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Jan 29 2025
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Bamberg County

Honorable Edward W. Miller, Circuit Court Judge

AARON LAMAR WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000537

JOHNSON PETITION FOR WRIT OF CERTIORARI

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The PCR court erred in finding there was no viable trial strategy that could have been adopted on the attempted murder charge when there was no evidence presented that petitioner had the specific intent to kill Youmans and the initiation of a physical confrontation in the form of a fistfight does not supply the required *mens rea* for attempted murder. 4

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ISSUE PRESENTED

Did the PCR court err in finding there was no viable trial strategy that could have been adopted on the attempted murder charge when there was no evidence presented that petitioner had the specific intent to kill Youmans and the initiation of a physical confrontation in the form of a fistfight does not supply the required *mens rea* for attempted murder?

STATEMENT

Petitioner appeared before the Honorable Clifton Newman on July 12, 2021, to select a jury for a trial on charges of attempted murder and assault and battery by mob. App. 1; 26, ll. 5 – 20. The charges stemmed from an altercation involving petitioner, his brother Austin Williams, and a third party, Anthony Youmans. App. 26, ll. 5 – 20; 152. It is undisputed that petitioner and Youmans engaged in a physical altercation that was initiated by petitioner. App. 192, l. 23 – 193, l. 25. Importantly, while petitioner possessed a firearm during the altercation, he never pointed or presented the weapon at Youmans. App. 78, ll. 1 - 12. Instead, it fell from his person and was picked up by Youmans who fired the weapon. App. 78, ll. 1 – 12; 192, l. 23 – 193, l. 25. While petitioner and Youmans struggled, petitioner's brother, Austin, approached and fired on both petitioner and Youmans, hitting each. App. 78, ll. 1 – 12; 192, l. 23 – 193, l. 25. As a result of the wounds inflicted by his brother, petitioner was paralyzed. App. 80, ll. 1 - 7. Despite not personally firing a weapon during the altercation, petitioner was charged with the attempted murder of Youmans. App. 152.

Petitioner was represented by Charles David Hayes with Jerry Screen representing Austin Williams. App. 1. David Miller and Carson Alexander appeared on behalf of the state. App. 1. The trial judge denied a continuance on motion by counsel for the defendants. App. 12, ll. 6 – 11. The trial judge also denied petitioner's motion to relieve Hayes so he could seek different representation. App. 19, ll. 3 – 13. A jury was seated for trial and the case was set to begin the following day. App. 62, l. 13 – 63, l. 15. On July 13, 2021, petitioner entered a guilty plea to the attempted murder charge. App. 69, ll. 8 – 19. Following the guilty plea, the court sentenced petitioner to ten (10) years incarceration. App. 153.

Petitioner filed for post-conviction relief asserting ineffective assistance of counsel. App. 155 – 162. An amended application was filed on petitioner's behalf by appointed counsel, Ashley McMahan. App. 163. An evidentiary hearing was held before the Honorable Edward W. Miller on January 17, 2023. App. 179. Ms. McMahan appeared on behalf of petitioner with Zachery Jones appearing for the state. App. 179. By written order of dismissal, the PCR court denied relief. App. 207 – 215.

This petition follows.

ARGUMENT

The PCR court erred in finding there was no viable trial strategy that could have been adopted on the attempted murder charge when there was no evidence presented that petitioner had the specific intent to kill Youmans and the initiation of a physical confrontation in the form of a fistfight does not supply the required *mens rea* for attempted murder.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). "Thus, when challenging a guilty plea, a PCR applicant must show (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's errors, the applicant would not have pled guilty." Ervin v. State of South Carolina, 438 S.C. 559, 565, 885 S.E.2d 387, 390 (2023) (internal citations omitted). In a guilty plea setting, "the prejudice analysis is limited to the outcome of the plea process—whether but for counsel's deficiency, the defendant would have declined to plead and instead proceeded to trial." Frierson v. State, 423 S.C. 257, 263, 815 S.E.2d 433, 436 (2018). "In other words, in order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

How the issue was addressed during petitioner's guilty plea.

Petitioner attempted to relieve Hayes as trial counsel on July 12, 2021. In requesting a change of counsel, petitioner told the Court:

> I only met with him two times and when we met we -- we really didn't talk about any -- talk about the case and it really wasn't no

> defense of what we was gonna do in the case and I'm here today and I'm on trial and we don't have a defense and haven't talked about what we was gonna do and how we was going forward with the case, so I feel like I need me a better lawyer to come to trial and can represent me better that's equipped for trial than he is for today.

App. 13, 3 – 11. The trial court denied the motion as well as a continuance and proceeded with jury selection. App. 12, 6 – 11; 19, 3 – 13. On the following day, petitioner entered a guilty plea with Hayes appearing on his behalf. During the plea, petitioner informed the court that he was involved in a physical fight but did not pull a weapon and did not fire a weapon. App. 79, ll. 9 – 16. At the time of the plea, petitioner was still recovering from the significant injuries he sustained during the during the altercation which left him paralyzed. App. 80, ll. 4 – 12.

> Q You guys had kind of a long guilty plea where a bunch of people talked. Do you remember the Judge asking you how much time you thought you should serve?
>
> A Yes, I kind of remember that. I was going through a lot of pain then.
>
> Q And why was that?
>
> A I was shot. I really couldn't move. I was in a wheelchair then. I was on medicine, pain medicine. I was taking shots every 12 hours.

App. 189, ll. 15 – 23.

How the issue was addressed during the PCR hearing.

During the PCR hearing, petitioner testified that Mr. Hayes failed to discuss or develop any trial strategy leading up to trial.

> Q So when you met with him, did you ever discuss a possible trial strategy or anything like that?
>
> A I told him I wanted to go to trial, but he didn't have a strategy. One time he told me that me might be getting me off with attempted murder, but I still had the assault by mob.

> Q Did you guys talk about hand of one, hand of all, like, conspiracy and all that?
>
> A No, ma'am.

App. 184, ll. 17 – 25.

In fact, petitioner was expected by Mr. Hayes to come up with his own trial strategy:

> Q So when you met with him at the courthouse that morning, what were you guys talking about?
>
> A He called me in the back and the first thing he asked me was how do I want to play this. I told him I really don't know, that he was my lawyer and he needed to have an angle.

App. 183, l. 21 – 184, l. 1.

Regarding his investigation and trial preparation, Hayes indicated that the video of the incident limited the defense of the case since it was all caught on video:

> Q So I think in what you said was your opening, you were alluding to the fact that a picture is a thousand words and this doesn't explain the whole picture, this one video. Were you attempting to use this prior incident earlier that day to kind of describe the whole situation?
>
> A That was -- the only strategy you had a trial was to explain the whole situation, that there was a fight prior to with the brother and this was why this was going on. But in the end, self-defense isn't an option. They're at fault for bringing on the difficulty.
>
> Q Do you recall how much earlier in the day that fight in the parking lot was prior?
>
> A It was the day before or it was a day or two days before.

App. 202, l. 17 – 203, l. 5.

Hayes noted that there was no defense strategy that he could assert since petitioner was on video and "coming to attack the victim. Even admittedly, he just testified to it again that they

were coming to fight and attack the victim. That's hand of one, hand of all. They're both there to fight him. They're bringing on the difficulty themselves. There's no defense and it's on video." App. 194, ll. 3 – 10.

How the PCR court ruled.

In ruling on Hayes' trial strategy, the PCR court found:

> Based on Counsel's credible testimony, the Court finds Applicant has failed to prove Counsel's performance fell below an objective standard of reasonableness. Applicant claims Counsel was deficient for failing to come up with a viable trial strategy; however, Applicant did not articulate any trial strategy Counsel could have raised, much less one that would have been viable in light of the damning video evidence in his case.

App. 214.

How the PCR court erred.

The PCR court erred in finding plea counsel's lack of trial strategy, based upon his opinion that the video precluded any viable defenses, was not deficient. This lack of a trial strategy was expressed by counsel during the PCR hearing: both petitioner and his brother are "coming to attack the victim" and that created a "hand of one, hand of all" that petitioner was "bringing on the difficulty" and there was "no defense and it's on video." App. 194, ll. 3 – 10. In accepting this legal opinion, the PCR court failed to appreciate or apply the *mens rea* element of the crime for which petitioner pled – attempted murder requires a specific intent.

In terms of the shooting that followed petitioner's fight with Youmans, petitioner was not actively involved and did not fire a weapon. Since attempted murder is a specific intent crime, "it is logically impossible to attempt an unintended result, prosecutions are generally not maintainable for attempts to commit general intent crimes, such as criminal recklessness, attempted felony murder, or attempted manslaughter." State v. King, 422 S.C. 47, 56, 810 S.E.2d

18, 23 (2017). "[T]he General Assembly created the offense of attempted murder by purposefully adding the language 'with intent to kill' to 'malice aforethought, either express or implied' to require a higher level of *mens rea* for attempted murder than that of murder." King, 422 S.C. at 61, 810 S.E.2d at 25.

As a specific intent crime, attempted murder does not use concepts such as transferred intent. *See* State v. Geter, No. 2021-001408 (S.C. Jan. 23, 2025) (resolving "any remaining confusion on this issue by holding the doctrine of transferred intent is inapplicable to the crime of attempted murder"). This extends to use of implied malice due to the commission of some other felony. *See* State v. Smith, 430 S.C. 226, 232, 845 S.E.2d 495, 498 (2020) (holding felony attempted murder is not a recognized crime).

This logically extends to a prohibition on reducing the requisite *mens rea* element of a specific intent crime when applied to an alleged accomplice. *See* Wilson-Bey v. United States, 903 A.2d 818, 838 (D.C. 2006) ("We therefore conclude that it serves neither the ends of justice nor the purposes of the criminal law to permit an accomplice to be convicted under a reasonable foreseeability standard when a principal must be shown to have specifically intended the decedent's death and to have acted with premeditation and deliberation, and when such intent, premeditation, and deliberation are elements of the offense.").

South Carolina has treated the specific intent crime of attempted murder as requiring an individualized *mens rea* element.

> The mental state required to commit a general intent crime does not raise the same concern as that necessary to commit a specific intent crime. General intent is 'the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated.' On the other hand, specific intent is 'the intent to accomplish the precise act which the law prohibits.' To hold a defendant criminally liable for a specific intent crime, Nevada

> requires proof that he possessed the state of mind required by the statutory definition of the crime.

Bolden v. State, 121 Nev. 908, 922–23, 124 P.3d 191, 201 (2005).

As such, the prosecution would have been required to present evidence petitioner intended to kill Youmans by engaging in a fistfight. Here, the video evidence and the existence of petitioner's gun would have negated any inference of specific intent to murder Youmans. Had petitioner wanted to kill Youmans, he would not have engaged in a fistfight. Rather, he would have used a deadly weapon that was readily at his disposal. The absence of petitioner resorting to the use of a firearm supported the lack of a specific intent to kill, the exact opposite of the conclusion reached by both plea counsel and the PCR Court. While petitioner's brother, Austin Williams, fired a handgun during the altercation and such action would have supplied evidence of specific intent to kill, that intent on the part of Austin Williams would not have attached to petitioner under a hand of one theory of accomplice liability.

There was a "reasonable probability that, but for counsel's errors, the applicant would not have pled guilty." Ervin, 438 S.C. at 565, 885 S.E.2d at 390 (2023). To meet this burden, the petitioner needs to present evidence, even if solely his own testimony, that absent trial counsel's ineffective assistance he would not have pled guilty. *See* Alexander v. State, 303 S.C. 539, 543, 402 S.E.2d 484, 485 (1991); Jackson v. State, 342 S.C. 95, 97–98, 535 S.E.2d 926, 927 (2000) (noting the petitioner satisfied the prejudice prong by simply providing testimony that he would not have pled guilty, but for trial counsel's mistaken advice); Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) ("The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty.").

Here, petitioner indicated the only reason he elected to plead was trial counsel's failure to develop a trial strategy:

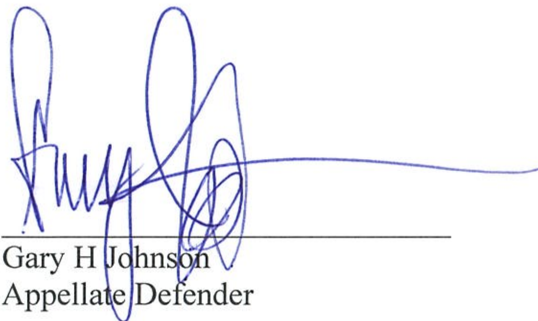
> Q Tell us how that came about, why you decided to do that.
>
> A Because we really didn't have a strategy, so the Judge told me I had until nine o'clock that morning to come in and decide if I wanted to take a plea deal before we swore the jury in. So I went home and I thought that night and I thought it was best for me to take the plea deal because we didn't have a strategy to go to trial with.

App. 186, ll. 12 – 19.

Based upon plea counsel's failure to appreciate the impact of the specific intent nature of attempted murder on the facts presented, counsel's ineffectiveness "undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686 (1984). Moreover, there is a "reasonable probability that, but for counsel's errors, [petitioner] would not have pled guilty." Ervin, 438 S.C. at 565, 885 S.E.2d at 390 (2023) (internal citations omitted).

CONCLUSION

Based upon the foregoing, petitioner respectfully requests that this Court grant the writ of certiorari to allow full briefing on this issue.



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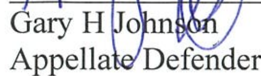
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Aaron Lamar Williams 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 Edward W. Miller, which was held on January 17, 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 Aaron Lamar Williams.

Respectfully Submitted,



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This 29th day of January, 2025.

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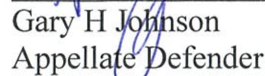
CERTIFICATE OF COUNSEL

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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