

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2015-002214

RECEIVED
DEC 27 2017
SC Court of Appeals

QUINTON LINEN, 238553

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**PETITION FOR WRIT OF CERTIORARI
TO THE SOUTH CAROLINA COURT OF APPEALS**

TARA DAWN SHURLING
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ATTORNEY FOR PETITIONER.

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QUESTIONS PRESENTED

I.

Did the lower court err in denying Petitioner's Application for Post-Conviction Relief where the records before the Court demonstrated that Petitioner's original PCR action addressing his 1988 judgment was improperly dismissed in an invalid order issued in connection with a separate PCR case involving different charges, a separate General Sessions proceeding and a different defense attorney?

II.

Did the lower court err in denying Petitioner's Application for Post-Conviction Relief where the records before the Court demonstrated that Petitioner's original PCR action addressing his 1988 judgment was improperly dismissed without notice to Petitioner and without the opportunity to respond required by statute?

III.

Does the current case present facts which warrant an exception to this Honorable Court ruling in *Haggins v. State*, 377 S.C. 135, 659 SE2d 170 (2008), wherein this Court held that it would not entertain Rule 226, SCACR, Petitions for Writ of Certiorari to review "letter denials" in PCR matters and subsequent decisions extending that ruling to short form orders denying Certiorari and would denial of review infringe upon Petitioner's right pursuant to the Constitution of the U.S., as well as his right to Due Process of Law as protected by the Constitution of the U.S. as well as the S.C. Constitution?

PROCEDURAL HISTORY

This Post-Conviction Relief appeal was originally filed in this Honorable Court by Notice of Appeal filed and served on October 23, 2015. The long and complicated history of this case is set forth in detail in the Petition for Writ of Certiorari filed with this Court on June 8, 2016. The Respondent filed the State's Return thereto on September 8, 2016. Petitioner did not file a Reply to the State's Return. This appeal was transferred to the jurisdiction of the South Carolina Court of Appeals on March 2, 2017. By Order entered July 28, 2017, the South Carolina Court of Appeals denied the Petition for Writ of Certiorari filed in this case. Petitioner filed his Petition for Rehearing and Request for Rehearing *En Banc* on August 14, 2017. Said Petition was denied by Order of the South Carolina Court of Appeals filed November 20, 2017.

The original Appendix submitted from this PCR appeal is already on file with this Honorable Court. All subsequent documentation relevant to the current Petition for Writ of Certiorari is submitted as a Supplemental Appendix hereto.

ARGUMENTS

I.

Did the lower court err in denying Petitioner's Application for Post-Conviction Relief where the records before the Court demonstrated that Petitioner's original PCR action addressing his 1988 judgment was improperly dismissed in an invalid order issued in connection with a separate PCR case involving different charges, a separate General Sessions proceeding and a different defense attorney?

Petitioner respectfully relies upon the argument presented on this question in the Petition for Writ of Certiorari originally filed in this case with this Honorable Court. That Certiorari Petition is found in the Supplemental Appendix filed along with this Petition.

II.

Did the lower court err in denying Petitioner's Application for Post-Conviction Relief where the records before the Court demonstrated that Petitioner's original PCR action addressing his 1988 judgment was improperly dismissed without notice to Petitioner and without the opportunity to respond required by statute?

Petitioner respectfully relies upon the argument presented on this question in the Petition for Writ of Certiorari originally filed in this case with this Honorable Court. That Certiorari Petition is found in the Supplemental Appendix filed along with this Petition.

III.

Does the current case present facts which warrant an exception to this Honorable Court ruling in *Haggins v. State*, 377 S.C. 135, 659 SE2d 170 (2008), wherein this Court held that it would not entertain Rule 226, SCACR, Petitions for Writ of Certiorari to review "letter denials" in PCR matters and subsequent decisions extending that ruling to short form orders denying Certiorari and would denial of review infringe upon Petitioner's right pursuant to

the Constitution of the U.S., as well as his right to Due Process of Law as protected by the Constitution of the U.S. as well as the S.C. Constitution?

The Petitioner now asks that this Honorable Court grant him leave to be heard on the merits of his Questions I and II, based upon the arguments articulated in the Petition for Writ of Certiorari originally filed with this Court before his appeal was transferred to the South Carolina Court of Appeals. He most respectfully acknowledges this Court's decision in *Haggins, supra*, however, he submits that this case presents an unusual procedural history which should indeed constitute "a special reason" justifying the exercise of this Court's discretion in granting a review of the decision of the South Carolina Court of Appeals. Petitioner respectfully submits that the facts present in this unique case warrant an exception to the general rule.

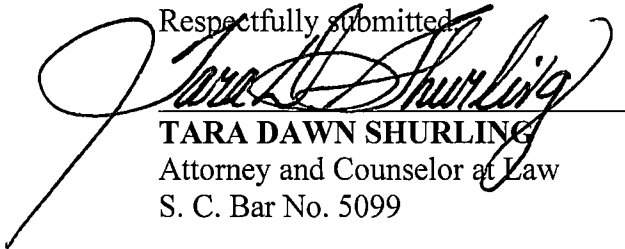
As the Petition for Writ of Certiorari filed in this matter demonstrates the Petitioner is currently serving a life without parole sentence which is illegal under South Carolina case law which developed after his judgment and sentence were issued, but while this matter was pending on collateral review. Although Petitioner himself did not adequately articulate the core issues before the Court, it is clearly possible that Petitioner may have had the opportunity to have these issues considered and resolved at that time had a former Circuit Court Judge not improperly ruled on two separate Post-Conviction Relief cases in the same Order; including one case which was not before that judge. Petitioner respectfully submits that denying him the opportunity to have this Honorable Court review the decision of the Court of Appeals, on the facts of this case, would constitute a violation of his rights to due process of law as protected by both the U.S. Constitution and the South Carolina Constitution. Additionally, Petitioner would argue that his life sentence on the facts of this case violates his rights pursuant to the Eighth and Fourteenth Amendments to the U.S. Constitution where said sentence is not consistent with the law in this

State concerning second and subsequent most serious crimes inasmuch as the predicate strike utilized to give him a life without parole sentence involved a crime which took place within twenty-four hours of the offense for which the life sentence was imposed.

CONCLUSION

For these reasons Petitioner now prays that this Court grant him a review of the decision of the South Carolina Court of Appeals. In the alternative, Petitioner seeks leave of Court to submit this issue for review by this Honorable Court by way of a Petition for Writ of Certiorari filed in the original jurisdiction of this Honorable Court. Petitioner asks that his Petition for Writ of Certiorari be reviewed, granted and that Petitioner be granted re-sentencing. In the alternative, he asks that this Petition be reviewed and that the Writ be granted in order that he might more fully brief the issues summarized herein. In the event this Court declines to grant an exception to the rule in *Haggins, supra*, Petitioner asks for leave of Court to address the operative questions presented in this case in a Petition for Writ of Certiorari filed in the original jurisdiction of this Honorable Court.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

This 20th day of December, 2017.

LAW OFFICE OF



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December 21, 2017

The Honorable Jenny A. Kitchings
Clerk of Court, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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DEC 27 2017
SC Court of Appeals

RE: Quintin Linen, #238553 v. State of South Carolina
Appellate Case No.: 2015-002214

Dear Ms. Kitchings:

Yesterday I mailed a Petition for Writ of Certiorari in the above captioned matter to the Supreme Court for filing. I apologize, but I was alone at the office when it was mailed out, and I inadvertently forgot to send you a copy. I enclose a copy of that Petition for your Court's records. I am sorry for this oversight.

I hope you and your family have a lovely Christmas and a very blessed New Year. As always, I remain,

Sincerely,

A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is fluid and cursive, with a large initial "T".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosure

cc: The Honorable Daniel E. Shearouse (w/o enclosure)
Judah N. VanSyckel, Assistant Attorney General (w/o enclosures)



Law Office of
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The Honorable Jenny A. Kitchings
Clerk of Court, SC Court of Appeals
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