

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2015-002214

QUINTIN LINEN, #238553,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR LEAVE TO FILE A
PETITION FOR WRIT OF CERTIORARI
TO THE SOUTH CAROLINA COURT OF APPEALS

Procedural History

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Petitioner was indicted at the January 1988 term of the Charleston County Grand Jury for armed robbery (1987-GS-10-3362). Russell Brown, Esquire, represented Petitioner. On January 29, 1988, Petitioner pled guilty as indicted before the Honorable John Hamilton Smith. Judge Smith sentenced him to a term of imprisonment of twelve years. Petitioner did not appeal his conviction or sentence, and he was

RECEIVED

FEB 08 2018

S.C. SUPREME COURT

RECEIVED

FEB 09 2017

SC Court of Appeals

released from SCDC custody.

Petitioner did not file his first PCR application (1997-CP-10-2086) until April 2, 1997, more than nine years after his 1988 conviction. Petitioner filed this application after he was indicted at the February 1997 term of the Charleston County Grand Jury for armed robbery (1997-GS-10-0926). On April 8, 1997, Petitioner proceeded to trial, and the jury found him guilty as indicted. The Honorable Charles W. Whetstone, Jr., sentenced Petitioner to life imprisonment without parole (LWOP) pursuant to the "two strikes" law. *See* S.C. Code Ann. § 17-25-45 (2014).

In his first PCR application, Petitioner alleged the following grounds for relief:

1. Ineffective assistance of counsel:
 - i. "Failure to investigate the offense: attorney only met with me 1 time 5-7 days before court. I told him where I was when crime happened, but he never investigated. I had only met with my lawyer one time before court for no more than 20 minutes. Mr. Brown never asked for name or witnesses."
2. Guilty plea – waiver of rights not knowingly and voluntarily made:
 - i. "Mr. Brown told me if I did not plead guilty I would get the maximum sentence of 25 years. I felt intimidated and like I did not have a choice. I did what Mr. Brown told me to do, not what I felt was right."

This application was subsequently merged with Petitioner's second PCR application (1998-CP-10-5031), which was filed on December 31, 1998, and addressed his 1997 conviction.

He alleged the following grounds for relief:

1. Ineffective assistance of counsel;
2. "The manner in which the State has proscribed that my sentence be carried out is unconstitutional;" and
3. After discovered evidence, constitutional issues – novel issues.

An evidentiary hearing was held at the Charleston County Courthouse on May 22, 2000. Juan Tolley, Esquire, represented Petitioner. By order filed October 12, 2000, the Honorable H. Dean Hall denied and dismissed both applications with prejudice. The order stated:

This Court finds Petitioner's 1997 PCR application (97-CP-10-2086), collaterally attacking his 1988 armed robbery conviction (87-GS-10-3362) is barred by the statute of limitations. S.C. Code Ann. § 17-27-45(a). Petitioner was convicted on January 28, 1988; however, he filed his application on April 2, 1997, well after the July 1, 1996 statute of limitations passed. *See Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). Accordingly, the application is denied.

Petitioner filed a pro se motion to alter or amend judgment pursuant to Rule 59(e), SCRPC, on November 7, 2000. Upon information and belief, a hearing was held on February 15, 2001, at the Charleston County Courthouse.¹ Ellen Howard, Esquire, represented Petitioner. By order filed July 30, 2003, the Honorable Daniel F. Pieper denied the motion.

Petitioner appealed, and Eleanor Duffy Cleary, Esquire, represented him. The South Carolina Supreme Court denied his Johnson² petition for a writ of certiorari on May 13, 2004. The remittitur was issued on June 1, 2004.

Petitioner subsequently filed another PCR application (2001-CP-10-1999) on March 16, 2001, challenging both his 1988 and 1997 convictions, and alleging the following ground for relief:

1. "Denied unlawful PCR procedures and direct appeal."
2. "Both my convictions 97-GS-10-0926 and 87-GS-10-3362 were illegally imposed by an unlawful form of S.C. Bar Court out of legal lawful jurisdiction of S.C. Circuit Court."
3. "Denied counsel by criminal dysfunctional counsel aiding solicitor to illegally fraud client with a frauded indictment at no time has any counsel been honest and lawfully working for my best interest."

¹ Judge Hall retired prior to the Rule 59(e) hearing, and Chief Administrative Judge Pieper presided over the hearing.

² Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

4. "Racially targeted and discriminated against in illegal prosecution and denial of legal counsel in a lawful manner in the initial prosecutions, direct appeal, PCRs and etc."

Respondent made its return and motion to dismiss on June 14, 2001. On July 5, 2001, Petitioner submitted a pro se memorandum in opposition to Respondent's motion to dismiss. Ellen Howard, Esquire, represented Petitioner. Upon information and belief, Petitioner withdrew his application at a hearing on January 16, 2002. By order filed January 17, 2002, the Honorable R. Markley Dennis, Jr., dismissed his application with prejudice after finding Petitioner freely, voluntarily, and intelligently withdrew his application.³

Petitioner filed his current application on March 31, 2014, solely challenging his 1988 conviction and alleging the following grounds for relief:

1. Petitioner was denied the opportunity for his one full collateral review of the judgments and sentences addressed in his first PCR which addressed the judgment and plea for armed robbery used to enhance his sentence at his subsequent jury trial to Life without parole. He has not had his "one full bite at the apple" for collateral review of his first PCR.
2. Petitioner was without the benefit of Counsel to assist him in raising the appropriate defenses to the Summary Dismissal of his first PCR action docketed at 97-CP-10-2086. The Petitioner now respectfully argues that the Petitioner's first PCR action was dismissed without him ever being fully heard on the reasons that action should have been found to be timely. The Petitioner was without fault in this matter inasmuch as he never got the chance to develop this argument and have it heard in the context of his first PCR action. For that reason, he should now have his first PCR action reopened and that he be afforded the opportunity, this time with adequate legal counsel, to demonstrate why his initial PCR was timely. In the alternative, at minimum, he should be granted a belated PCR appeal from the Order of Dismissal issued in this matter on October 12, 2000.

³ Petitioner subsequently filed two more PCR applications (2005-CP-10-4339, 2007-CP-10-2431) and a pro se federal petition for a writ of habeas corpus (04-2382) challenging his 1997 conviction, which were all dismissed.

Respondent filed a Return and Motion to Dismiss on February 17, 2015. An evidentiary hearing was convened at the Charleston County Courthouse on April 23, 2015. Petitioner was present and represented by Tara D. Shurling, Esquire. Respondent was represented by Elizabeth H. Neyle, Esquire. On September 22, 2015, the Honorable W. Jeffrey Young issued an Order of Dismissal. On June 3, 2016, Petitioner filed a Petition for Writ of Certiorari to this Court. On September 28, 2016, Respondent filed a Return to Petition for Writ of Certiorari. This Court transferred this matter to the Court of Appeals which issued an order denying the petition on July 28, 2017. On August 14, 2017, Petitioner filed a Petition for Rehearing and Request for Rehearing *En Banc*. The Court of Appeals denied this Petition on November 20, 2017. A Petition for Leave to File a Petition for Writ of Certiorari to the South Carolina Court of Appeals was filed on December 20, 2017. This Return follows.

Respondent submits this Court should deny the Petitioner's Petition for Leave to File a Petition for Writ of Certiorari to the South Carolina Court of Appeals because this Court has expressly stated it will not entertain on appeal the denial of PCR Petition for Writ of Certiorari by the Court of Appeal. Respondent submits the Petitioner's claims are without merit and this Court should deny this petition because the Petitioner is not entitled to review by this Court of a denial of petition for writ of certiorari.

Argument

In Haggins v. State, 377 S.C. 135, 137, 659 S.E.2d 170 (2008), this Court held it would not entertain petitions for writ of certiorari to review "letter denials" in post-conviction relief matters. In Missouri v. State, this Court extended its holding in Haggins and held this Court would not entertain petitions for writ of certiorari to review an order denying a petition for writ of certiorari in a post-conviction relief matter. 378 S.C. 594, 663 S.E.2d 480 (2008) holding

modified by Ellison v. State, 382 S.C. 189, 676 S.E.2d 671 (2009). Respondent submits this Court has explicitly stated it will not entertain denials of post-conviction relief petition for writ of certiorari. This Court should follow its holding in Missouri and refuse to entertain Petitioner's denial of petition for writ of certiorari.

The arguments raised in the Petition seems to suggest that Petitioner's case is in some way special or unique from other post-conviction relief cases in which the Court of Appeals denies a petition for writ of certiorari. However, there is nothing in Petitioner's case which indicates it warrants any special treatment by this Court. Moreover, there is nothing to suggest that the Court of Appeals did not extend to Petitioner's case the same thorough review it extends to all post-conviction relief cases it reviews. A decision by the Court of Appeals to grant or deny a writ of PCR certiorari is a matter committed to that court's discretion. Haggins, 377 S.C. at 136-37, 659 S.E.2d 170. The Court of Appeals in its discretion concluded Petitioner's claims did not warrant briefing, oral argument, and the issuing of a formal opinion. Respondent submits the Court of Appeals exercised its discretion in denying further review and Petitioner has failed to provide any valid reason for this Court to depart from its holding in Missouri v. State.

Conclusion

Requiring the Court of Appeals to issue a full formal opinion in every case in which it denies a petition for writ of certiorari would abrogate the Court's discretion to decide which cases warrant briefing, oral argument, and a full formal opinion. Therefore, Respondent respectfully asks this Court to deny this Petition and avoid carving out the unwarranted exception that Petitioner is requesting.

{Signature on the following page.}

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RASHEEDA CLEVELAND
Assistant Attorney General

By: *Rasheeda Cleveland*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 8th, 2018

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

FEB 08 2018

CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable W. Jeffrey Young, Circuit Court Judge

RECEIVED

FEB 09 2018

Circuit Court Case No: 2014-CP-10-2117
Appellate Case No.: 2015-002214

SC Court of Appeals

QUINTIN LINEN,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

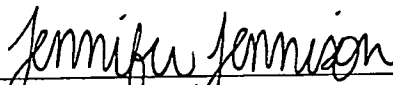
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Return to Petition for Leave to File a Petition for Writ of Certiorari to the South Carolina Court of Appeals** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Tara Dawn Shurling, Esquire
Law Office Of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite A
Columbia, SC 29204

This 8th day of February, 2018.



Jennifer A. Jennison
Legal Assistant for Petitioner