

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

DOMINICK LORENZO Johnson — PETITIONER  
(Your Name)

VS.

Court of Appeal — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United State Court of Appeal for the fourth Cir.

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: \_\_\_\_\_

\_\_\_\_\_, or

☐ a copy of the order of appointment is appended.

Dominick L. Johnson  
(Signature)

**AFFIDAVIT OR DECLARATION  
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Dominick L. Johnson, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Self-employment	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Income from real property (such as rental income)	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Interest and dividends	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Gifts	\$ <u>50</u>	\$ <u>50</u>	\$ <u>25</u>	\$ <u>25</u>
Alimony	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Child Support	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Disability (such as social security, insurance payments)	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Unemployment payments	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Public-assistance (such as welfare)	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Other (specify): <u>NONE</u>	\$ <u>none</u>	\$ <u>none</u>	\$ <u>none</u>	\$ <u>none</u>
<b>Total monthly income:</b>	\$ <u>50</u>	\$ <u>50</u>	\$ <u>25</u>	\$ <u>25</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	U.S. Penitentiary Thomson, Thomson IL, 6128	N/A	\$ none
			\$ none
			\$ none

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	105 Joe Louis Street Greenville S.C., 29611	N/A	\$ none
			\$ none
			\$ none

4. How much cash do you and your spouse have? \$ 0  
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
none	\$ 0	\$ Disability
none	\$ 0	\$ Disability
none	\$ 0	\$ Disability

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☒ Home  
Value Government Assistance

☐ Other real estate  
Value N/A

☐ Motor Vehicle #1  
Year, make & model N/A  
Value

☐ Motor Vehicle #2  
Year, make & model N/A  
Value

☐ Other assets  
Description N/A  
Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>Internal</u>	\$ <u>600</u>	\$ <u>N/A</u>
<u>Revenue</u>	\$ <u>1,200</u>	\$ <u>N/A</u>
<u>SERVICES (IRS)</u>	\$ <u>1,800</u>	\$ <u>N/A</u>

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
<u>Marklea Dillard</u>	<u>Brother</u>	<u>33</u>
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>N/A</u>	\$ <u>N/A</u>
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>0</u>	\$ <u>0</u>
Home maintenance (repairs and upkeep)	\$ <u>0</u>	\$ <u>0</u>
Food	\$ <u>0</u>	\$ <u>0</u>
Clothing	\$ <u>0</u>	\$ <u>0</u>
Laundry and dry-cleaning	\$ <u>0</u>	\$ <u>0</u>
Medical and dental expenses	\$ <u>0</u>	\$ <u>0</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>0</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>0</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>0</u>	\$ <u>0</u>
Life	\$ <u>0</u>	\$ <u>0</u>
Health	\$ <u>0</u>	\$ <u>0</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Other: _____	\$ <u>0</u>	\$ <u>0</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ <u>0</u>	\$ <u>0</u>
Installment payments		
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Credit card(s)	\$ <u>0</u>	\$ <u>0</u>
Department store(s)	\$ <u>0</u>	\$ <u>0</u>
Other: _____	\$ <u>0</u>	\$ <u>0</u>
Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u>0</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>0</u>
Other (specify): _____	\$ <u>0</u>	\$ <u>0</u>
<b>Total monthly expenses:</b>	\$ <u>0</u>	\$ <u>0</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☒ Yes    ☐ No    If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form?    ☐ Yes    ☒ No

If yes, how much? \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes    ☒ No

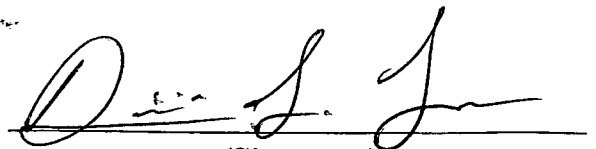
If yes, how much? \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 5th, 2023

  
(Signature)

(- Attachment -  
For Question 9)

I honestly am expecting a major change in my monthly income due to not yet receiving my "Stimulus IPP payment" during the Covid-19 pandemic. I have not received any of those payments yet. Once I do there will be a significant change in my monthly expenses, Etc.

No.

IN THE

SUPREME COURT OF THE UNITED STATES

Dominick L. Johnson — PETITIONER  
(Your Name)

vs.

U. S. Court of Appeals — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United State Court of Appeals for the fourth Cir.  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dominick Lorenzo Johnson  
(Your Name)

(USP-Pollock) P.O. Box 2099  
(Address)

Pollock, LA 71467-0000  
(City, State, Zip Code)

800-477-5437  
(Phone Number)



### QUESTION(S) PRESENTED

- 1.) Is it true? or Not, that per federal law that all 922(g)'s are Constitutionally Invalid?
- 2.) What is the significance of a 922(g) when a defendant is first indicted?
- 3.) If a attorney is ineffective during plea agreement and clearly clarify this during sentencing/record is the attorney appropriate for representation?
- 4.) Can a defendant still be convicted if he has a post-conviction relief held in state court that relates to why he shouldn't be considered a ACCA?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

- Rehaif v. United States 588 U.S., 139 Ct, 204 L.Ed.  
Decided June 21, 2019.
- Bailey v. United States 516 U.S., 137, 133 L. Ed 2d  
Decided December 6, 1995
- Strickland v. Washington 466 U.S. 668, 80 L Ed 2d  
Decided May 14, 1984
- Furlow v. United States 928 F.3d 311; 2019 U.S.App.  
Decided June 27, 2019
- Greer v. United States 141 S. Ct. 2090; 210 L. Ed. 2d.  
Decided June 14, 2021 Argued April 20, 21  
(See Attachment)

- Attachment -

- Tobias Lee vs. Higgins, 2008, U.S. no. 8:08-1594) Due process.
- Furlow v. United States, 928 F.3d. 311; 2019 U.S. App. Decided June 27, 2019

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APPENDIX B	UNITED STATES DISTRICT COURT AND MAGISTRATE FINDINGS
APPENDIX C	ORDER OF A FEDERAL COURT OF APPEALS DENYING RE-HEARING
APPENDIX D	DECISION FROM THE UNITED STATES DISTRICT COURT OF COMMON PLEAS
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APPENDIX F	Motion Affirmed by United States in the Court of Appeals (See: 2020 U.S. App. Lexis)

## TABLE OF AUTHORITIES CITED

### CASES

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- *Rehaif v. United States* 588 U.S., 139 Ct. pg. 1-3
- *Bailey v. United States* 516 U.S. 137, 133 pg. 2-3
- *Greer v. United States* 141 S.Ct. 2090; 210 pg. 1-2

### STATUTES AND RULES

- Rule 52(b) pg. 1-3

### OTHER

NOTE: I together with NO. 20-444, *United States v. Gary*, on certiorari to the United States Court of Appeals for the Fourth Circuit, [This case in particular piggy backs off the *Greer v. U.S.* (see above App.)]

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☒ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 1, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 12, 2023, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- I'm Acknowledging to the Courts during the continuous of my writ of Certiorari motion that all 922(g)'s are Constitutionally Unlawful SEE *Rehaif v. United States*, 588 U.S. 139, ... Appendix A. The Statutory text supports the presumption. It specifies the following;

"If a defendant commits a crime, if he 'knowingly' violates SEC. 922(g) which makes possession of a firearm unlawful when the following elements are satisfied: (1) a status element (here being a alien, ... illegally or unlawfully in the United States) (2) A possession element (to possess); (3) A jurisdictional element (In or effecting Commerce) and; (4) A firearm element (A firearm or Ammunition)." SEE also *Greer v. United States*, 141 S. Ct. Appendix B

The "Meas' rea" is the first element to charging a defendant under criminal statute, theirs a "status element" inside the "Meas' rea" that if show insufficiency it will rise a unconstitutional violation, ... related case: (*Bousely v. United States*, 523 US 614, (1998))

- I'm also making acknowledgement to the Courts to protect my "Due process Rights" As a defendant im afforded protection due to being incarcerated in federal custody and i have no control over Federal transfers (SEE *Tobias Lee v. Higgins*, 2008 U.S. no. 8: 08-1594) Appendix C.
- The above is specifically pretaining to my "Due process" which affords me to file without conflict. Appendix C.



## STATEMENT OF THE CASE

- The petitioner is greatly making it clear that all 922(g)'s are Constitutionally Invalid Due to the first element of the 922(g) (The meas'rea) not being properly served, which violates the "status element" inside the meas'rea.

If the "status element" inside the meas'rea is sufficient then it lacks "knowingly" that provides knowledge of the penalties and relevant category.

It now remains essential that the Government prove both, that i knew i possessed a firearm being a convicted felon and that i knew my relevant category. Thus before the Supreme Court ruling in *Rehaif* (SEE Appendix A in petition) that knowledge of category was never provided, simply because that knowingly language wasn't in the reading of the 922(g) statute.

The Standard provision under Federal pleas and plea agreements, it's that your attorney must inform you of the nature of the charge(s) and the elements of the charge(s) that must be provided by the United States beyond a reasonable doubt before being found guilty. (SEE *Strickland v. Washington*, 466 US 668)

- If the Courts view the status of my sentencing hearing my attorney made it clear and admitted that their was (the following);

..... Theirs inconsistencies between the state Shepard documents and how my client has been categorized as a Arm Career Criminal and i don't understand myself. (SEE Case: 6:16-cr-00761-TMC-1 (2017)) ..... - Benjamin T. Stepp -  
- South Carolina Greenville County United Federal Court -  
SEE Attachment next page....

## - Attachment - Statement of the Case

- To further clarify the standards of my case using Furlow it specify directly:

..... "When applicable, the modified Categorical approach for determining whether an offense constitutes a predicate for purpose of the armed Career Criminal Act (ACCA) or the United States Sentencing Guidelines Career offender provision permits a sentencing court to examine a limited class of documents to determine which of a status alternative elements formed the basis of the defendant's prior conviction. These documents (often called Shepard documents) include the state court indictment, a transcript of the plea colloquy in state court, or a comparable state court record. Once a sentencing court has used those Shepard documents to identify the elements of the particular state offense for which the defendant was convicted, it must compare those elements with the ~~statutory~~ definition of serious drug offense and controlled substance offense. If there is a match, the defendant's conviction is a predicate for the ACCA or the Career offender provision, respectively. Because S.C. Code Ann § 44-53-375 (B) prohibits the mere purchase of methamphetamine or crack cocaine. The statute is not a categorical match with the federal definitions of serious drug offense and controlled substance offense, 18 U.S.C. § 924(e)(2)(A)(ii) defining serious drug offense; U.S. Sentencing Guidelines Manual § 4B1.2(b) (defining controlled substance offense).".....

- I ask the courts to acknowledge the above and apply appropriately.

## REASONS FOR GRANTING THE PETITION

I bring Fourth to the court the compelling reason for granting the following petition is due to the fact the Courts demonstrated a "Due process violation" by dismissing my case with prejudice without properly affording me the rights to exercise my redress.

The appeals court conflicted with Rule 10(a) showing characteristics of "prejudice" by not acknowledging my "Due process Rights" for the purpose of evidence on my behalf that would've protect me under rule 40 "Time limits". (See copy 10/31/22) the evidence that protects me under the "Due process clause" is a Rule 45 notice that I received Oct 20, 2022 Thus telling me to file my Declaration of Inmate filing" timely (see notice)

- Every defendant that is confined to any segregated housing unit has no control over mail process, transactions (legally) or transfers (see Tobias Lee v. Higgins, 2008, U.S. no. 8:08-1594) were a petitioner files at one institution but is then transferred after filing has no control over the mailing system process and due to the mailing system not processing a petitioner's orders, motions, etc. creates constitutionally violation under "Due process".

To corroborate the facts above I ask the courts to allow me to proceed further with my writ of certiorari to exercise my claims for relief for the erroneous 922(c) that is constitutionally invalid.

— (See proof of filing...  
Declaration of inmate filing) —

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dominick L. Johnson

Date: July 5th, 2023

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Dominick Lorenzo Johnson PETITIONER  
(Your Name)

VS.

U. S. Supreme Court — RESPONDENT(S)

PROOF OF SERVICE

I, Dominick Lorenzo Johnson, do swear or declare that on this date, July 5th, 2023, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States, Room 5614  
Department of Justice, 950 Pennsylvania Ave, N.W.,  
Washington D.C. 20530-0001.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 5th, 2023

D. L. Johnson  
(Signature)

Retail



20543

U.S. POSTAGE PAID  
FCM LG ENV  
PINE KNOT, KY 42635  
SEP 22, 2023

\$0.00

RDC 99

R2305K140622-5

FILED: April 12, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 22-7053  
(6:16-cr-00761-TMC-1)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DOMINICK LARENZO JOHNSON

Defendant - Appellant

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O R D E R

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The court strictly enforces the time limits for filing petitions for rehearing and petitions for rehearing en banc in accordance with Local Rule 40(c). The petition in this case is denied as untimely.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 22-7053**

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**UNITED STATES OF AMERICA,**

**Plaintiff - Appellee,**

**v.**

**DOMINICK LARENZO JOHNSON,**

**Defendant - Appellant.**

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**Appeal from the United States District Court for the District of South Carolina, at  
Greenville. Timothy M. Cain, District Judge. (6:16-cr-00761-TMC-1)**

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**Submitted: December 20, 2022**

**Decided: December 27, 2022**

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**Before NIEMEYER and QUATTLEBAUM, Circuit Judges, and FLOYD, Senior Circuit  
Judge.**

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**Dismissed by unpublished per curiam opinion.**

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**Dominick Lorenzo Johnson, Appellant Pro Se.**

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**Unpublished opinions are not binding precedent in this circuit.**

PER CURIAM:

Dominick Lorenzo Johnson seeks to appeal the district court's order in his 28 U.S.C. § 2255 proceeding granting his motion to amend, directing the clerk to mail him a copy of the Government's amended motion for summary judgment and an order under *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) (per curiam), and dismissing his 28 U.S.C. § 2241 petition without prejudice and with leave to refile. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, and certain interlocutory and collateral orders, 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-47 (1949). The order Johnson seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. Accordingly, we dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

**DISMISSED**



IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

USA,	)	
	)	Action No. 6:16-761
Plaintiff,	)	
	)	<b><u>ORDER</u></b>
vs.	)	
	)	
Dominick Lorenzo Johnson	)	
	)	
Defendant(s).	)	
_____	)	

A motion to dismiss or for summary judgment has been filed in this case that was brought originally by an individual who is without counsel. Because the plaintiff does not have an attorney, the Clerk is directed to send him or her by mail a copy of this Order, an explanation of summary judgment procedure, and a copy of pertinent extracts from Rule 12 and Rule 56 of the Federal Rules of Civil Procedure.

The plaintiff shall have a period of **thirty-three (33) days** from the date of this Order to file any material (s)he wishes to file in opposition to the motion in accordance with the requirements explained in the Rules, and if (s)he fails to respond adequately, the motion may be granted, thereby ending this case.<sup>1</sup> Careful attention should be given to the requirements of Rule 56(e) concerning the necessity for affidavits filed in opposition to summary judgment to be based on personal knowledge, to contain facts admissible in evidence, and to be executed by a person who would be competent to testify as to matters contained in the affidavit if he or she were called to the witness stand. Affidavits or exhibits pertaining to matters that are not involved in this case will not be considered by the Court, nor will affidavits that contain only conclusory statements or argument of facts or law.

A person who is representing himself in federal court may submit a brief or memorandum containing argument if he or she desires to do so, but this is not required. However, submission of a brief, or even the filing of a reply to an answer or return, will not be sufficient alone to withstand a properly supported motion for summary judgment.

This order is entered at the direction of the Court.

May 26, 2022

S/Timothy M Cain  
United States District Judge

<sup>1</sup>This is one (1) month plus three (3) days mail time, and the time will not be enlarged unless highly persuasive reasons are submitted under oath to support a motion to enlarge time.

Federal Rules of Civil Procedure<sup>4</sup>

Rule 12(b) provides, in part:

"\* \* \* If, on a motion asserting the defense...to dismiss for failure of the pleading [this means the complaint, motion or petition] to state a claim upon which relief can be granted, matters outside the pleading [here meaning the answer or return] are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent [that is, having some connection with the matter or matters in dispute] to such a motion by Rule 56."

Rule 56 provides, in part:

"(b). . . A party against whom a claim...is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof."

"(e) \* \* \* When a motion for summary judgment [and this includes a Rule 12(b) motion to dismiss] is made and supported as provided in this rule, an adverse party [this is the plaintiff(s) or petitioner(s)] may not rest upon the mere allegations or denials of his pleading [meaning the complaint, motion or the petition], but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. [Emphasis added to show that specific facts are required, not conclusory allegations or argument.] If he does not so respond, summary judgment, if appropriate, shall be entered against him."

See attached explanation of summary judgment procedure for a quotation of a part of Rule 56(e) as to the form and sufficiency of affidavits filed in support of or in opposition to a motion for summary judgment. Rule 56(e) also requires that copies of all papers referred to in an affidavit must be attached to the affidavit, and that such copies must be sworn to or certified.

<sup>4</sup>The material contained within brackets is inserted by way of explanation of terms used, and is not a part of the Rules quoted. These extracts are prepared for the use of state and federal prisoners who submit complaints, petitions or § 2255 motions to the United States District Court in their own behalf (pro se). The United States Court of Appeals for the Fourth Circuit has expressly or impliedly approved the application of Rules 12 and 56 to petitions for post-conviction relief in federal court pursuant to Title 28, United States Code, Sections 2254 and 2255, as well as to civil rights actions based on Title 42, United States Code, Sections 1983 and 1985.

**EXPLANATION OF SUMMARY JUDGMENT PROCEDURE**(For plaintiffs or petitioners who do not have counsel)<sup>2</sup>

Most pro se litigants are prisoners who seek federal habeas corpus relief or relief available under civil rights statutes, 42 U.S.C. § 1983 et seq. Generally, the only issues federal courts entertain in such cases are alleged violations of rights secured by the Constitution. The Federal Rules of Civil Procedure apply in all civil rights cases, and the rules applicable to pleadings and motions apply for the most part in federal habeas cases started by state (or federal) prisoners.

When a defendant (or a respondent) moves or pleads for summary judgment under Rule 56, or sets up in a motion or pleading a defense that the plaintiff (or petitioner) has failed to state a claim upon which relief can be granted, he is arguing, in effect, that a constitutional claim has not been shown by the plaintiff's complaint (or the petitioner's petition). If affidavits or other material are submitted by a defendant (or respondent) to support that defense, and if the court accepts such matters outside the pleading, the court treats the submission as a request for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

Whenever one or more affidavits or other material outside the pleading of a defendant (or respondent) are served on a pro se plaintiff (or a pro se petitioner), he cannot rest upon the allegations or denials of his own pleadings. He has a right to file one or more opposing affidavits or other exhibits, and indeed must do so if his action is to survive. If this is not done, the court may very well grant summary judgment against him. [This is true also if the parties are all represented by counsel.]

All affidavits submitted by pro se litigants must meet the standards required by Rule 56, which standards can be determined from the following quotation of a portion of Rule 56(e):

"(e) Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

If a pro se litigant does not fully understand what facts would be admissible, and who would be competent to testify, he should not withhold affidavits, for the court will determine whether these standards are met by his affidavit(s).

Under Rule 56(f), if a person served with affidavits cannot obtain opposing affidavits, he must submit to the court his own affidavit, stating why he cannot present by affidavit facts essential to justify his opposition to the facts set out in the affidavits served by the opposing party. Under Rule 56(g), all affidavits submitted to the court must be made in good faith (and, obviously, the facts sworn to must be true),<sup>3</sup> and appropriate action will be taken by the court if it is satisfied that affidavits are presented in bad faith, or solely for the purpose of delay.

UNITED STATES DISTRICT JUDGE  
**EXCERPTS FROM RULE 12 AND RULE 56**

This explanation, or one of similar import, is required by Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), which was a civil rights case. The same procedure applies in federal habeas corpus cases under Webb v. Garrison, No. 77-1855 (4th Cir., decided July 6, 1977).

<sup>3</sup>All affidavits submitted in a federal case are submitted under penalties of perjury or subornation of perjury (18 U.S.C. §§ 1621 and 1622), and the federal statute which makes use of the mail to defraud a crime (18 U.S.C. § 1341) has been applied to convict a person who transmitted false averments by mail in a civil rights suit seeking damages. United States v. Murr, 681 F.2d 246 (4th Cir. 1982), cert. denied, 459 U.S. 973 (1982).

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**  
**INFORMAL BRIEF**

No. 22-7053, US v. Dominick Johnson

6:16-cr-00761-TMC-1

**1. Declaration of Inmate Filing**

An inmate's notice of appeal is timely if it was deposited in the institution's internal mail system, with postage prepaid, on or before the last day for filing. Timely filing may be shown by:

- a postmark or date stamp showing that the notice of appeal was timely deposited in the institution's internal mail system, with postage prepaid, or
- a declaration of the inmate, under penalty of perjury, of the date on which the notice of appeal was deposited in the institution's internal mail system with postage prepaid. To include a declaration of inmate filing as part of your informal brief, complete and sign the declaration below:

**Declaration of Inmate Filing**

Date NOTICE OF APPEAL deposited in institution's mail system: 10-3-11

I am an inmate confined in an institution and deposited my notice of appeal in the institution's internal mail system. First-class postage was prepaid either by me or by the institution on my behalf.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Signature: [Signature] Date: 10/3/11

*[Note to inmate filers: If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of Fed. R. App. P. 4(c)(1) or Fed. R. App. P. 25(a)(2)(A)(iii).]*

**2. Jurisdiction**

Name of court or agency from which review is sought:

U.S. District Court for the District of Columbia

Date(s) of order or orders for which review is sought:

Receiv. Order (6-11)-Inmate Brief 11/4/21

**3. Issues for Review**

Use the following spaces to set forth the facts and argument in support of the issues you wish the Court of Appeals to consider. The parties may cite case law, but citations are not required.

**Issue 1.**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

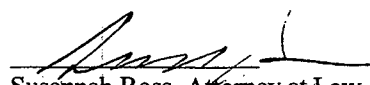
2016-CP-23-7631

Dominick L. Johnson, ..... Appellant,  
v.  
The State, ..... Respondent.

NOTICE OF APPEAL

Dominick L. Johnson appeals the Honorable Alex Kinlaw, Jr.'s Order of Dismissal filed August 7, 2020.

This 21 day of Aug., 2020.

  
Susannah Ross, Attorney at Law  
330 E. Coffee St.  
Greenville, SC 29601  
(864) 242-0029  
Attorney for Appellant

Other Counsel of Record:  
Taylor Zane Smith, Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
(803) 734-3970  
Attorney for Respondent

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

DOMINICK L. JOHNSON, )  
APPELLANT, )

VS. )

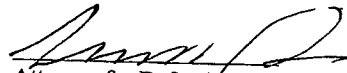
THE STATE OF SOUTH CAROLINA, )  
RESPONDANT. )

IN THE SUPREME COURT

CERTIFICATE OF SERVICE  
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Notice of Appeal** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of the Attorney General  
PCR Division  
P.O. Box 11549  
Columbia, SC 29211

  
Attorney for Defendant

This 21 day of August, 2020

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Dominick L. Johnson,  
Applicant,

v.

State of South Carolina,  
Respondent.

) IN THE COURT OF COMMON PLEAS  
) IN THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2016-CP-23-7631

**FINAL ORDER OF DISMISSAL**

PAUL B. BICKERSTAFF  
JUDGE  
GREENVILLE CO. SC

This matter comes before the Court by way of an application for post-conviction relief filed by Dominick L. Johnson ("Applicant") on December 29, 2016, in which he claimed that he was entitled to post-conviction relief for multiple reasons. The State ("Respondent") filed its return on July 17, 2017, and moved therein for summary dismissal of the application on the ground that Applicant failed to state a claim upon which post-conviction relief can be granted.

Applicant is presently in federal custody and incarcerated outside of South Carolina. During its May of 2016 term, the Greenville County Grand Jury indicted Applicant for two counts of distribution of cocaine base, third or subsequent offense (2016-GS-23-4366, -4367), and indicted Applicant during its December of 2015 term for possession of cocaine base with intent to distribute (2016-GS-23-8836). Randall Lee Chambers, Esquire, represented Applicant during the underlying criminal case, and Assistant Solicitor Andrew Kurt Hietman of the Thirteenth Circuit Solicitor's Office prosecuted the case. On July 21, 2016, Applicant appeared before the Honorable Edward W. Miller and pleaded guilty the lesser included offenses of two counts of distribution of cocaine base, second offense, and possession of crack cocaine, third offense. In accordance with the State's sentencing recommendation, Judge Miller sentenced Applicant to imprisonment for fifteen years for each count of distribution of cocaine base,

second offense, and for ten years for possession of crack cocaine, third offense. The sentences were suspended with probation for three years.

Applicant did not appeal his convictions or sentences.

In his application for post-conviction relief, filed on December 29, 2016, Applicant claims he is entitled to post-conviction relief because:

1. "Greenville County Sherriff officials gave [Applicant] a false preconception as to why they chose to knock on [Applicant's] door."
2. "Greenville County Sherriff officials did not state that they had a reasonable suspicion as to why they come to [Applicant's] residence" to speak to applicant concerning any crime applicant might have been involved in.
3. "Greenville County Sherriff officials lead [Applicant] astray by force."
4. "Greenville County Sherriff officials stepped inside [Applicant's] residence without [Applicant's] consent, demanding [Applicant] to step outside by pulling out Tasers."

In its return, filed on July 17, 2017, Respondent moved for the summary dismissal of the application on the ground that Applicant failed to state a claim upon which post-conviction relief can be granted, arguing the claims presented by applicant are not cognizable under the Uniform Post-Conviction Procedure Act ("Act").

On May 8, 2019, pursuant to Respondent's motion, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable Perry H. Gravely issued a conditional order of dismissal, conditionally granting Respondent's motion to dismiss and giving Applicant twenty days after the service of the order upon him to provide reasons, factual or legal, that the motion should not be granted outright and the application should not be dismissed summarily. The conditional order of dismissal was served on Applicant on May 21, 2019, as is shown by the attached cover letter and certificate of service, which are incorporated into this order.



Applicant, though represented by counsel throughout this PCR action, has filed various documents pro se. On June 20, 2019, Respondent filed a motion to strike Applicant's pro se filings. Judge Gravely granted Respondent's motion to strike in an order issued on June 20, 2019. Accordingly, this Court will not consider any of Applicant's pro se filings in ruling upon Respondent's motion for the summary dismissal of the application. Although Applicant has been served with the conditional order of dismissal, he has not filed any response thereto.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

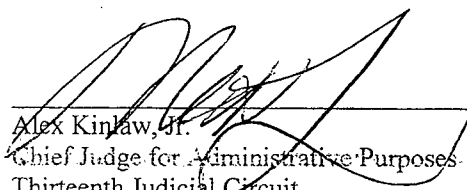
Before this Court are the records of the Greenville County Clerk of Court regarding Applicant's convictions, the transcript from Applicant's plea hearing before Judge Miller, and the records from Applicant's present application for post-conviction relief. This Court does not have records for Applicant from the South Carolina Department of Corrections because Applicant is in federal custody. Pursuant to S.C. Code Ann. § 17-27-70(b), this Court makes the following findings of fact and conclusions of law:

Applicant has failed to file a response to the conditional order of dismissal issued by Judge Gravely. Applicant has failed to give any reason that the conditional dismissal should not be final. Applicant has failed, therefore, to meet the burden imposed upon him in this matter. Respondent's motion for the summary dismissal of this application is granted, and the application is denied and dismissed with prejudice because it does not present a claim for which post-conviction relief can be granted under the Act.

**IT IS THEREFORE ORDERED** that Respondent's motion for the summary dismissal of the application is granted and this application is denied and dismissed with prejudice. This Court hereby advises the Applicant that he must file and serve a Notice of Appeal, through his attorney, within thirty days of the service of this Order to secure appellate review. Rule 203,

SCACR. Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 3<sup>rd</sup> day of Sept, 2020.

  
Alex Kinlaw, Jr.  
Chief Judge for Administrative Purposes  
Thirteenth Judicial Circuit

Crawley, South Carolina.

Dep. mailed to
Attorney <u>general / S. Ross</u>
on <u>10</u> / <u>27</u> / <u>2020</u>