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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable R. Kirk Griffin, Circuit Court Judge

JAKE ANTONIO WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000498

JOHNSON PETITION FOR WRIT OF CERTIORARI

David Alexander
Deputy Chief Attorney for Capital Appeals

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

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ISSUE PRESENTED

In this murder case where accident was the defense, did the PCR court err in finding no prejudice to trial counsel's deficient performance in eliciting petitioner's criminal history when the trial judge had ruled his criminal history was inadmissible?

STATEMENT

Petitioner was indicted in Charleston County for murder, a gun charge, and burglary and on November 17, 2008, was tried before the Honorable Deadra L. Jefferson and a jury. Julie Cardillo and Nathan Williams represented the State and Andrew Grimes and Marybeth Mullaney represented petitioner. App. 1. The jury convicted petitioner of murder and the gun charge, but acquitted him of burglary. App. 1092. Judge Jefferson sentenced petitioner to life imprisonment. App. 1108.

Petitioner filed a PCR application after the conclusion of his direct appeal and on April 21, 2023, a hearing was held before the Honorable R. Kirk Griffin. App. 1143. Christopher J. Murphy represented petitioner and Danielle Dixon represented the State. App. 1143. On March 13, 2024, Judge Griffin denied the application. App. 1213. This petition follows.

ARGUMENT

In this murder case where accident was the defense, the PCR court erred in finding no prejudice to trial counsel's deficient performance in eliciting petitioner's criminal history when the trial judge had ruled his criminal history was inadmissible.

Petitioner testified in his own defense and his credibility was central to this case's outcome. Petitioner and Latoya Pendergrass lived together and had two children together. App. 864. They had an argument and she kicked him out of the house. App. 867-68. After hanging out at a friend's house playing cards and drinking beer, at approximately 1:15am, petitioner went to Pendergrass's house. App. 872-73. He knocked on the door and she let him in. App. 873-74.

Petitioner and Pendergrass watched television and talked. App. 875. One of their children was asleep and the other was awake. App. 875. They grew tired and went upstairs to go to bed. App. 875. Their one-year old child went upstairs with them. App. 875-76. They both fell asleep. App. 876.

After about an hour's sleep, the child woke them up. App. 876. Pendergrass went downstairs and brought the child a sippy cup. App. 866-77. The child went back to sleep and so did the parents. App. 877.

When petitioner went to Pendergrass's house that night, he had a gun with him for protection. App. 874. Pendergrass lived in a high crime area. App. 874. Petitioner had been robbed in that neighborhood before. App. 874.

When petitioner fell asleep with Pendergrass, the gun was still in his pocket. App. 876. Pendergrass and petitioner both awakened around 5:00am. App. 877-78. Petitioner took the gun and "was being careless playing around with the gun." App. 878. Petitioner admitted he "was being an idiot." App. 878.

Pendergrass told petitioner to quit playing with the gun, but he persisted. App. 878-79. He was waving the gun back and forth. App. 879. Pendergrass sat up in the bed and hit his hand that was holding the gun. App. 879. Tragically, the gun went off and Pendergrass was shot. App. 879. The bullet entered the right side of her head and lodged in the base of her skull. App. 798-801. Pendergrass died from the gunshot wound.

Petitioner called 911. App. 880. He stayed at the scene and was arrested after the police arrived. App. 881-82. He emphatically testified that he did not intend to shoot Pendergrass and that he wished he had been shot instead of her. App. 887.

To disprove accident, the State's key witness was a firearms expert from SLED, Agent David Black. App. 579. Agent Black testified that the mechanisms in the gun to prevent accidental discharge worked properly. App. 592. He also testified that if the gun were cocked, it would take 2.75 pounds of pressure to pull the trigger. App. 593. If the gun were not cocked, it would take 11 pounds of pressure to pull the trigger. App. 593-94.

At the PCR hearing, PCR counsel asked petitioner if he recalled the trial judge ruling that evidence of his prior record would not come into evidence. App. 1156. Petitioner agreed. App. 1156. Petitioner then agreed that trial counsel asked petitioner about his prior record even though the judge ruled this evidence was not admissible. App. 1156. Petitioner testified that trial counsel admitted he had made a mistake. App. 1156. Trial counsel was deceased at the time of the PCR hearing and his second chair said he never changed the script of his direct-examination of petitioner after the trial judge ruled. App. 1186-1190. She testified she saw a change in the jury's demeanor when they learned of petitioner's conviction. App. 1189-90.

The trial judge originally indicated that the convictions for distribution of crack cocaine would be admissible for impeachment. App. 835-36; 838; 843-849. But as the judge began

making her ruling, she found additional precedent indicating that drug convictions are not probative of truthfulness. App. 849-55. The judge reversed course and excluded the prior drug conviction “out of an abundance of caution.” App. 855.

Early into his direct-examination, trial counsel asked petitioner if he had ever been convicted of a felony. App. 865. Petitioner responded affirmatively and trial counsel then asked if it was a non-violent charge. App. 865. After petitioner again responded “yes,” the judge summoned trial counsel to the bench. App. 865. The second-chair described the trial judge as “shocked” when trial counsel asked these questions. App. 1199-1200.


The PCR court correctly found trial counsel performed deficiently when he mistakenly introduced petitioner’s prior record. App. 1224-25. But the court found no prejudice because the evidence that the shooting was not accidental was overwhelming. App. 1224-25.

The PCR court erred in finding no prejudice. In State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006), the trial court erred in admitting prior convictions for impeachment. The Bryant Court found the error prejudicial because Bryant testified he acted in self-defense. The Court reversed Bryant’s conviction because the State was improperly allowed to attack his “credibility with inadmissible prior convictions; especially where the Petitioner’s credibility was essential to his defense.” Id. “[N]arcotics offenses are generally not considered probative of truthfulness” State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001).

Like Bryant, this case hinged on petitioner’s credibility that the shooting was an accident. Trial counsel’s error was prejudicial. Second chair counsel saw the jury’s demeanor change and also described the trial judge as “shocked” at trial counsel’s deficient performance. This Court should grant certiorari and reverse.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari and reverse petitioner's convictions.


David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of November, 2024.

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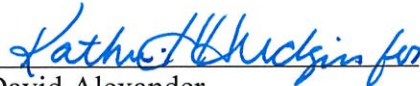
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jake Antonio Wilson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner’s post-conviction relief hearing before Judge R. Kirk Griffin, which was held on April 21, 2023, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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 him as counsel for Jake Antonio Wilson.

Respectfully Submitted,


David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 7th day of November, 2024.

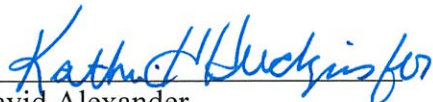
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of his 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 7th day of November, 2024.