

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

**Jan 18 2023**

S.C. SUPREME COURT

\_\_\_\_\_  
Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge  
\_\_\_\_\_

JOHN D. LANE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001083  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Trial counsel erred in failing to develop the defense of immunity from prosecution in petitioner's case because petitioner experienced a drug overdose on the date of his arrest.

## STATEMENT

Petitioner John D. Lane pled guilty to trafficking in heroin (4 grams or more) as a lesser offense (negotiated)<sup>1</sup> during the August 2019 term of the Florence County General Sessions Court before Judge D. Craig Brown and was sentenced to imprisonment for a period of ten years (negotiated). Elizabeth Neyle represented petitioner at the plea proceeding, and Assistant Solicitor John Jepertinger appeared on behalf of the state. App. 1-12. Petitioner did not appeal his guilty plea or sentence.

On March 2, 2020, petitioner filed a PCR application with the Florence County Office of the Clerk of Court. App. 14-20. An amended PCR application was filed on March 2, 2020, and subsequently, another amended PCR application was filed as well. App. 21-23; App. 31. The respondent then filed a return dated August 21, 2020. App. 24-30. A PCR hearing was convened on April 20, 2022, at the Florence County Courthouse before George M. McFadden, Junior. App. 32-65. Petitioner was present at the hearing and represented by Ola A. Johnson, and Assistant Attorney General D. Russell Barlow appeared on behalf of the state.

On July 11, 2022, Judge McFadden filed an Order of Dismissal in the case. App. 67-82. Petitioner appealed. This petition follows.

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<sup>1</sup> Petitioner was indicted for the offenses of trafficking in heroin (28 grams or more) and possession of a weapon during the commission of a violent crime, which was nol prossed.

## ARGUMENT

Trial counsel erred in failing to develop the defense of immunity from prosecution in petitioner's case because petitioner experienced a drug overdose on the date of his arrest.

The facts in the case were presented to the plea judge at petitioner's guilty plea proceeding. On October 11, 2017, Florence County police responded to a report that a person was seen "passed out in the driver's seat of a car." Thereafter, police officers found petitioner as reported in the driver's seat of his car "passed out," and a loaded rifle on the passenger's seat, and 69.91 grams of heroin in his (petitioner's) pocket. App. 8, l.21-p. 9, l.8.

During the PCR hearing held in the case, petitioner testified that he was suffering from a drug overdose when the police found him on the date in question. Petitioner stated that trial counsel erred in failing to develop an immunity from prosecution defense due to his drug overdose in his case, which is allowed under S.C. Code Ann {44-53-1930, as this would have led to the dismissal of the state's drug charge filed against him. Petitioner added that he was hospitalized for seven days after his arrest because of his drug overdose. App. 40, l. 18 – p. 41, l.18; App. 47, lines 9-23.

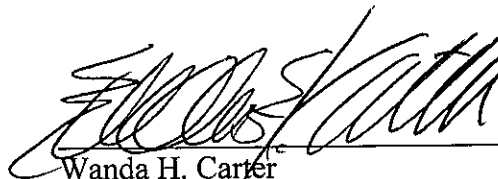
The Assistant Attorney General argued that petitioner's heroin charge did not fall under the eligible offenses listed to qualify for a drug overdose immunity from prosecution claim. App. 34, l. 22 - p. 35, l. 4; App. 36, l. 4 – p. 37, l. 12. Petitioner's PCR counsel argued that per extended negotiations, trial counsel could and should have maneuvered further in order to render the immunity defense applicable on petitioner's behalf. App. 37, l. 14 – p. 38, l. 24. The PCR judge dismissed petitioner's claim of ineffective assistance of counsel regarding counsel's failure to raise the defense of immunity from prosecution in his case. App. 38, l. 25 – p. 39, l. 5.

S.C. Code{44-53-1930 is the limited immunity prosecution for overdose victim law that allows relief to the extent that any person who experiences a drug or alcohol related overdose and is in need of medical assistance may not be prosecuted for any offenses listed under S.C. Code Ann {44-53-1920. S.C. Code Ann. 44-53-1920 lists offenses found under 44-53-370 (a) and (c) as eligible offenses that would allow for this immunity from prosecution. Although, petitioner was indicted under S.C. Code Ann {44-53-370 (e)(3)(c); nonetheless, his offense fell under the umbrella of S.C. Code Ann.{44-53-370; and therefore this immunity could and should have been raised on his behalf. Clearly, this statutory immunity was applicable to petitioner's case based on the spirit of the law despite the opposing position that the letter of the law disqualified petitioner from presenting such a claim.

Criminal statutes must be constructed against the state and in favor of the defendant, and the intent of the legislature must be ascertained in interpreting a statute. State v. Dickinson, 339 S.C. 194, 528 S.E.2d 675 (2000). Also, in criminal cases it must appear that the defendant violated not only the letter of the law, but the spirit of the law as well. State v. Dickinson, *supra*, citing to State v. Deangelis, 257 S.C. 44, 183 S.E.2d 906(1971). Petitioner's case was immune from prosecution per the spirit of the law under S.C. Code Ann. 44-53-1930. A statutory construction should not be out of harmony with the letter of the law or the spirit of the law. State v. Gilliam, 208 S.C. 126, 37 S.E.2d 299 (1946). Courts should comply with the spirit of the law as well as the letter of the law, and relief should be granted under the spirit of the law if it is substantial. Earle v. Greenville County, 215 S.C. 539, 56 S.E.2d 348 (1949). Counsel's error in failing to defend petitioner's case under this limited immunity from prosecution was ineffective assistance under the Sixth Amendment and Hill v. Lockhart, 474 U.S. 52 (1985), and but for the error, the outcome of petitioner's case would have been different.

**CONCLUSION**

Based on the foregoing argument, counsel for petitioner requests that this Court grant the petition and allow briefing on the above-raised issue in the case.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of January, 2023.

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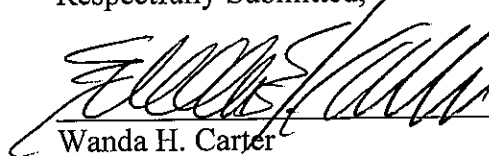
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for John D. Lane states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge George M. McFaddin, which was held on April 20, 2022, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for John D. Lane.

Respectfully Submitted,



Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of January, 2023.

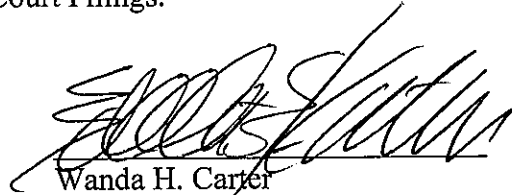
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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This 18th day of January, 2023.