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**Jul 18 2025**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Richland County

Honorable Daniel McLeod Coble, Circuit Court Judge

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BOUVIA A. SALES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000495

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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JESSICA M. SAXON  
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 in finding counsel was not ineffective where counsel failed to successfully investigate potential alibi witnesses prior to advising Petitioner to pled guilty?

## STATEMENT OF THE CASE

Petitioner was indicted for one count of murder, one count of burglary first degree, and one count of possession of a weapon during the commission of a violent crime during the August 2017 term of the Richland County grand jury. App. 108-113. The charges arose from an incident on April 8, 2017, at the home of Marlon Butler, Sr (Butler). Butler and his son, Marlon, Jr. (Marlon), had returned home around 1:45 in the morning to find the front door of the house had been forced open and a light in the house that had been off when they left was now on. They entered the house and saw it had been burglarized, immediately noticing a 50-inch Vizio TV was missing. Butler proceeded upstairs into a bedroom where he encountered an unknown individual. Marlon heard Butler say “whoa whoa” before a gun was fired. Marlon hid briefly before running out of the house. As he ran, the perpetrator fired at him. App. 5, l. 19-App. 6, l. 12.

Law enforcement arrived on scene and discovered Butler face down on the floor in the bedroom. Shell casings were found all over the upstairs hallway and there were obvious signs that the home had been burglarized. The following day, Marlon noted a Pepsi soda can in the bedroom where his father was shot that should not have been there. He informed law enforcement of the can. After confirming through crime scene photographs that the can was there the night of the incident, they collected it for DNA testing. App. 6, l. 13-App. 7, l. 2.

DNA testing of the Pepsi can resulted in a match to Petitioner. Police discovered Facebook messages of Petitioner where he appeared to reference killing a man. In June, Vizio reported that the stolen TV had been reconnected to the internet. Police traced the TV to Sharia Green who stated she had purchased it from an Alexander Robinson. Police questioned Robinson who stated Petitioner lived with him at the time of the incident and confessed to him

about the murder which is why he sold the TV to Green. He further stated that a man named Derrick Nance had been involved in the incident. Nance was interviewed by police and eventually implicated himself and Petitioner in the incident. App. 7, l. 3-App. 9, l. 28.

On January 29, 2020, Petitioner appeared before the Honorable DeAndrea G. Benjamin to enter a negotiated guilty plea. Petitioner was represented by Alicia D. Goode. The state was represented by Carter R. Potts. App. 1. Pursuant to the plea agreement, Petitioner would plead guilty pursuant to North Carolina v. Alford<sup>1</sup> to one count of voluntary manslaughter and one count of burglary first degree for a negotiated twenty-five-year sentence, along with pleading to the weapon charge for a negotiated consecutive five-year sentence. App. 3, ll. 3-13. Judge Benjamin accepted Petitioner's plea and imposed the negotiated sentences. App. 20, l. 24-App. 21, l. 9; App. 114-116.

Petitioner did not appeal his convictions and sentences. He timely filed an application for post-conviction relief on December 10, 2020, wherein he alleged plea counsel was ineffective for failing to investigate. App. 23-29. The state filed a return and motion for a more definite statement on March 5, 2021. App. 30-41. An evidentiary hearing was held on September 11, 2023, before the Honorable Daniel McLeod Coble. The state was represented by D. Russell Barlow, II. Petitioner was represented by Timothy L. Griffith. App. 42. At the call of the case, the state indicated that PCR counsel had emailed amended allegations to include that plea counsel failed to investigate multiple alibi witnesses. App. 45, ll. 4-10.

Petitioner testified that one of the main things he wanted investigated were his alibi witnesses. App. 47, ll. 12-13. He gave plea counsel the names of Biale Jenkins, Kenneth Archie (who is known as "Juvie"), his friend DJ, and Halerio Jones who he learned was really Horatio

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<sup>1</sup> 400 U.S. 25 (1970)

Jones. App. 47, ll. 9-14. Petitioner stated that he had been playing cards with Jenkins the night of the incident, and he had asked Jenkins to give him a statement for his alibi. He maintained that none of his alibi witnesses were ever spoken to nor were any other investigative steps taken by plea counsel. App. 49, ll. 3-25. Petitioner pled pursuant to Alford in order to maintain his innocence. He did not want to plea and would have gone to trial had plea counsel taken the investigative steps he had requested of her. App. 52, l. 9-App. 53, l. 23.

Plea counsel testified that Petitioner wanted the best possible plea deal. She agreed that he informed her of potential alibi witnesses but stated she had a difficult time getting names of the witnesses from him. She confirmed she was given the names of Jenkins and “Juvie” as well as a third person. She maintained her investigators attempted to run down Petitioner’s potential alibi witnesses, but they were never able to locate the people or concrete information about their whereabouts. App. 68, l. 5-App. 69, l. 9; App. 71, l. 4-24; App. 74, l. 22-App. 75, l. 13.

An order of dismissal was issued on July 31, 2024, finding that Petitioner had not met his burden of proof. App.83-107. The PCR court found that plea counsel had credibly testified that while Petitioner had provided names for alibi witnesses, he had not provided any concrete information for contacting those witnesses. The court further found that Petitioner had failed to produce the testimony of the purported alibi witnesses and therefore could not show prejudice. App. 96-97.

## ARGUMENT

The PCR court err in finding counsel was not ineffective where counsel failed to successfully investigate potential alibi witnesses prior to advising Petitioner to pled guilty.

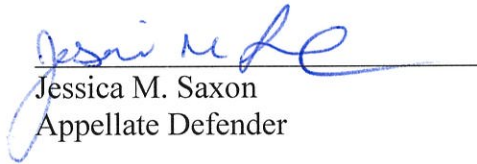
“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different.” Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992) (citing Strickland v Washington, 466 U.S. 668 (1984)). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Strickland 466 U.S. at 695 (1984). A PCR applicant is entitled to relief based on ineffective assistance of trial counsel if he can establish that counsel's performance was deficient and that this deficiency prejudiced his defense. Id.; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

“[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (quoting Strickland, 466 U.S. 668, 691 (1984)). “One component of that duty is to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable.” Id. (citing Grooms v. Solem, 923 F.2d 88, 90 (8th Cir.1991)). If a PCR applicant claims trial counsel was ineffective for failing to interview or call alibi witnesses, then the “applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence.” Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995).

Plea counsel was required to undertake reasonable investigation into Petitioner's alibi witnesses. Having an investigator run down information on only one of three names provided was not reasonable. That Petitioner did not have the most concrete information for the witnesses did not excuse plea counsel from her duty to fully investigate the names she was given. Petitioner pled guilty under Alford specifically to preserve his claim of innocence. He wanted to proceed to trial but did not because plea counsel had not fully investigated the alibi witnesses of his case. This amounted to ineffective assistance of counsel.

**CONCLUSION**

Based on the forgoing argument, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to allow full briefing of the issue.

  
Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of July, 2025.

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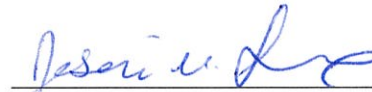
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Bouvia Sales states:

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 Daniel McLeod Coble, which was held on Sept. 11, 2023, 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 Bouvia Sales.

Respectfully Submitted,



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Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of July, 2025.

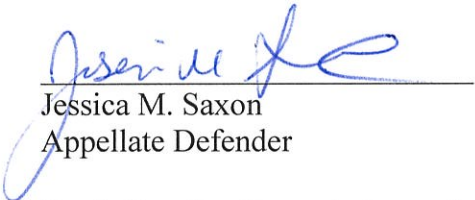
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CERTIFICATE OF COUNSEL

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."



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This 18th day of July, 2025.