

IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Walton J. McLeod, IV, Circuit Court Judge

Case No. 2024-001052

Kalvin R. Brown,

Petitioner,

vs.

The State of South Carolina,

Respondent.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

Petitioner offers this brief reply to Respondent's contention that Issue III of Petitioner's brief for a writ of certiorari is not preserved for appellate review.

I. Petitioner's argument regarding whether the PCR Court erred in concluding trial counsel was not ineffective for failing to request a *Jackson v. Denno* hearing when the State introduced a statement Petitioner made allegedly admitting to ownership of the drugs without Petitioner being able to challenge the voluntariness of the statement is preserved for appellate review.

Respondent argues that Petitioner's claim that trial counsel was ineffective for failing to request a *Jackson v. Denno* hearing to challenge Petitioner's statement is not preserved for appellate review because they believe the issue of voluntariness was never raised. This is incorrect as the issue was raised in the PCR proceedings and therefore eligible to be considered by this Court.

The issue of trial counsel failing to request a *Jackson v. Denno* hearing regarding the circumstances in which the supposed statement was taken was brought up numerous times in the PCR evidentiary hearing and argued to the PCR court by both Respondent and Petitioner. *See* App. 335, 337-338, 358-359, 361, 365, 368-369, 373, 390-391, 398-399, 411-415, 427-428. Petitioner asserted that he did not actually make the statement. The only proof of the supposed confession was Deputy Gibson's testimony which revealed the statement was not written down, video recorded, or witnessed by anyone else. App. 60-64, 67. However, as Petitioner previously pointed out in his Motion to Atter or Amend Judgment following the PCR Court's Order of Dismissal— "[t]he question as to whether the statement was actually made is as important as whether the statement was made under influence." App. 448. Petitioner here argues that the circumstances surrounding the supposed confession necessitated the *Jackson v. Denno* hearing. He was not given a chance to even object to the voluntariness of the alleged statement. Deputy Gibbons relayed that

the Petitioner simply sat with him and admitted to possession of the narcotics. A hearing would have allowed Petitioner to testify as to what he contends actually occurred.

Petitioner raised this issue in the PCR hearing in the form it was presented in this Petition. Respondent was present at the hearing and had the opportunity to bring this up then. The primary purpose of issue preservation rules is to give the trial court, or the PCR court in this instance, a fair opportunity to consider the issue—which it did. *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023). Therefore, this claim is properly preserved and is reviewable by this Court.

Conclusion

Petitioner respectfully asks this Court to grant his petition for writ of certiorari.

Respectfully submitted,

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