order of commitment to the Department of Juvenile Justice, and has been adjudicated and found BY "Decree" To a undetermine sentence in The court of family court. § 63-19-1410(A)

"No adjudication by family court of the status of a child is a conviction, nor does the adjudication operate to impose civil disabilities ordinarily resulting from conviction, nor may anybody who's subject to this chapter be charged with a crime or convicted in another court, except as provided in section 63-19-1210 (6). (also citing)... § 63-19-1410(7)(c)

Petitioner also cited South Carolina state statute 14-21-540 which has been revised To 63-19-1210. This statute is plain and ambiguous, it reads in pertinent part "Transfer of Certain Criminal Cases from family court To other courts." First legislative intent must be honored by the court. No solicitor has the authority to disregard what legislature lawfully enacted. Attorney Chris Scatzo attributes authority to the solicitor that the solicitor just do not have "The prosecutor could do that at his discretion" (PCR TR. 79 90 L 25). Statute 14-21-540 mandates family court may transfer jurisdiction of a child 16 years of age or older To another court only after a full investigation has been conducted and a waiver hearing has been complete. The petitioner was indeed seventeen years old at the time of the crime, but not only was he already committed to the department of Juvenile Justice he was a child BY LAW. The petitioner cited Shaw v. State, Kent v. United States, and also Patton v. Toy (TR 79 80 L 19-21).

The Petitioner stands on the Premise that when the trial Court allowed this case to be heard in a Court of General Sessions, completely disregarding the fact that the defendant was still in the custody of Department of Juvenile Justice and only seventeen years old. That the Court of General Sessions was negligent because custody of Petitioner was still under the exclusive and original jurisdiction that the Family Court is vested with.

The PCR Court erred by deciding that just because a seventeen year old may be tried as an adult, that child has no rights to a due process of law, which requires family court to first investigate the matter and then waive it to a Court of General Sessions after a hearing by family court.

This Court should rule that counsel was ineffective for not investigating the apparent jurisdictional issue in the case at bar.

This Court should rule that the PCR court was incorrect to rule that the Petitioner could be in the custody of the department of Juvenile Justice and the South Carolina Department of Corrections both at the same time, therefore Judge Verdin misapplied the law by citing McKnight v. State "A criminal defense attorney has a duty to conduct a reasonable investigation so that he may discover all reasonably available case changing evidence." Had Attorney Scalzo did a reasonable investigation and applied statute 14-21-540 to the case at bar the Petitioner's right to due process would have never been violated.

FOR THE FOREGOING REASONS, THIS COURT SHOULD DISMISS THE CHARGES AGAINST THE PETITIONER OVERTURN HIS CONVICTION AND VACATE HIS SENTENCE.

Respectfully Submitted,



Brandon J Christian #350508

# PROOF OF SERVICE

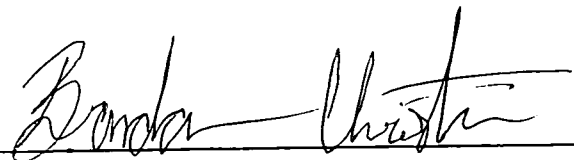
The undersigned Person hereby Certifies that the Pro-Se Johnson Petition addressed to the South Carolina Supreme Court, P.O. Box 11330 Columbia S.C. 29211 was Deposited in the mail Room of Broad River Correctional Institution on December 4, 2015.

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**S.C. SUPREME COURT**

December 4, 2015



Brandon J Christian # 350508  
Petitioner

BRANDON JABAR CHRISTIAN #350508

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
4460 BROAD RIVER RD  
COLUMBIA, SC 29210

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SOUTH CAROLINA SUPREME COURT  
DANIEL E. SHEAROUSE, CLERK OF COURT  
P.O. BOX 11330  
COLUMBIA, S.C. 29211

S.C. SUPREME COURT

RE: Pro-Se Johnson Petition For Brandon Christian v.  
State of S.C.

Case No: 2015-000123

Dear Honorable Clerk,

Enclosed please find your copy of the Pro-Se Johnson  
Petition that I have filed in the above caption. I thank  
you very much for your time and consideration.

Kindest  
Regards

Brandon Christian