

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jul 23 2025

S.C. SUPREME COURT

Certiorari to Marion County

Honorable G.D. Morgan, Jr., Circuit Court Judge

JAYME D. GAMBLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000302

JOHNSON PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the PCR court err in denying relief because petitioner demonstrated an actual conflict of interest which did not require a showing of prejudice?

STATEMENT

Petitioner Jayme D. Gamble and his brother, Kendell Alan Gamble, were indicted in Marion County on a twenty-four count indictment. App. 3. They were indicted for one count of first-degree burglary, seven counts of attempted armed robbery, seven counts of kidnapping, five counts of attempted murder, one count of discharging a firearm into a vehicle, one count of conspiracy, one count of possession of a stolen gun, and a weapons charge. App. 146-51. Laura Hiller represented petitioner. App. 1. Laura Hiller's husband, Jonathan Hiller, represented petitioner's brother. App. 1. App. 98-99. Patti Parker represented the State. App. 1. On August 1, 2018, the brothers pled guilty before the Honorable William H. Seals. App. 1. They both pled to one count of first-degree burglary, one count of attempted armed robbery, one count of kidnapping, three counts of attempted murder, a weapons charge, and petitioner pled guilty also to failure to stop for a blue light. App. 3-5. Judge Seals sentenced them to concurrent terms of imprisonment totaling fifty years. App. 29. Petitioner's appeal was dismissed by the Court of Appeals. App. 109.

On September 18, 2019, petitioner filed a PCR application. App. 31. On January 23, 2024, a hearing was held before the Honorable G. D. Morgan, Jr. App. 71. Joshua Bailey represented petitioner and Talida Balaj represented the State. App. 71. On February 20, 2025, Judge Morgan denied petitioner's application. App. 107. This petition follows.

ARGUMENT

The PCR court erred in denying relief because petitioner demonstrated an actual conflict of interest which did not require a showing of prejudice.

Despite a direct prohibition in the Rules of Professional Conduct, husband and wife lawyers represented petitioner and his co-defendant/brother. App. 118. See SCACR 407, RPC Rule 1.8(k). Rule 1.8(k) states, “A lawyer related to another lawyer as parent, child, sibling or spouse shall not personally represent a client in a representation directly adverse to a person whom the lawyer knows is represented by the other lawyer unless the client gives informed consent.” Id. Plea counsel testified at the PCR hearing, “I think we had them sign waivers, but I don’t know for sure.” App. 99. No written waiver was introduced by the State at the PCR hearing.

Petitioner Jayme D. Gamble (“Jayme”) and his brother Kendell Gamble (“Kendell”) were indicted on twenty-four counts stemming from a home invasion in Marion County. App. 3-5. One of the people in the house dialed 911 as the intruders entered. App. 10-11. The encounter could be heard on the 911 recording. App. 11. The police arrived before the robbers left the house. App. 12-13. After an exchange of gunfire and a car chase, the brothers were caught by the police. App. 13-14.

Plea counsel for Jayme was Laura Hiller (“Laura”). App. 94. She worked at Axelrod and Associates. App. 94. Jayme retained Laura. App. 94-95. The Gamble family asked Laura to recommend an attorney for Kendell. App. 98-99. She recommended her husband, Jonathan Hiller (“Jonathan”), who had his own firm. App. 98-99. At the PCR hearing, Laura testified that the brothers wanted a “unified defense.” App. 98. Laura and Jonathan had worked together as

law partners in the past and were “comfortable working alongside each other on a case.” App. 99.

Laura testified that the case was always “going to be a plea, not a trial.” App. 98. “Everything was pretty much on camera.” App. 98. Laura did not testify about whether she explained the potential conflict of interest to her client. App. 99. She testified, “We—you know, I think in this case—and I don’t recall. I think we had them sign waivers, but I don’t know for sure. But in this case, it did seem that they were not—at the time, we weren’t going through it looking to harm each other in any way. They wanted a unified defense. That’s what they told us, and that’s why.” App. 99.

Jayme testified that the conflict of interest caused Laura not to do a “proper investigation.” App. 79. Laura did no independent investigation to determine the identity of the shooter. App. 82. Kendell was the shooter and admitted as much. App. 89. Laura claimed she could see that the shooter was Kendell on the videos. App. 103. The lawyers told the brothers they would not receive more than fifteen years. App. 80. Despite Kendell being the one who fired at police officers, the brothers received nearly identical sentences totaling fifty years. App. 29.

The Sixth Amendment guarantees the right to conflict-free counsel where the conflict affects the attorney’s performance. U.S. Const. amend. VI; Glasser v. United States, 315 U.S. 60, 70 (1942) (“[S]o are we clear that the ‘Assistance of Counsel’ guaranteed by the Sixth Amendment contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests.”). “In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must

demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Cuyler v. Sullivan, 446 U.S. 335, 348 (1980).

Petitioner was entitled under the Sixth Amendment to advice from conflict-free counsel. Gonzales v. State, 419 S.C. 2, 9, 795 S.E.2d 835, 839 (2017). Under Gonzales, it does not matter whether plea counsel recognized the conflict of interest. Gonzales at 11-12, 795 S.E.2d at 840. The attorney in Gonzales had a conflict of interest when he simultaneously represented the defendant and his mother's boyfriend on drug charges. Id. The failure to pursue cooperation for the defendant in Gonzales to the benefit of the boyfriend led this Court to reverse. Id. In Gonzales, the defendant was prejudiced because of the attorney's "failure to advise petitioner as to favorable options he may have otherwise exercised." Id. at 12, 795 S.E.2d at 840.

Petitioner "need not demonstrate prejudice if there is an actual conflict of interest." Lomax v. State, 379 S.C. 93, 102, 665 S.E.2d 164, 168 (2008) (holding plea counsel ineffective for simultaneously representing a husband and wife). See also Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001) (finding an actual conflict of interest arising from simultaneous representation of husband and wife).

In Thomas, a husband and wife waived any conflict of interest, but a plea offer by the solicitor later created a conflict. Thomas at 144, 551 S.E.2d at 256. Counsel did not obtain a new waiver and this Court held, "To be valid, a waiver of a conflict of interest must not only be voluntary, it must not only be voluntary, it must be done knowingly and intelligently." Id. Here, Rule 1.8(k) requires informed consent before spouses may represent co-defendants. No evidence supports that Laura ever informed Jayme of the problems foreseen by Rule 1.8(k). Without informed consent, an actual conflict existed.

Furthermore, Laura pursued no defenses arising from Kendell being the sole shooter. Jayme explained at the PCR hearing, “We both got charged in a shooting and there was only one shooter.” App. 82-83. Jayme had no prior knowledge that Kendell would shoot at police officers. App. 84.

In a case from Missouri, the appellate court dealt with a husband-and-wife team representing co-defendant brothers. Nunley v. State, 556 S.W.3d 89, 91 (Mo. Ct. App. 2018). Missouri applies a different standard of determining whether an actual conflict of interest exists depending on whether the conflict arises during plea negotiations or trial. Id. at 94. If the conflict arose during plea negotiations, a less strict standard applies. Id. The defendant “need only show that counsel actively represented conflicting interests that adversely affected the adequacy of counsel’s performance.” Id. See generally, Deena L. Buchanan, Note, Strange Bedfellows? Married Lawyers and Conflicts of Interest, 11 Geo. J. Legal Ethics 753 (1998). Without the conflict prohibited by Rule 1.8(k) in this case, counsel could have used the fact that Jayme was not the shooter to obtain a better plea deal. This showing meets the Nunley and Lomax standards. This Court should reverse and remand to allow petitioner to be represented by conflict-free counsel.

CONCLUSION

For the foregoing reasons, petitioner's convictions should be reversed and this case remanded for a new trial.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 23rd day of July, 2025.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jayme Gamble states:

1. He is Deputy Chief Attorney for Capital Appeals 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 G.D. Morgan, Jr., which was held on Jan. 23, 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 Jayme Gamble.

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 23rd day of July, 2025.

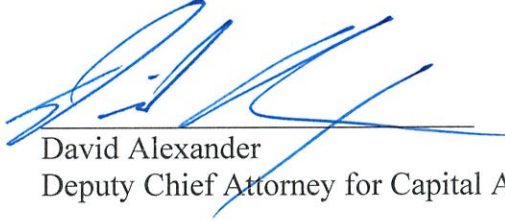
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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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