

The Supreme Court of South Carolina

Javan Frederick Mays, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-000891

ORDER

Petitioner filed two applications for post-conviction relief (PCR) - Case Nos. 2015-CP-42-01784 and 2015-CP-42-02535- involving different crimes. The applications were scheduled for evidentiary hearings on the same day; however, following completion of the evidentiary hearing in Case No. 2015-42-01784, petitioner informed the PCR judge he wished to withdraw his application in Case No. 2015-CP-42-02535. The PCR judge issued an order of dismissal in Case No. 2015-CP-42-01784 addressing the allegations raised in the PCR application filed in that matter. The PCR judge issued a Form 4 order accepting petitioner's withdrawal of the application in Case No. 2015-CP-42-02535 and dismissing the matter.

Petitioner's counsel served and filed a notice of appeal from the denial of the PCR application in Case No. 2015-CP-42-01784 only. A notice of appeal was not filed from the Form 4 order issued in Case No. 2015-CP-42-02535. Indeed, a notice of appeal could not be filed in that case. *See Rush v. State*, 368 S.C. 144, 628 S.E.2d 42 (2006) (holding a PCR applicant who sought to withdraw his PCR application could not appeal the order that resulted when his request was granted because the order was in the nature of a consent order).

However, counsel for petitioner has filed a petition for a writ of certiorari pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), in which she challenges

the dismissal of the PCR application in Case No. 2015-CP-42-02535.¹ Because the decision in that case is not before this Court on appeal, we hereby strike the *Johnson* petition. Counsel shall have thirty days from the date of this order to serve and file a new petition for a writ of certiorari relevant to Case No. 2015-CP-42-01784. If counsel's new petition is filed pursuant to *Johnson, supra*, petitioner shall have forty-five days from the date of service of the petition to file an amended *pro se* response if he chooses to do so.



FOR THE COURT C.J.

Columbia, South Carolina

May 25, 2018

cc:

Wanda H. Carter, Esquire
Jordan Adraine Cox, Esquire
Javan Fredrick Mays, 250287

¹ Petitioner filed a *pro se* response challenging the PCR judge's ruling in Case No. 2015-CP-42-01784.