

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE SUPREME COURT

—————  
Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge  
—————

RECEIVED

JUL 30 2018

S.C. SUPREME COURT

CURTIS D. RICHARDSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000816  
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI  
—————

Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

**INDEX**

INDEX ..... i

ISSUE PRESENTED ..... 1

STATEMENT ..... 2

ARGUMENT

There was insufficient evidence to support the PCR judge’s  
order dismissing petitioner’s application for post-  
conviction relief because petitioner did not get a full bite of  
the apple. .... 3

CONCLUSION ..... 5

PETITION TO BE RELIEVED AS COUNSEL ..... 6

**ISSUE PRESENTED**

Whether there was sufficient evidence to support the PCR judge's order dismissing petitioner's application for post-conviction relief when petitioner did not get a full bite of the apple?

## STATEMENT

On September 16, 2011, petitioner appeared before the Honorable Benjamin H. Culbertson in Horry County and pled guilty to possession with intent to distribute marijuana and unlawful possession of a pistol. Petitioner was sentenced to respective sentences of five (5) years and three (3) years. Brana J. Williams, Esq. was plea counsel. Heather Smith Von Hermann, Esq. was the assistant solicitor.

Petitioner appealed his guilty plea but decided to withdraw the appeal. The South Carolina Court of Appeals dismissed the appeals on July 12, 2012.

Petitioner filed an application for post-conviction relief on April 24, 2012. Later, petitioner informed the court that he wished to withdraw his application. By order dated May 5, 2013, the application was dismissed.

Back on January 8, 2010, the South Carolina Supreme Court ordered that no clerk of court in this state shall accept any documents from petitioner unless he submits a filing fee and an affidavit of good faith. This order addressed past repetitive, frivolous, and abusive filings by petitioner.<sup>1</sup>

Petitioner filed his current application on August 26, 2016. (App. p. 1- p. 7). The Honorable William H. Seals, Jr. issued an order of dismissal pursuant to the restrictive filing order. (App. p. 22-p. 24).

This petition follows.

---

<sup>1</sup>The order can be found in the appendix at pages 18-21.

## ARGUMENT

There was insufficient evidence to support the PCR judge's order dismissing petitioner's application for post-conviction relief because petitioner did not get a full bite of the apple.

The PCR judge dismissed petitioner's current application for post-conviction relief without a hearing because he said it was pursuant to a restrictive filing order. For some reason the PCR judge noted the grounds petitioner set forth in his first application for post-conviction relief as follows:

1. "Illegal Sentence and actual innocence"
2. "Ineffective Assistance of Counsel"
3. "Court lacked jurisdiction to accept plea."
4. "Court lacked jurisdiction to impose sentence of five years for this offense"
5. "the prosecutor knowingly and deliberately mislead the court and supplied false information to the court causing the court to impose illegal without jurisdictional authority, current conviction and sentence"
6. "Counsel erroneously coerced guilty plea by relaying false information to client."
7. "I was denied my witness testimony"

But petitioner withdrew his application and the merits were never ruled on by the court. (App. p. 22-p. 23).

Petitioner's current application for post-conviction relief explained that he did not appeal his plea and sentences because he was uncounseled and not advised of his right to appeal. He also alleged newly discovered evidence and actual innocence. He said he was being held in custody unlawfully. He said his State charges were being used to enhance his Federal sentence. He said his charges were uncounseled and his plea was accepted by general sessions in violation of State rules of criminal procedure, Federal rules of criminal procedure, and Boykin v. Alabama. (App. p. 2- p. 3).

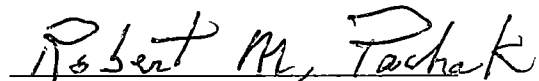
Petitioner also filed a supplemental amendment in support of his application for post-conviction relief. He alleged that marijuana conviction was invalid because the amount of marijuana involved was on 4.5 grams which was a misdemeanor under S.C. Code 44-53-370. (App. p. 11-p. 13).

As noted above, petitioner's application was dismissed pursuant to the restrictive filing order. There was no hearing. The order stated that petitioner did not submit a filing fee with his application. (App. p. 24).

This Court has previously held that an applicant is entitled to "one bite at the apple." Gamble v. State, 298 S.C. 176, 379 S.E.2d 118, 119 (1989); Odom v. State, 337 S.C. 256, 523 S.E.2d 753, 755 (1999).

**CONCLUSION**

Petitioner's case should be remanded for a hearing on his application.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 30th day of July, 2018.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

---

CURTIS D. RICHARDSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

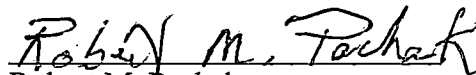
PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Curtis D. Richardson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge William H. Seals, which was held on , and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Curtis D. Richardson.

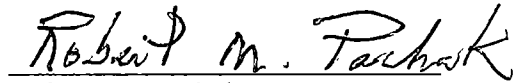
Respectfully Submitted,

  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 30th day of July, 2018.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of his 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."



Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

This 30th day of July, 2018.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

---

CURTIS.D. RICHARDSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,


RESPONDENT

---

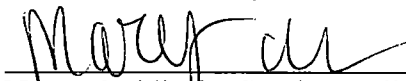
CERTIFICATE OF SERVICE

---

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Johnny Ellis James, Jr., 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 Curtis D. Richardson, #28507-171, at Federal Correctional Institution, P. O. Box 1500, Butner, NC 27509, this 30th day of July, 2018.

  
Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 30th day of July, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: May 12, 2027.