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Apr 23 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Newberry County
The Honorable Eugene C. Griffith, Trial Judge
The Honorable Casey L. Manning, Post-Conviction Relief Judge

Appellate Case No. 2020-001080

MANUEL S. HERNANDEZ,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**RETURN TO MOTION FOR APPOINTMENT OF COUNSEL AND CERTIFIED
INTERPRETER**

ALAN WILSON
Attorney General

BRIANNA L. SCHILL
Assistant Attorney General
S.C. Bar No. 103380

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

This matter comes before this Court pursuant to a “Motion for Appointment of Counsel and Certified Interpreter” filed by Petitioner Manuel S. Hernandez, in relation to his appeal from the denial of his application for post-conviction relief. By letter dated April 14, 2021, this Court requested Respondent, the State of South Carolina, file a return to this filing. Respondent makes the following return:

I. STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections. Petitioner was indicted at the August 2014 term of the Newberry County Grand Jury for second-degree criminal sexual conduct with a minor (victim 11-14 years of age inclusive) (2014-GS-36-0489). Petitioner was represented by Charles Verner, Esquire. On April 6, 2015, Petitioner pled guilty as indicted before the Honorable Eugene C. Griffith, Jr., and was sentenced to imprisonment for twelve years. Petitioner did not appeal his conviction or sentence.

In his original application for post-conviction relief, Petitioner alleged he is being held unlawfully for the following reasons:

Ineffective Assistance of Counsel

1. “Counsel failed to conduct meaningful independent investigation”
2. Failed to inform Petitioner of negotiated plea agreements
3. “Failed to apprise Petitioner of the many exclusionary mechanisms available to attack the validity of the State's evidence and any statements given by Petitioner or witnesses”
4. “Failed to explain the charges to Petitioner and the facts of these charges in relationship to the applicable law”
5. “Failed to formulate any defense strategy and took the path of least resistance by coercing Petitioner to plead guilty”
6. “Failed to withdraw Petitioner's guilty plea”
7. “Failed to fully apprise Petitioner of his constitutional rights”

Involuntary Guilty Plea

On October 10, 2019, Petitioner served upon Respondent an amended PCR application, adding the following claims:

Ineffective Assistance of Counsel

1. Failure to inform Petitioner of his deportation risks;
2. Failure to obtain Victim's medical records;
3. Failure to suppress Petitioner's statements; and
4. Failure to investigate and prepare the case for trial

A hearing was held on October 18, 2019, at the Greenwood County Courthouse. At the outset of the hearing, Petitioner stated he was going forward on the allegations contained in his original and amended application. By Order dated December 2, 2019, the PCR court denied Petitioner's PCR application and dismissed it with prejudice. Petitioner filed a Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Respondent subsequently filed a return to Petitioner's Motion to Reconsider. Petitioner's motion was denied by Order dated July 16, 2020.

Applicant filed a timely notice of appeal. On January 28, 2021, Appellate Defender David Alexander, Esquire filed a *Johnson*¹ Petition for Writ of Certiorari and a motion to be relieved as counsel pursuant to *Johnson*. Petitioner filed a *pro se* response. The *Johnson* petition and motion to be relieved are currently pending before this Court. By motion dated April 5, 2021, and filed April 8, 2021, Applicant requested an appointment of counsel and a certified interpreter. By letter dated April 14, 2021, this Court requested Respondent file a response to this motion.

¹ *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

II. RETURN TO PETITIONER'S "MOTION FOR APPOINTMENT OF COUNSEL AND CERTIFIED INTERPRETER"

In his "Motion for Appointment of Counsel and Certified Interpreter," Petitioner requests this Court appoint him counsel and an interpreter. However, this motion is simply improper. Petitioner is currently represented by Appellate Defender David Alexander, as Petitioner's *Johnson* Petition and Alexander's motion to be relieved pursuant to *Johnson* are still pending before this Court. Should this Court deny Petitioner's petition and grant Alexander's motion to be relieved pursuant to *Johnson*, this Court will have determined Petitioner's PCR appeal lacks merit, and therefore, neither counsel nor an interpreter would be proper or necessary. In the alternative, should this Court deny Alexander's motion to be relieved as counsel pursuant to *Johnson* and instruct the parties to address an issue, Respondent would not oppose Petitioner's request for an interpreter. However, even if this Court were to deny Alexander's motion to be relieved as counsel pursuant to *Johnson* and direct the parties to address an issue, Petitioner's request for appointment of counsel would still be improper as Alexander would be representing Petitioner.

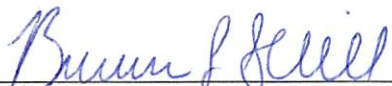
CONCLUSION

This Court should deny Petitioner’s motion as it is currently improper. However, should this Court deny Alexander’s motion to be relieved as counsel and direct the parties to address an issue, Respondent would not oppose Petitioner’s request for an interpreter. In any event, Petitioner’s request for an appointment of counsel is improper because pursuant to *Johnson*, this Court will either determine this appeal lacks merit and relieve Alexander, or this Court will deny Alexander’s motion to be relieved, in which case, Alexander will still be representing Petitioner.

Respectfully submitted,

ALAN WILSON
Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

BY: 
Brianna L. Schill
S.C. Bar No. 103380

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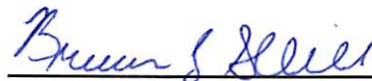
RESPONDENT.

PROOF OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Return to Motion for Appointment of Counsel and Certified Interpreter has been served upon opposing counsel by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

David Alexander, Esquire
dalexander@sccid.sc.gov

This 23rd day of April, 2021.



Brianna L. Schill
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
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briannaschill@scag.gov

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STATE OF SOUTH CAROLINA,

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CERTIFICATE OF SERVICE

I, Kaitlyn Slice, certify that I have served the Petitioner with a copy of the Return to Motion for Appointment of Counsel and Certified Interpreter by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

**Manuel S. Hernandez, #363633
OB-0032-B
Kershaw Correctional Institution
Kershaw, South Carolina 29069**

I further certify that all parties required by Rule to be served have been served. This 23rd day of April, 2021.



KAITLYN S. SLICE
LEGAL ASSISTANT



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

April 23, 2021

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
(By Electronic Filing Only)

Re: **Manuel S. Hernandez v. State of South Carolina**
Appellate Case No. 2020-001080

Dear Ms. Kitchings:

Enclosed please find a copy of the Return to Motion for Appointment of Counsel and Certified Interpreter for filing in the above-referenced post-conviction relief appeal. By copy of this letter, I am serving opposing counsel with this Return. Additionally, because this was a *pro se* motion, I am also serving a copy upon Petitioner directly by U.S. mail.

Sincerely,

Brianna L. Schill
Assistant Attorney General
SC Bar No. 103380

BLS/ks
Enclosures

cc: David Alexander, Esquire (By Email Only)
Manuel S. Hernandez (By U.S. mail)