

The Honorable Daniel E Shearcouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, South Carolina 29211

4th Nov, 2015

Re: James Edward Johnson, Jr v. State of South Carolina;
Case #2015-001062

Dear Mr Shearcouse,

Enclosed for filing is a Motion to Believe Counsel in the above case. Also enclosed is a proof of service on the Petitioner's attorney as well as the Respondent's Attorney. Would your office please clock stamp, file, and copy these and when complete forward me a copy, Thank you.

Sincerely,

James Edward Johnson, Jr #353643
PCI Q1-B-209
430 Oaklawn rd
Pelzer SC 29669

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NOV 10 2015

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Deadra L. Jefferson, Circuit Court Judge

James Edward Johnson, Jr. Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent

Appellate Case # 2015-001062

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Motion to Relieve Counsel

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S.C. SUPREME COURT

Tiffany L. Butler

Appellate Defender

South Carolina Commission on Indigent
Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

Attorney for Petitioner

Alan Wilson

Attorney General

Karen Ratigan

Senior Assistant Deputy Attorney

PO Box 11549

Columbia, SC 29211

Attorneys for Respondent

Here comes the Petitioner (James E. Johnson, Jr.) in the above mentioned proceeding seeking to be relieved of counsel and proceed pro se.

The Petitioner states that he is making this request with open eyes to the facts, circumstances surrounding the case, as well as an understanding of the appellate procedure which is required under Johnson v. Zerbst, 304 U.S. 458, 464 (1938), Adams v. United States ex rel McCann, 317 U.S. 269, 279 (1942). The Petitioner also understands that his constitutional right to counsel does not extend to discretionary appeals on collateral attack. Johnson v. State 294 S.C. 310 (1988)

The Petitioner wishes to be relieved of counsel for the following

Reasons:

1.) The Petitioner has wrote counsel numerous times requesting assistance to time sensitive issues, she has not responded. See Copy

2.) The Petitioner has asked counsel to respond to a letter sent requesting her to brief three meritorious issues, she has not responded. See Copy

3.) Counsel told the Petitioner, "she will no longer accept collect phone calls from him," in doing so has completely cut communication with the Petitioner.

Conclusion

The Petitioner believes there are unreconcilable differences between counsel and myself and asks this Court to relieve counsel.

Respectfully Submitted

James E. Johnson, Jr #353643

This day the 4th of Nov, 2015

PCI Q1-B-209

430 Oaklawn rd

Pelzer SC 29669

Petitioner

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Deborah Jefferson, Circuit Court Judge

Appellate Case # 2015-001062

James Edward Johnson, Jr

Petitioner,

v.

State of South Carolina,

Respondent

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Proof of Service

S.C. SUPREME COURT

I certify that I (James E. Johnson, Jr) served the Motion to Believe Counsel on this day Nov, 2015 to the following person(s) by depositing a copy in the Perry Correctional Institution's mail room, postage prepaid:

1.) Karen Ratigan

PO Box 11549

Columbia, SC 29211

Tele (803) 734-3737

Attorney for Respondent

2.) Tiffany L Butler

PO Box 11589

Columbia, SC 29211

Tele (803) 734-1330

Attorney for Petitioner of South Carolina

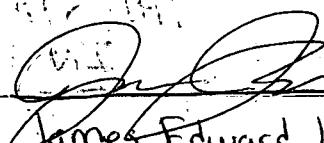
3.) Daniel E. Shearouse

PO Box 11330

Columbia, SC 29211

Clerk of Supreme Court

STATE OF SOUTH CAROLINA
SOUTH CAROLINA BAR


James Edward Johnson, Jr. #353643

Sworn to and subscribed before me this 4th day of Nov, 2015
Tomara Conwell
PCI Q1-B-209
430 Oaklawn rd
Pelzer SC 29669

My Commission Expires
September 25, 2023

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NOV 10 2015

S.C. SUPREME COURT

Tiffany L. Butler
SCCID, Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211

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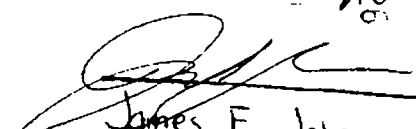
SEP 21 2015

P.C.I. MAILROOM

Re: case # 2013-CP-42-2352 / Appellate case # 2015-001062

Dear Mrs Butler,

I am writing you in reference to the two phone calls we had two weeks ago, about my transcripts being incorrect, those incorrect statements and or omissions being used to deny me relief, as well as what I would like you to do to fix this issue. Pursuant to Rule 607(i) of SCACR Filing objections with the court reporter and seeking corrections to the transcripts must be done within 30 days of its first transcription. Now since that time has passed there isn't any guarantee that the audio tape hasn't been destroyed, I'm asking that you contact the court reporter (Pamela E Green) by phone or email to see if the audio tapes are available. If it isn't, I ask that you immediately move in the appellate court to strike the allegedly incorrect transcript and to reconstruct the record as provided in South Carolina state courts under the authority of *China v Parrott*, 251 SC 329 (SC 1968). As my attorney I trust you will do what is necessary to correct this for our case to succeed. I also understand this is a time sensitive issue and we may only have one more extension please write back asap with your response.


James E Johnson #353643
PCI Q1-B-209
430 Oaklawn rd
Pelzer SC 29669

Sworn to and subscribed before me this 21st day of September, 2015
x Tamara Conwell
My Commission Expires September 25, 2023

Tiffany L Butler
 Appellate Defender, SCCID
 Division of Appellate Defense
 PO Box 11589
 Columbia, SC 29211

Re: Appellate Case # 2015-001062, 2013-CP-412-2352

Dear Ms Butler,

I am writing to thank you for sending my Appendix. I have gone thru it several times and would like to give you an idea of what my thoughts are. First of all I am not in any way trying to tell you how to do your job. I believe that you have the education as well as the experience to win, I simply want to give you a understanding of what I attempted to present in the PCR hearing. I also know that I am not your only client and time as well as resources are limited, this is just a summary of the arguments that I believe are the most promising. I know that you have an eye for these types of things so if you feel that they are not meritorious please help me understand why. I look forward to your response, thank you.

Sincerely

James E Johnson
 James E Johnson #353643
 PCI Q1-B-209
 430 Oak Lawn Rd
 Pelzer, SC 29769

This 28 day of Sept, 2015

2015 OCT -2 AM 9:46
 TELETYPE

Statement of the Case

The charges in this case arose out of a armed robbery of a Family Dollar store by the Petitioner and a co-defendant, on July 12, 2012. The Petitioner and co-defendant were apprehended leaving the scene and were subsequently charged.

The Petitioner pled guilty on Dec 18, 2012' ~~to~~ to four counts of Kidnapping, three counts of armed robbery, two counts of attempted armed robbery, one count of failure to stop for a blue light, and one count of possession of a stolen pistol. The Petitioner was represented by Andrea Leah Price, Esquire. The Honorable J. Derek Cole sentenced the Petitioner to concurrent sentences of thirty years for armed robbery, as well as concurrent sentences of twenty years for four Kidnappings and two attempted armed robberies, he also revoked his probation in full. The Petitioner did not appeal his plea, sentence, or probation revocation.

The Petitioner filed for Post-conviction relief on April 29, 2013. The respondent made its Return on or about June 27, 2014. An evidentiary hearing into the matter was convened on January 12, 2015, at Spartanburg County Courthouse, before the Honorable Dedra H Jefferson, presiding circuit judge. The Petitioner was presented at the hearing and was represented by J. Brandt Rucker, Esquire. Suzanne H White, Esquire of the South Carolina Attorney General's office represented the respondent.

On March 31, 2015, the PCR court filed an order of Dismissal which denied relief on all the Petitioner's claims. Notice of Appeal was timely served and filed. The Petitioner now seeks a writ of Cert ~~to~~.

FILED

2015 OCT -2 AM 9:46

The PCR court erred in denying relief to Petitioner based on its incorrect finding that counsel was not ineffective for failing to provide correct legal advice to the permanent deprivation element of Armed Robbery.

The Petitioner pled guilty to three total armed robbery indictments alleging cell phones as the property taken. The Petitioner alleges that one key element of armed robbery is the intent to permanently deprive the owner of property. The Petitioner presented evidence to the PCR court in the form of a police report (Exhibit 2), victim statement (Exhibit 1), as well as his own testimony to prove that the Petitioner left the scene without the personal property of the alleged victims. The Petitioner alleges that counsel's failure to give correct advice to the permanency element of armed robbery was deficient performance. South Carolina Supreme Court ruled that counsel's failure to distinguish the permanency element of larceny from the provisions of SC code Ann. 16-21-60 (1985) regarding temporary deprivation constituted deficient performance, Kerrigan v State, 406 SE2d 160 (1991). The Court went on to state that an intent by the offender to permanently deprive the owner of possession by converting the property to the offender's own use is implicit in the definition of larceny. Id. similarly, the intent to permanently deprive is also implicit in the definition of armed robbery, Broom v State, 569 SE2d 336 (2002). Since the Petitioner did not flee with the property, one can make a strong argument that he conclusively demonstrated his intent not to keep the ~~property~~ property permanently. Without an intent to keep the property permanently, his actions cannot constitute robbery as defined by Broom. The Petitioner asserts that reasonably effective counsel either would have advised him not to plead guilty to these charges or at the very least, would have explained to him South Carolina law of robbery and the elements in Broom. By failing to advise the Petitioner of how the facts of his case related to South Carolina law of robbery, counsel made certain that her client's plea could not be knowingly and voluntarily entered, Herring v Estelle, 491 F2d 125 (5th 1974) and should be deemed ineffective assistance.

The PCR court erred in denying relief to the Petitioner based on its incorrect finding that based on counsel's failure to research and/or investigate to provide possible defense did not constitute the Petitioner's guilty plea to be unknowing and involuntary.

The Petitioner testified that the main reason he pled was because counsel told him he had no defense, he also testified that if he would have been able to present this evidence he would not have pled guilty (Tr 17:10-17:20) The Petitioner testified that he believed his charge shouldn't have been armed robbery and that it was under counsel's advice, that he had no defense that he pled guilty. Had he known this information he could have brought this to the court and let a jury decide. (Tr 16:11-16:17) Counsel testified in the PCR hearing that, she was aware of the statement from the victim (Mrs Williams) that stated that her phone was kicked away. (Tr 48:10-48:13) Counsel testified that she was aware of the reports that the phones had been found, two of them in the back of the store. (Tr 47:23-48:1) Counsel testified that she was not aware of any evidence showing that they (Petitioner or Co-defendant) transported, picked up and or put the phones in the trash (Tr 50:11-50:14) Counsel testified that she reviewed the store video (Tr 48:2-48:4) and that there is no evidence of the Petitioner ordering any people within the Family Dollar store to do anything. (Tr 58:5-58:8). Counsel testified that one indictment for attempted armed robbery, the Petitioner was simply charged with the theft from the victim because she was merely present; and that the state could not prove a cell phone existed (Tr 54:9-55:5) Counsel testified that the Family Dollar should be considered the victim twice because two employees were robbed (Tr 57:15-57:18) Counsel stated in the Guilty Plea hearing that the Petitioner has absolutely no defense to these charges, during the time she's been representing him she has told him that Guilty Plea (Tr 26:22-26:24) Counsel testified twice that she did not rely nor could present any legal precedent in South Carolina to determine if the Petitioner indeed did not have a defense. (Tr 49:14-50:2)

(Tr 57:19-57:21) The Petitioner asserts that counsel's lack of understanding of the laws pertaining to the case, the evidence in her possession, as well as

failing to further research the facts and or law is deficient performance and deprived the Petitioner of key information needed to make an informed decision of whether to plead guilty or go to trial. The Petitioner states that under Strickland a court must strongly presume that counsel has exercised reasonable professional conduct. Strickland, 466 U.S. 668, 690 however no such presumption is warranted when a lawyer advises his client to plea bargain to an offense which the attorney has not investigated. such conduct is always unreasonable. Woodard v Collins, 898 F2d 1027 (5th 1990) - This misleading advice through failure to research law after notice of possible defenses amounts to ineffective assistance, Tolliver v United States, 563 F2d 1117 (4th 1977) and makes his guilty plea invalid. By not bringing possible defenses to the Petitioner's attention he was prejudice in that, A defendant cannot knowingly and intelligently waive what he doesn't know. Hoffman v Leeke, 908 F2d 280, 289 (4th 1990) Defense counsel must be familiar with the laws and the facts of a case in order to provide effective assistance of counsel. United States v Burton, 575 Fsupp 1320 (ED Texas 1983). Furthermore the PCR court ruled that the fact that the Petitioner faced life without parole had the state prevailed on even one armed robbery is error upon the court. (Tr 62:1-62:9) All we must find here is a reasonable probability, that the result of the plea process would have been different - that Hill "would not have pled guilty and insisted on going to trial"; - if counsel had given accurate advice. Hill v Lockhart, 877 F2d 698 (8th 1987)

James E Johnson # 353648
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NOV 04 2015
P.C.I. MAILROOM

Supreme Court of South Carolina
Clerk of Court
Honorable Daniel E. Shearouse
Post Office Box 11330
Columbia, South Carolina 29211

LEGAL MAIL

THE DEPARTMENT OF CORRECTIONS HAS
NOT INSPECTED OR CENSORED THIS ITEM.
THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR THE CONTENTS.
PRISON CORPORAL INSTITUTION
SO DEPARTMENT OF CORRECTIONS