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Aug 09 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari from Lee County
Honorable Diane Schafer Goodstein, Circuit Court Judge

JOHNNY HAGGINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000176

REPLY BRIEF OF PETITIONER

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ATTORNEY FOR PETITIONER

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ARGUMENT IN REPLY

A. Issue Preservation

Respondent initially argues that Petitioner's claim that he was denied the right to counsel is not preserved for appellate review. The issue of Petitioner being denied the right to counsel was raised to and ruled upon by the PCR court. In Petitioner's initial application he alleged as his fifth ground that "[t]he trial court abused its discretion and/or committed reversible error when trying (holding the trial) and/or sentencing defendant in absentia without giving defendant proper notice of hearing date 7-10-18 which was seal sentence." App. 105. Petitioner additionally alleged in his seventh ground that he was denied due process because he could not present a defense. App. 105. It is axiomatic that the right to counsel is an integral part of due process – protected by the Sixth Amendment and applied to the states through the Fourteenth Amendment – and goes hand in hand with the ability of a defendant to present a defense. The PCR court ruled on these two allegations by dismissing the claims as not cognizable under the PCR Act. The PCR court also, in a footnote, found the claim would fail on the merits because the "record reflects Applicant forfeited his right to counsel by failing to provide updated contact information and keep in contact with his attorney." App. 173.

B. Merits

Respondent maintains that free standing claims of trial court error, even when framed as deprivations of constitutional rights, are not cognizable claims under the PCR Act. Respondent relies on cases such as Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975), Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993), Stepney v. State, 278 S.C. 47, 292 S.E.2d 41 (1982), and Gibson v. State, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) to support its position. However, a critical aspect to all of these cases is that the PCR applicant *could have*

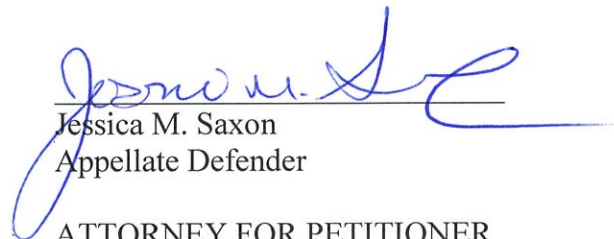
raised the matters on direct appeal and did not. The same is not true for Petitioner. He was tried in his absence and without counsel. No objections or motions were made on his behalf. The entire trial for two major felonies lasted approximately an hour. There were no preserved errors or objections that could have been reviewed on direct appeal. Petitioner's only opportunity to litigate the valid constitutional challenges to his convictions was through PCR. See Fortune v. State, 428 S.C. 545, 559, 837 S.E.2d 37, 44 (2019) (In some circumstances...an inmate may present a claim for PCR based on constitutional violations other than ineffective assistance of counsel. Subsection 17-27-20(A) specifically provides this, "Any person who has been convicted of ... a crime and who claims ... the conviction ... was in violation of the Constitution ... may institute ... a proceeding under this chapter to secure relief.").

C. Remand

Finally, Respondent suggests that this Court should remand the matter to the PCR court for consideration should it find the claims were properly before the PCR court. Respectfully, the PCR court had a full opportunity to rule on these matters and did in fact rule. It ruled they were not cognizable claims under the PCR Act as a matter of law. That ruling was an error of law. Therefore, this Court is well within its rights to adjudicate the merits of Petitioner's claims that he was denied his basic and most fundamental constitutional rights.

CONCLUSION

Based on the arguments above, as well as those in the Brief of Petitioner, Petitioner respectfully requests that this Court decide his case on the merits and ultimately reverse and remand the matter back to the Court of General Sessions for Lee County for a new trial.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 9th day of August, 2024.

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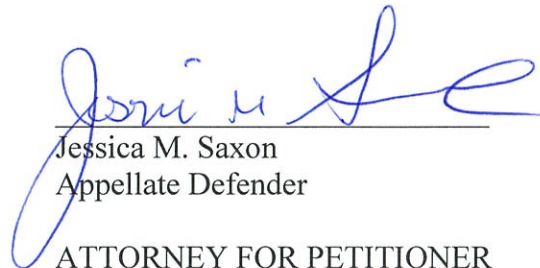
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000176

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Reply Brief of Petitioner in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 9th day of August, 2024.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

From: [Leverett, Scott](#)
To: [SC - EDWARDS JOSHUA](#)
Cc: [SC - COLLINS CAROLINE](#); [Saxon, Jessica](#)
Subject: 2022-000176 - Haggins, Johnny - Reply Brief of Petitioner
Date: Friday, August 9, 2024 4:01:00 PM
Attachments: [2022-000176 - Haggins, Johnny - Reply Brief of Petitioner.pdf](#)

Dear Mr. Edwards,

Attached please find a copy of the Reply Brief of Petitioner in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Jessica Saxon
Appellate Defense