

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Certiorari to Pickens County

Honorable Letitia H. Verdin, Circuit Court Judge

TAVISH DOMINIQUE YEARGIN,

PETITIONER,

V.

THE STATE,

RESPONDENT

APPELLATE CASE NO 2017-001324

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

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SC Court of Appeals

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ISSUE PRESENTED

The circuit court judge erred in allowing petitioner to appear pro se at the Forensic DNA hearing held in the case.

STATEMENT

Petitioner Tavish Dominique Yeargin was found guilty of murder and grand larceny per jury trial held during the November, 2013 term of the Pickens County General Sessions Court before Judge Robin B. Stilwell. Petitioner sentenced to imprisonment for an aggregate period of sixty years. App. 1 – 616. Petitioner was represented at trial by John DeJong, and Assistant Solicitors Doug Richardson and Brandi Hinton appeared on behalf of the state. Petitioner appealed his trial court convictions and sentences, but the South Carolina Court of Appeals dismissed the appeal. See State v. Yeargin, Unpublished Opinion No. 2016-UP-043 (January 20, 2016). App. 692-695. Petitioner was represented on appeal by Jeffrey P. Dunlaevy, Esquire, of Ogletree Deakins Nash Smoak & Stewart, PC of Greenville, South Carolina. See briefs filed at App. 617 – 691.

Petitioner submitted his Application for Forensic DNA Testing on February 1, 2017, (App. 696-700), and a hearing into the matter was subsequently convened on May 25, 2017, at the Pickens County Courthouse before Judge Letitia H. Verdin. App. 701-710. Assistant Solicitor Brandi Hinton appeared on behalf of the state and petitioner appeared pro se at the hearing. On May 30, 2017, Judge Verdin signed an Order Denying Defendant's Application for Forensic DNA Testing and filed the same on June 2, 2017. App. 712-714.

Petitioner appealed Judge Verdin's Order. This petition follows.

ARGUMENT

The circuit court judge erred in allowing petitioner to appear pro se at his forensic DNA hearing held in the case.

During the Application for Forensic Testing hearing, petitioner argued on behalf of his request for DNA testing on a bullet, a BB gun, clothing, car keys and license plates. Note, however, that appellant appeared at this hearing pro se. Petitioner's arguments were nonsensical and indecipherable and incomprehensible. Note below petitioner's attachment to his Application for Forensic DNA testing requesting the appointment of counsel as follows:

Rule 71.1 Post-Conviction Relief Actions

Now comes into this court Tavish Dominique Yeargin #317173. (Herein-after "plaintiff") and appearing through representation of counsel under the Procedure for Post-Conviction relief is provided by the uniform post-conviction Act (Act), S.C. Code Ann. § 17-27-10 to -120 (1985). The South Carolina Rules of Civil Procedure Shall apply to the extent that they are not inconsistent with the Act. (d) Appointment of counsel for hearing after the state has filed its return. The application presented questions of law or fact which will require a hearing. The Court shall promptly appoint counsel to assist the applicant if he is indigent insure that all available grounds for relief are included in the application and shall amend the application if necessary. See Supp. Appendix.

S.C. Code Ann §17-28-10 is cited as the "Access to Justice Post Conviction DNA Testing Act." See §17-28-10-120 (2008). This collateral post-conviction relief related action refers to offenses for which post-conviction DNA testing is available under §17-28-30, and the factors to be proved in order to obtain relief for DNA testing under §17-28-90, and finally when DNA test results warrant a new trial under §17-28-100. Therefore, since DNA testing is connected in effect to collateral post-conviction relief actions, it appears that Rule 71.1, SCRPC, which mandates the appointment of counsel in PCR cases, extends to PCR Applications for DNA Testing cases as well. Since Gideon v. Wainwright, 372 U.S. 335 (1968), the right to

counsel has been entrenched in our jurisprudence to the extent that the Sixth and Fourteenth Amendments require that counsel be provided for indigent criminal defendants. Compare Turner v. State, 384 S.C. 451, 682 S.E.2d 792 (2009), where the Court discussed the right to counsel for probationers (Rule 602, SCACR, and Barlet v. State, 288 S.C. 481, 343 S.E.2d 620 (1986)) and a parolee's right to counsel via due process per the interplay of the Fifth and Fourteenth Amendments.

In addition, there was no waiver of the right to counsel during the hearing because petitioner never asserted his right to self-representation and the trial judge did not advise petitioner of his right to counsel and the dangers of self-representation and if he made a knowing waiver of the right to counsel. See Faretta v. California, 422 U.S. 806 (1975). None of the above requirements regarding a waiver of counsel existed in the case at bar. Compare State v. Browner, 328 S.C. 117, 492 S.E.2d 97 (1997).

CONCLUSION

Petitioner's positions made at his hearing were incomprehensible and therefore, based on the foregoing argument, counsel for petitioner requests that the case be remanded for a another hearing that includes the appointment of legal counsel.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 28th day of November, 2017.

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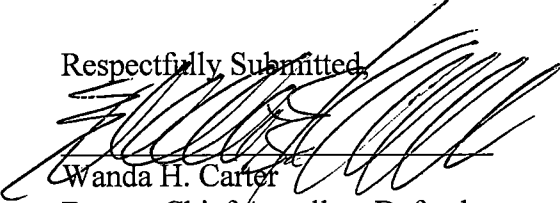
RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tavish Dominique Yeargin states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's trial before Judge Letitia H. Verdin, which was held on May 25, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process. Therefore, counsel requests that the Court relieve her as counsel for Tavish Dominique Yeargin.

Respectfully Submitted,



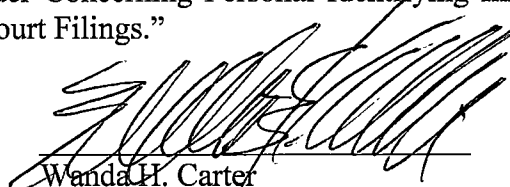
Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 28th day of November, 2017.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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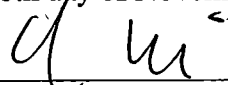
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix and Supplemental Appendix in the above referenced case has been served upon Alphonso Simon, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Tavish Dominique Yeargin, #317173, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 28th day of November, 2017.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 28th day of November, 2017.

 _____ (L.S)
Notary Public for South Carolina
My Commission Expires: 05/12/2025