

Supreme Court

No. 2014-34-Appeal.

Jose L. Garcia :
v. :
State of Rhode Island. :

ORDER

This case is before the Supreme Court on appeal by the applicant, Jose L. Garcia, from an order denying his application for postconviction relief. On July 11, 1995, the applicant was sentenced, after a jury trial, to six terms of life imprisonment, two of those terms without the possibility of parole, upon conviction for multiple counts of arson, conspiracy to commit arson, and felony murder in connection with the deaths of six family members in an arson fire in Providence that was set by the applicant. His convictions were affirmed by this Court in State v. Garcia, 743 A.2d 1038 (R.I. 2000). In 2000, the applicant filed an application for postconviction relief that was heard and summarily denied by a justice of the Superior Court on July 24, 2013, after his court-appointed counsel was permitted to withdraw following the filing of a memorandum in accordance with Shatney v. State, 755 A.2d 130 (R.I. 2000). After posing several questions to the applicant, the trial justice concluded that the claim rested on allegations of ineffective assistance of appellate counsel and declared that he would not “assess and decide whether or not counsel for [the applicant] in another forum, namely the Supreme Court,” effectively represented the applicant. The trial justice thereupon dismissed the application.

The state has filed a confession of error in this case, based on the trial justice's failure to advise the applicant of the court's intention to summarily dismiss the application and without providing the applicant with a meaningful opportunity to respond to the proposed dismissal, as required by G.L. 1956 § 10-9.1-6 and this Court's decision in Campbell v. State, 56 A.3d 448 (R.I. 2012).

Based on the state's confession of error and our careful review of the papers in this case, the Court accepts the confession of error with respect to the manner in which this case was decided in the Superior Court. We vacate the judgment, which dismissed the application for postconviction relief. We remand this case to the Superior Court for a new hearing in which the applicant shall be afforded the assistance of counsel.

Accordingly, the judgment denying postconviction relief entered in the Superior Court is vacated, and the case is remanded to the Superior Court for further proceedings consistent with this order.

Entered as an Order of this Court, this **6th** day of **May, 2014**.

By Order,

/s/
Clerk



RHODE ISLAND SUPREME COURT CLERK'S OFFICE

Clerk's Office Order/Opinion Cover Sheet

TITLE OF CASE: Jose Garcia v. State of Rhode Island.

CASE NO: No. 2014-34-Appeal.

COURT: Supreme Court

DATE ORDER FILED: May 6, 2014

JUSTICES: Suttell, C.J., Goldberg, Flaherty, Robinson, and Indeglia, JJ.

WRITTEN BY: N/A – Court Order

SOURCE OF APPEAL: Providence County Superior Court

JUDGE FROM LOWER COURT:
Associate Justice Robert D. Krause

ATTORNEYS ON APPEAL:
For Applicant: Jose Garcia, Pro Se
For State: Christopher R. Bush
Department of Attorney General