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Jun 06 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Cherokee County

Honorable Heath P. Taylor, Circuit Court Judge

WILLIAM T. TATE, SR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000006

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. DUDEK
Chief 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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The post-conviction relief court erred by ruling defense counsel was not ineffective for not explaining petitioner’s option of presenting a self-defense case to the jury since counsel reasoned because of the victim’s injuries he did “not believe it would have been possible to overcome the burden that [petitioner] would have to overcome in proving self-defense” since effective counsel would have explained the actual burden of proof was that the state would have had to disprove self-defense beyond a reasonable doubt once petitioner raised it at trial, and injuries to the parties involved alone are almost never dispositive of a self-defense claim.7

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ISSUE PRESENTED

Whether the post-conviction relief court erred by ruling defense counsel was not ineffective for not explaining petitioner's option of presenting a self-defense case to the jury since counsel reasoned because of the victim's injuries he did "not believe it would have been possible to overcome the burden that [petitioner] would have to overcome in proving self-defense" since effective counsel would have explained the actual burden of proof was that the state would have had to disprove self-defense beyond a reasonable doubt once petitioner raised it at trial, and injuries to the parties involved alone are almost never dispositive of a self-defense claim?

STATEMENT

Petitioner was indicted at the November 14, 2019 term of the Cherokee County grand jury for the offenses of domestic violence of a high and aggravated nature, and kidnapping. App. 137-138. Petitioner appeared on December 6, 2022 before the Honorable G. D. Morgan, Jr. Petitioner was represented by Christopher Allen. Toria Smith was the assistant solicitor. App. 1.

The judge questioned petitioner about the state's offer to allow him to plead guilty to domestic violence first degree with a cap of a ten-year sentence to run concurrent with his kidnapping charge. App. 6, ll. 16-22. Petitioner said that he was rejecting the state's offer and he wanted a jury trial. App. 7, l. 23 – 8, l. 24.

The following day, December 7, 2022, defense counsel Allen remembered helping petitioner put his tie on for court when he learned of another plea offer by the solicitor. App. 94, ll. 4-23. The solicitor then told the judge that the victim was present for trial and that the SANE nurse would be there for court that afternoon at two o'clock. However, the state had offered that petitioner could plead pursuant to North Carolina v. Alford¹. App. 9, ll. 9-25. In exchange for the Alford plea, the state agreed to dismiss the kidnapping charge. App. 10, ll. 1-4.

Petitioner then confirmed that he wished to plead pursuant to Alford and the judge told petitioner he faced a possible prison term of up to twenty years for domestic violence of a high and aggravated nature. App. 11, l. 2 –13, l. 25.

The solicitor then told the judge that on April 12, 2019, the police responded to a 911 call made by the victim, petitioner's live-in girlfriend, in Cherokee County. The victim reported she had been assaulted by petitioner. She claimed he choked her "and beat her for no reason." App. 14, ll. 2-17. The solicitor said he learned from the victim that she was in a relationship with

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

petitioner for approximately two years and that they were living together. “She was involved in his children’s lives.” App. 15, ll. 5-22. The solicitor also offered that the victim said petitioner, while he was driving, “snatched her purse from her, threw it out the window. She states that he knocked her glasses off, snatched her wig off of her head and locked the door.” App. 16, ll. 16-20.

After the solicitor’s recitation of facts, defense counsel Allen said those facts were consistent with what he read in the statements from the “witnesses” although there were “a few contradictions.” App. 22, ll. 3-16.

Defense counsel Allen told the judge about the strange background in this case. When petitioner was eleven years old and the victim was eighteen years old, petitioner’s father became concerned because the victim expressed a romantic interest in the eleven-year-old petitioner. Suspicion grew from her “inappropriate or somewhat inappropriate” interest in eleven-year-old petitioner. App. 27, ll. 21-25. Petitioner’s father urged petitioner to avoid the victim. App. 32, l. 6 – 34, l. 14.

Defense counsel said as an adult petitioner had custody of his children and he was a good father. The victim conversely was a violent person. For example, she had destroyed petitioner’s automobile in the past in a jealous rage. The victim also had a prior conviction for assault and battery of a high and aggravated nature.

The victim hit petitioner during the fight that led to the charges against him in this case. Petitioner had wounds to his eyes and arms as a result of that fight. Defense counsel explained that petitioner fought back, but petitioner said he never tried to strangle the victim as was being alleged. Petitioner’s father took photographs of his injuries. App. 29, l. 1 – 32, l. 5.

At the conclusion of the guilty plea, the judge sentenced petitioner to eight years in prison. App. 39, ll. 16-19.

Petitioner filed an application for post-conviction relief on July 7, 2023. App. 43-51. Petitioner alleged ineffective assistance of counsel and asserted his guilty plea was involuntarily tendered. He also contended his attorney had failed to investigate defenses in his case. App. 46. To this application, the state filed a return and motion for a more definite statement on October 4, 2023. App. 52-63.

An evidentiary hearing was convened on May 20, 2024 before the Honorable Heath P. Taylor. Rodney Richey represented petitioner. The Assistant Attorney General was Shayla Flores. App. 64.

Petitioner testified that he was “dressed out” for trial right before he pled pursuant to Alford. He thought he was going to get probation because of his plea. App. 71, ll. 3-20. Petitioner said that the victim started the fight and she was hitting him during the attack. Petitioner only hit her to defend himself. App. 73, ll. 1-13.

Petitioner said that the victim’s injuries were overplayed during his Alford plea and that his injuries were largely ignored even though he had photographs of them at his guilty plea. The photographs showed petitioner suffered “a black eye, bite mark up under my left chest, stab wound on my right side, and some bruises on my right side.” App. 74, l. 3 – 75, l. 12.

Petitioner said given these facts where he was defending himself, his lawyer should have further investigated and encouraged petitioner to go to trial with self-defense being his viable defense. App. 75, l. 2 – 82, l. 6. However, petitioner testified that defense counsel never discussed self-defense with him in any detail, and counsel instead told petitioner if he went to trial, he would receive a fifty-year prison sentence after his conviction. App. 82, ll. 8-15.

Petitioner's father, Herman Tate, Sr., testified that he saw petitioner immediately after this fight, and petitioner had "all kinds of bruises and bites and stuff was all over him." App. 88, ll. 7-16. Mr. Tate described petitioner's relationship with the victim as a "rocky relationship." App. 89, ll. 2-17. The victim fought with petitioner "all the time." She had cut the tires on his car, and she had badly damaged his house. App. 89, ll. 15-20.

Defense counsel Christopher Allen confirmed at PCR that petitioner wanted a jury trial and that he "was putting his tie on him in the – in, in the jail [immediately before court]." App. 94, ll. 4-17. Allen testified that the victim was badly injured as a result of the fight in this case. He acknowledged that petitioner also "sustained injuries." App. 96, l. 17 – 97, l. 20. However, "I just don't believe that I could have ever convinced the jury that the injuries were caused to Ms. Littlejohn because of self-defense." App. 100, l. 10 – 101, l. 16.

An order of dismissal was filed on December 6, 2024. App. 110-136. The order noted that petitioner testified the victim initiated the fight, that petitioner suffered injuries during that fight, and petitioner wanted a jury trial to present his defense. App. 126. The order stated the judge found defense counsel's testimony that he "briefly discussed self-defense" with petitioner credible. App. 127. However, the order noted plea counsel thought it would be very "hard for a jury to believe that the injuries by the victim were the result of self-defense." App. 127. The order stressed defense counsel's testimony at the post-conviction relief hearing that counsel did not think the jury would ultimately find the injuries suffered by the victim were the result of petitioner acting in self-defense. App. 127-128.

The order stated that plea counsel had recommended petitioner not going to trial given the facts: "He did not believe it would have been possible to overcome the burden that [petitioner] would have to overcome in proving self-defense." App. 124 *citing* App. 103.

From this order, petitioner is seeking a writ of certiorari pursuant to Rule 243, SCACR.

ARGUMENT

The post-conviction relief court erred by ruling defense counsel was not ineffective for not explaining petitioner's option of presenting a self-defense case to the jury since counsel reasoned because of the victim's injuries he did "not believe it would have been possible to overcome the burden that [petitioner] would have to overcome in proving self-defense" since effective counsel would have explained the actual burden of proof was that the state would have had to disprove self-defense beyond a reasonable doubt once petitioner raised it at trial, and injuries to the parties involved alone are almost never dispositive of a self-defense claim.

Once evidence is produced that the defendant acted in self-defense, the law requires the state to disprove self-defense by proof beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 544, 500 S.E.2nd 49, 493-94 (1998). Further, if there is any evidence in the record of self-defense, the issue must be submitted to the jury. See State v. Burkhart, 350 S.C. 252, 260, 565 S.E.2nd 298, 302-303 (2002).

Petitioner's testimony at the post-conviction relief hearing, if presented at trial, would have mandated a self-defense instruction. The state then would have had the burden of disproving petitioner's assertion of self-defense by proof beyond a reasonable doubt that petitioner was not acting in self-defense. The reasoning of defense counsel and the post-conviction relief judge that petitioner likely could not have overcome *his burden* of proving self-defense was legally erroneous since the state bore the burden of disproving self-defense by proof beyond a reasonable doubt once any evidence of it was presented at trial. App. 124.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that to prevail on post-conviction relief, a petitioner must show that but for his plea counsel's erroneous advice, there was a reasonable likelihood the defendant would not have pleaded guilty and

instead he would have insisted on going to trial. Here, defense counsel reasoned that the victim's injuries alone would have defeated petitioner's self-defense claim. That is odd reasoning since victims, or the decedent are often killed in legitimate cases of self-defense. The extent of injuries alone should almost never be deemed dispositive in a self-defense case since self-defense by its nature usually arises when there is a high risk of great bodily injury or death to those involved.

Four elements exist for self-defense in South Carolina: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger *of losing his life or sustaining serious bodily injury*, or he must have actually believed he was in imminent danger *of losing his life or sustaining serious bodily injury*; (3) if his defense is based upon his belief of imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger. State v. Light, 378 S.C. 641, 649-50, 664 S.E.2d 465, 469 (2008); State v. Slater, 350 S.C. 66, 644 S.E.2d 50 (2007) (emphasis added).

Defense counsel's reasoning in his advice to petitioner as to self-defense was based on his erroneous assumption that the victim's injuries by themselves would defeat a self-defense claim, and the error of law in reasoning petitioner could not be able to overcome his burden of proving self-defense where the state bore that burden by having to present evidence disproving self-defense by proof beyond a reasonable doubt. This legally erroneous reasoning led to petitioner being misadvised about the viability of a self-defense case, and this Court respectfully should therefore grant certiorari.

CONCLUSION

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

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of June, 2025.

Jun 06 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

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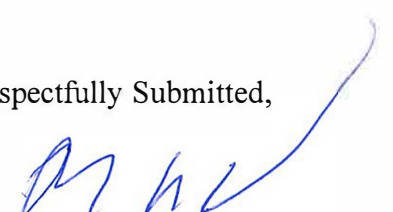
PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Tyrone Tate states:

1. He is Chief 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 Heath P. Taylor, which was held on May 20, 2024, 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 William Tyrone Tate.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of June, 2025.

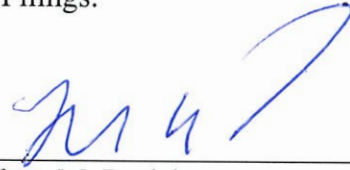
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CERTIFICATE OF COUNSEL

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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Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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This 6th day of June, 2025.