

STATE OF SOUTH CAROLINA RECEIVED

IN THE SUPREME COURT **Dec 11 2024**

————— S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Walton J. McLeod, IV, Circuit Court Judge

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JONTEZ M. WARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000897

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JOHNSON PETITION FOR WRIT OF CERTIORARI
—————

SARAH E. SHIPE
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court err granting the state's motion to dismiss petitioner's allegation of prosecutorial misconduct without an evidentiary hearing finding the allegation was not cognizable under the PCR act?

STATEMENT

In April 2016, a Charleston County grand jury indicted petitioner for possession of a weapon during the commission of a violent crime and possession with intent to distribute a controlled substance within proximity of a park. App. 3-6. In July 2018, a Charleston County grand jury indicted petitioner for trafficking heroin. App. 1-2.

Petitioner retained Peter McCoy to represent him in the above charges. App. 7. On July 25, 2018, The Honorable R. Markley Dennis, Jr. heard petitioner's motion to relieve counsel and represent himself. App. 7-15. Assistant solicitor, Alexander Ziegler represented the state. App. 7. At the conclusion of the hearing, Judge Dennis ruled while he could not conduct an "intelligent *Faretta*¹ hearing," petitioner would be tried without an attorney and relieved Mr. McCoy. App. 14, l. 9—15, l. 5.

Petitioner's case was called to trial on February 5, 2019, before the Honorable Diane Goodstein and a jury. App. 17-306. Petitioner represented himself. Assistant solicitors, Alexander Ziegler and Ashley Brown prosecuted the case for the state. App. 17. On February 7, 2019, the jury found petitioner guilty as indicted. App. 299, ll. 6-21. Judge Goodstein sentenced petitioner to concurrent terms of twenty-five years' imprisonment for trafficking heroin, ten years' imprisonment for possession with intent to distribute a controlled substance within proximity of a park, and five years' imprisonment for possession of a weapon during the commission of a violent crime. App. 305, ll. 1-19; 307-309.

On February 22, 2019, Aimee Zmroczek filed a notice of appeal on petitioner's behalf. Supp. App. 1. On February 27, 2019, the South Carolina Court of Appeals dismissed the appeal where petitioner failed to timely serve the notice of appeal. Supp. App. 10. On March 7, 2019,

¹ *Faretta v. California*, 422 U.S. 806 (1975).

Ms. Zmroczek filed a motion to reinstate petitioner’s appeal. Supp. App. 11-12. Assistant attorney general, Ben Aplin, filed a return. Supp. App. 14-15. On May 13, 2019, the Court issued an Order denying the motion and subsequently remitted the case. Supp. App. 16.

Thereafter, petitioner filed an application for PCR. App. 310-19. A hearing was held on March 12, 2024, before the Honorable Walton J. McLeod, IV. App. 339-344. Christopher Murphy represented petitioner. Danielle Dixon, assistant attorney general represented the state. App. 339.

On April 8, 2024, Judge McLeod signed an order denying PCR. App. 346-354. The court found “this action should be dismissed based on [petitioner’s] failure to set forth a cognizable claim.” App. 349. The court found two of petitioner’s allegations were barred by res judicata.² App. 351. The court found petitioner’s second allegation of prosecutorial misconduct was not a proper basis for PCR. App. 353.

This petition follows.

² Petitioner’s first allegation on PCR was a claim of violation of due process by the state’s failure to disclose and produce a buy-bust audio and video that was used to support probable cause for his warrant. Petitioner’s third allegation on PCR was a claim of violation of due process where petitioner was unable to cross examine the confidential informant. App. 349.

ARGUMENT

The PCR court erred granting the state's motion to dismiss petitioner's allegation of prosecutorial misconduct without an evidentiary hearing finding the allegation was not cognizable under the PCR act.

Trial

At trial petitioner moved for a continuance contending he could not proceed without counsel. Additionally, he told the trial court he had not received all his discovery from the state. App. 23, ll. 7-25. Petitioner asserted he had only received bits and pieces of his discovery to include still shots but not the full videos. App. 65, ll. 5-16.

The state argued petitioner received all the discovery he was entitled to and there were videos that the state was withholding to protect the identity of a confidential informant. App. 65, ll. 19-23. The state admitted discovery had not been given to petitioner but stated it had been shared with petitioner's former counsel Peter McCoy. App. 70, ll. 1-8. The state assured the trial court there was no exculpatory evidence in the videos. App. 65, l. 1.

The court found discovery had been shared. App. 68, l. 24. The court continued the case until the following day so that petitioner could retain counsel to assist petitioner at trial. App. 60, l. 13—61, l. 6. Petitioner was unsuccessful in his attempt to retain trial counsel. App. 71, l. 9—72, l. 12.

Before jury selection petitioner became ill and emergency personnel were called to give petitioner medical assistance. App. 92-94. Petitioner did not feel well enough to participate in jury selection or opening statements. App. 95, ll. 18-25; 96, l. 20-22; 124, ll. 16-23; 134-137. Petitioner was not present during the state's first witness. App. 147, ll. 8-11.

PCR

At petitioner's hearing counsel for the state moved to dismiss petitioner's application arguing he had not set forth any cognizable claim and two of the three claims were barred by res judicata. App. 341, ll. 3-25. Counsel for petitioner contended petitioner never received the benefit of full discovery prior to his trial. App. 343, l. 20—344, l. 9.

No evidence was put forth at this hearing. The order of dismissal indicates petitioner was present at the hearing. However, petitioner is silent in the transcript of the hearing.

Discussion

The PCR court erred dismissing petitioner's claim of prosecutorial misconduct where it is evident in the record petitioner never received the benefit of full discovery.

"The Due Process Clauses in both the Fifth and Fourteenth Amendments provide that no person may be deprived of liberty 'without due process of law.'" *Fortune v. State*, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019).

"Any person who has been convicted of, or sentenced for, a crime and who claims ... the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State ... may institute ... a proceeding under this chapter to secure relief."

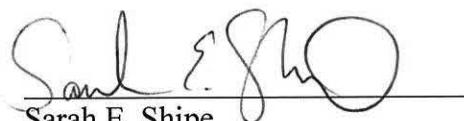
Usually, a PCR claim is properly presented as a Sixth Amendment claim for ineffective assistance of counsel. *Fortune v. State*, 428 S.C. 545, 558–59, 837 S.E.2d 37, 44 (2019) (citing *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000)). However, an individual may present a claim for PCR based on constitutional violations other than ineffective assistance of counsel. *Id.* 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.” S.C. Code Ann. § 17-27-20(A) (2014).

Petitioner’s allegation of prosecutorial misconduct for failure to turnover discovery to petitioner was properly before the PCR court. Petitioner was denied an opportunity to present evidence of his allegations on PCR where the PCR court dismissed the allegations without having an evidentiary hearing or allowing any testimony.

CONCLUSION

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on this issue.


Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of December, 2024.

STATE OF SOUTH CAROLINA

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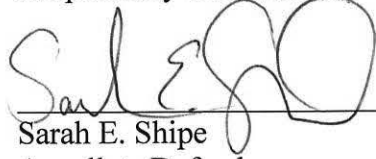
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PETITION TO BE RELIEVED AS COUNSEL
—————

Counsel for Jontez M. Ward states:

1. She is 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 Walton J. McLeod, IV, which was held on March 12, 2024, 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 Jontez M. Ward.

Respectfully Submitted,

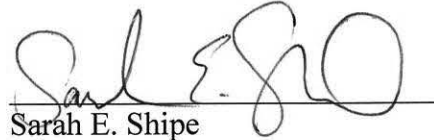

—————
Sarah E. Shipe
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of December, 2024.

CERTIFICATE OF COUNSEL

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."

A handwritten signature in black ink, appearing to read "Sarah E. Shipe", written over a horizontal line.

Sarah E. Shipe
Appellate Defender

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Johnson Petition for Writ of Certiorari, Appendix, and Supplemental Appendix in the above-referenced case have been served upon Danielle E Dixon, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Jontez M. Ward, #320975, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 11th day of December, 2024.



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Appellate Defender

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