

**Supreme Court**

No. 01-14-C.A.  
(P/97-5454)

State of Rhode Island

v.

Edson Toro

**ORDER**

The petitioner, Edson Toro, appeals from the denial of his petition for post-conviction relief. In the Superior Court, his court-appointed attorney concluded that Mr. Toro's petition lacked merit, and filed a report recommending that the petition be dismissed. A hearing justice agreed, and dismissed the petition with prejudice.

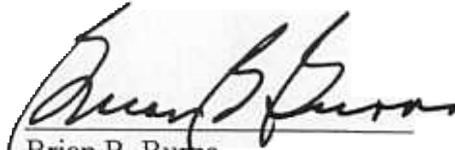
On appeal, the petitioner argues that the hearing justice failed to comply with the procedures set forth by this Court in Shatney v. State, 755 A.2d 130 (R.I. 2000) (per curiam). Those procedures require that if a hearing justice agrees with the assessment of a petitioner's attorney that the post-conviction relief petition has no arguable merit, then the justice must conduct a hearing with the petitioner present. If the justice decides to permit the attorney to withdraw, then the petitioner must be allowed the opportunity to proceed *pro se*, or the court must appoint new counsel to proceed with the petition. Id. at 135, 136-37. In this case, the hearing justice failed to follow these procedures.

The State has conceded that the hearing justice failed to follow the procedures outlined in Shatney, and it agrees that the case should be remanded to afford the petitioner an opportunity to

proceed with his post-conviction claims *pro se*. Accordingly, we sustain the appeal, and vacate the denial of the petition for post-conviction relief. This case is hereby remanded for a hearing in accordance with our dictates in Shatney v. State.

Entered as an Order of this Court this 22<sup>nd</sup> day of October, 2001.

By Order,



Brian B. Burns  
Clerk