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JUL 17 2019

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

SC Court of Appeals

APPELLATE CASE NO.: 2018-000396

RICHARD B. NILES, Jr.  
DEFENDANT,

PETITIONER'S MOTION TO DENY  
COUNSEL'S MOTION TO BE RELIEVED  
AS COUNSEL FOR PETITIONER

v.

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STATE OF SOUTH CAROLINA,  
RESPONDENT.

S.C. SUPREME COURT

THIS MATTER COMES BEFORE THE COURT BY WAY PETITIONER'S PRO SE BRIEF FILED BY THE PETITIONER RICHARD B. NILES, Jr. [PETITIONER]. THE PETITIONER WISHES TO ADDRESS THE INADEQUACY WITH WHICH COUNSEL FOR THE PETITIONER, ATTORNEY JAMES FALK, ESQUIRE. HAS FAILED TO LEGITIMATELY ARGUE THE BELOW LISTED ISSUES WHICH HE HAS STATED THAT HE HAS.

- [1] PCR COURT FAILED TO FIND TRIAL COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE TRIAL COURT'S RESPONSES TO THE JURY'S QUESTIONS.
- [2] PCR COURT ERRED IN FAILING TO FIND APPELLATE COUNSEL INEFFECTIVE FOR NOT BRIEFING ISSUE THAT TRIAL COUNSEL ERRED IN NOT OBJECTING TO TRIAL COURT'S RESPONSES TO THE JURY'S QUESTIONS.

THE PETITIONER WISHES TO EXHIBIT THE INADEQUACY WITH WHICH COUNSEL HAS "BARELY MENTIONED" THE AFORE-SAID ISSUES BEFORE THE PCR COURT DURING PETITIONER'S PCR HEARING. AS COUNSEL ADDRESSES THE PCR COURT LISTING THE ISSUES. " WE ARE ALSO RAISING THAT TRIAL COUNSEL FAILED TO PROPERLY HANDLE SOME OF THE COURT'S RESPONSES TO QUESTIONS THAT WERE ASKED BY THE JURY DURING THEIR DELIBERATIONS." SEE APP.pg.973 [LINE 11-14].

BJT, WITH RESPECT TO ARGUING THIS ISSUE SO THAT IT'S MERIT CAN BE BROUGHT BEFORE THE PCR COURT, ON RECORD FROM THE PCR PROCEEDING WE

CANNOT FIND WHERE THIS ARGUMENT WAS ADEQUATELY BROUGHT BEFORE THE COURT.

THIS ISSUE WAS "BARELY MENTIONED" ONCE MORE WHEN COUNSEL FOR THE PETITIONER SAID: " IF I COULD MOVE FORWARD, THEN, ON PAGE--JUST IF I COULD CALL THE ATTENTION TO PAGE 721 OF THE TRIAL TRANSCRIPT, LINES 7 THROUGH 11. THEN TO LINES 14 THROUGH 17.

PAGE 721 OF THE TRANSCRIPT. AND I THINK THAT THAT CLEARLY SHOWS THAT THE JURY WAS SORT OF WRESTLING WITH REASONABLE DOUBT, BURDEN OF PROOF THAT THE STATE HAD TO MAKE IN THAT CASE. AND TRIAL COUNSEL SHOULD HAVE SOUGHT CLEARER-- SHOULD HAVE SOUGHT A DIFFERENT ANSWER BY THE COURT TO THE JURY'S QUESTIONS."

THE PETITIONER ADVANCES THAT THAT WAS THE ENTIRETY OF THAT ISSUE BEING RAISED BEFORE THE PCR COURT. AS THE PETITIONER HAS HAD THE OPPORTUNITY TO BRIEF THESE TWO ISSUES IT WAS MADE KNOWN TO HIM JUST HOW LITTLE THESE ISSUES WERE EXPLAINED BEFORE THE COURT THAT IT COMPELLED THE PETITIONER TO INFORM THE SUPREME COURT JUSTICES ABOUT IT AS THE PETITIONER IS MINDFUL THAT THIS DISCREPANCY IN THE RAISING OF THE ISSUES MAY HAVE RESULTED IN THEIR BEING DISMISSED BY THAT COURT. FOR THESE REASONS THE PETITIONER REQUESTS THIS HONORABLE COURT TO DENY COUNSEL MOTION TO BE RELIEVED AS COUNSEL.

RESPECTFULLY SUBMITTED,

*Richard B. Niles, Jr.*

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