

Petition for A writ of certiorari
To The court of Appeals
The state of south carolina
IN The supreme court

RECEIVED

JUN 17 2016

APPEAL FROM RICHLAND COUNTY SC Court of Appeals
Robert E: Hood circuit Judge

opinion NO: 2014-000602

NAKIA JONES

Petitioner

v.

state of south carolina

Respondent

Petition for A writ of certiorari

Jo Clayton Mitchell
Asst attorney General
Post office BOX 11549
Columbia S.C 29211-1549

NAKIA JONES PROSE
BRCI MAIL ROOM 267
4460 Broadriver Rd.
Columbia S.C 29210

certificate of counsel

counsel for petitioner certifies
that the petition for rehearing was
made and finally ruled on by the court
of appeals on may 20, 2016.

RECEIVED

JUN 17 2016

SC Court of Appeals

Tables of contents

INDEX	1
questions Presented	2
statement of the case	3-5
Argument	6-9
conclusion	9

Question Presented

1. where the decision of the court of Appeals is in conflict with a prior decision of the supreme court where the court ruled that a decision in this petition would not terminate the uncertainty or controversy giving rise to the proceeding. Petitioner additionally submits that his 1996 40a sentence did not contain a designation as a "serious offense" or "most serious offense" as those terms are used in S.C. code §17-25-45(A). see state v. small 613 S.E. 2d 754, EPP v. Bazzle 2008 WL 2563151.
2. whether the petition substantial constitutional right to habeas corpus and due process of law were infringe on when the lower court and court of appeals ruled that this petition should be treated as a P-C-R action when a constitutional denial of fundamental fairness shocking to the universal sense of justice has accrued. see Butler v. state 302 S.C 466, 397 S.E2d 87, cert denied 498 U.S 972 111 S.Ct 442, 112 LEd 2d 425 1990.

statement of the case

1. Procedural. This case was filed in the fifth Judicial circuit court of common Pleas on May 25, 2012, by the Appellant herein, appearing pro SE, under the uniform Declaratory Judgments Act, §15-53-10, et seq, code of Laws of south Carolina, 1976 (as amended). The Appellant alleged that his incarceration was unlawful and invoked the habeas corpus provisions of Article 1 §18 of the south Carolina constitution and S.C. code §17-17-10, et seq.

Appellant's 1996 conviction.

The Appellant ("Jones") was accused of committing an Assault and Battery with Intent to Kill (ABIK) on January 27, 1995. At the time of the crime, Jones was twenty (20) years old (DOB: 11/28/74). An arrest warrant (No. E-380837) was issued on January 27, 1995. On June 14, 1995, Jones was indicted by the Richland County Grand Jury (Ind. No.: 95-65-40-1328) on the charge of ABIK. Jones remained in jail until he was brought to court on February 29, 1996. On that date, Jones appeared with counsel before the Honorable L. Casey Manning and pled guilty to ABIK. On the date of sentencing, Jones was twenty-one (21) years old. Judge Manning gave Jones an indeterminate sentence under the Youthful Offender Act. However, Jones did not consent in writing to being treated and sentenced as a Youthful Offender.

Jones did not appeal the sentence and was released by the YOA Parole Board after he had served one (1) year.

APPELLANT'S 1998 CONVICTIONS. Jones was accused of committing three (3) armed robberies; possessing a firearm during commission of a violent crime; and failing to stop for a blue light on June 29, 1997. The arrest warrants were issued on July 25, 1997, and Jones was arrested that same day. On May 20, 1998, Jones was indicted indictment nos. 98-GS-40-24551 through-24555. The state served Jones and his attorney with a Notice of Intent to seek a sentence of Life without possibility of parole in accordance with S.C. code § 17-25-45(H). On June 16, 1998, Jones' court-appointed attorneys, John E. Shutt, Esquire, and Robert M. Sneed, Esquire, moved to quash the indictments due to the state's failure to comply with Rule 3(C), SCACRIMP. The motion was denied and Jones was brought to trial the same day. A jury acquitted Jones of the blue light charge but found him guilty on the three (3) Armed Robbery charges and weapon charge. The Honorable H. Dean sentenced Jones to Life without possibility of parole. Jones appealed, claiming that the "Two strikes Law" was enacted after his 1995 conviction and was, therefore, an ex post facto violation; however, the S.C. Supreme Court affirmed his convictions and sentences (Opinion NO: 25257, March 12, 2001).

Post-conviction Relief: Jones filed for Post-conviction Relief in 2001 CCA No: 2001-CP-40-26607 regarding his 1998 convictions, which was denied by order of the Honorable James R. Barber, III, filed May 23, 2003, Jones filed an appeal which was denied. Jones then filed for Post-conviction Relief in 2003 CCA No: 2003-CP-40-3963 challenging his 1996 conviction, which was denied by order of the Honorable G. Cooper, Jr., filed February 22, 2006, Plaintiff filed an appeal which was denied.

ARGUMENT

1. The South Carolina court of appeals was incorrect for denying the Petition base on south carolina code 15-53-70 (2005) ("The court may refuse to render or enter a declaratory judgment or decree when such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.") But according to state vs. Small 364 S.C 343 613 S.E 2d 754, EPP vs. Bazzle 2008 WL 256315, This court specifically held that signing a sentencing sheet for a charge to which a defendant has plead guilty constitutes a written waiver of presentment. The controversy here is that the court relied on a illegal sentence to enhance Petitioner sentence under 17-25-45 code of Law in which Petitioner receive life without Parole and this illegal sentence should not have been used as a Prior conviction for Purposes of the Life without Parole sentencing. Petitioner additionally submits that his 1996 40A sentence didnot contain a designation as a "serious offense" or "most serious offense" as those terms are

used in S.C. Code §17-25-45(A), This would have been an appropriate use of the Declaratory Judgment Power. Pursuant to "South Carolina's uniform Declaratory Judgment Act" (The declaratory Judgment Act).

². "[C]ourts of record within their respective jurisdiction shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." S.C. Code Ann. §15-53-20. "Any person... whose rights, status or other legal relations are affected by a statute... may have determined any question of construction or validity arising under [] statute... and obtain a declaration of rights, status or other legal relations thereunder." Id §15-53-30. see Thompson vs. State 2016 WL 806159

2. The south carolina court of appeals denied this Petition by arguing S.C. Code Ann. § 17-27-20(B) (2014) stating *SIMPSON v. State* 329 S.C. 43, 46, 495 S.E. 2d 429, 431 (1998) *Gibson v. State*, 329 S.C. 37, 42, 495 S.E. 2d 426, 428 that the Petition did not allege that Jones had exhausted all available Post-conviction relief remedies and that the Petition had to show why other remedies, such as PCR were unavailable or inadequate. This complaint, however clearly alleged that Jones had filed a Post conviction Relief action (CIA No: 2001-CP-40-2660) and an Amended Application on April 24, 2003, which specifically challenged the constitutionality of his 1996 conviction. This complaint clearly alleged that Jones' PCR action had been denied with prejudice; therefore, Jones had no other adequate remedy at law. further, as the court is aware, south carolina P-C-R is limited to sixth Amendment (ineffective assistance of counsel) claims. Jones' claim that the 40A sentence was improperly rendered is not a sixth Amendment claim but, rather, a cognizable challenge to the lawfulness of said sentence.

Here Jones allege that he has exhausted all other remedies, and has set out a constitutional claim that meets the standard delineated in *Butler v. State* 302 S.C. 466, 397 S.E. 87, cert. denied, 498 U.S. 972, 111 S.Ct. 422, 112 L.Ed. 2d 425 (1990) *Baskins v. Moore*, 362 F.Supp 187 (D.S.C. 1973). Here Petitioner claim that an illegal sentence was used to enhance Petitioner sentence under 17-25-45 code of Law in which Petitioner receive life without Parole and this illegal sentence should not have been used as a prior conviction for Purpose of the life with out Parole sentencing.

CONCLUSION

For the reasons stated, Petitioner ask this court to grant the Petition for a writ of certiorari.

Date: _____

Respectfully
Submitted,
Nakia Jones Prose:
BrcI mairon 267
4460 Broadriver Ad.
Columbia S.C 29210