

STATE of South Carolina
IN the Court of Appeals

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OCT 09 2025

SC Court of Appeals

Appeal From Spartanburg County
Court of General Sessions

J. MARK HAYES, II, Circuit Court Judge
Appellate Case No. 2025-00324

GARY LAMONT PETTY petitioner

v.

THE STATE OF SOUTH CAROLINA Respondent

Reply TO Respondents RETURN TO
Petition FOR REHEARING

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PCI MAILROOM

SCACR Rule 263. Time, Computation

SCACR Rule 240(E)

SCACR Rule 249

SCACRimp Rule 29(b)

Judge misconduct (voir dire non disclosed)

STATUTE 14-3-330(a)(b)

STATE V. MCCOY, 737 S.E. 2d 623

STATE V. REWELL, 444 S.C. 109

SCACR Rule 201

SCACR Rule 221(b)

SCACR Rule 242(c)

STATUTE 18-1-90

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PCI MAILROOM

Untimely Return

Initially this Court requested a return from Respondent within 10 days, from Sept. 3rd, 2025

Attachment (#1) pg. 13); Attachment #2, pg. 14

On Sept. 17th, 2025 this Court received a request for an extension of time from Respondent to file and serve the return that was granted; however, not including the weekends in the (10) day computation made the 17th the tenth day; Furthermore, this rendered the return untimely.

At the time the extension was requested, it was not filed prior to the (10) day deadline.

With the weekends included Sept. 13th, 2025 was the tenth day, which was a Saturday (There is no rule or statute that excludes the weekends or holidays from computation)

As in accordance with SCACR Rule 263, Time Computation "The last day of the period so computed is to be included unless it is a Saturday or Sunday. . . . in which event the period runs until the end of the next day which is neither a Saturday or Sunday. . . ."

Pursuant to this Rule, with the tenth day being Saturday Sept. 13th, 2025, the following day that was not a Saturday or Sunday was Monday Sept. 15th, 2025. As the tenth day.

The 17th, 2025 was past the deadline for both the return and request for extension of time, and should not be considered by the Court, with the relief requested in the petition being granted in petitioner's favor.

The computation of Rule 263 SLACK was followed in reference to the respondent's extension that was granted by the Court, as the rule further states that when the period of time prescribed is less than (7) days, intermediate Saturday or Sunday shall be excluded in the computation,

The extension was from Sept. 17th to Sept. 22nd see (pg. 14) This Court informed the respondent of the deficiency of not serving petitioner with the return see (pg. 15-16) and allowed (10) days to have the petitioner served with the return;

PETITIONER RECEIVED THE RETURN ON SEPT. 29th, 2025,
SEE ENCLOSED (pg 15) THE RETURN IS DATED SEPT. 23rd
2025, SEE ATTACHMENT #4, PG. 20-21)

PURSUANT TO THE EXTENSION GRANTED THIS RETURN
IS UNTIMELY.

SOUTH CAROLINA APPELLATE COURT RULE 240 (F) STATES,
FAILURE TO TIMELY FILE A RETURN MAY BE DEEMED
A CONSENT BY THAT PARTY TO THE RELIEF SOUGHT IN
THE PETITION.

THERE WAS THE 10 DAYS FOR THE RETURN TO BE
MADE (WHICH WAS UNTIMELY), THEN THE EXTENSION OF
(5) DAYS (WHICH WAS UNTIMELY), THEN THE RETURN WITH
DEFICIENCY (10) DAYS TO CORRECT, AS THE CONTENT OF
THE RETURN IS FRIVOLOUS AND NOT AN ANSWER TO PETITIONER'S
BRIEF NOR ADDRESSED ANY POINTS RAISED, RULE 269 SCACE
STATES THAT THERE IS SANCTION FOR FRIVOLOUS RETURN
TAKEN SOLELY FOR PURPOSE OF DELAY OR NOT IN
COMPLIANCE WITH THE RULES.

Conviction DNA testing application.

states nothing about the access to Justice post

including Juree misconduct information; As the letter

Petitioner asserts that the filings was his motions

of filings; (Attachment # 5)

Court's letter was about insufficiencies with a number

Respondents return (pg. 1, L. 3-4) states that the Circuit

A new trial.

granted on petitioners Juree misconduct motion for

Circuit Court's ruling that no hearing would be

reference to his appeal, that was based upon the

Petitioner also asserts that the order was in

to Justice post conviction DNA testing Act;

initiated pro-se appeal were not based on ANR access

The order issued on July 29th 2008 and petitioners

In reference to Respondents' return (pg. 1, L. 1-2) (Attachment # 6)

(Attachment # 4, pg. 10-21)

of the following reasons: Respondents' return

basis for its entire return is misplaced because

post conviction DNA testing Act application as the

The Respondents' reliance on an access to Justice

- Respondents' Return (pg. 1, L. 10-11; pg. 2, L. 1-2)

The Respondent was correct in stating that petitioners' petition for rehearing did not raise any argument related to any ruling by the Circuit Court Judge - final or otherwise concerning petitioner Petty's application for post conviction DNA testing;

Petitioner asserts that there was a ruling on Rule 29(b) scree motion for new trial (statute of limitations) (see pg. 2, L. 3-5), and Juror misconduct motion for a new trial as the Circuit Court Judge stated due to the nature and existence of the jury information it was available at trial or within 12 months afterwards,

- Respondents' Return (pg. 2, L. 1-2), Respondent states that application for post conviction forensic DNA testing was the sole subject to which the matter currently before the Court relates;

Petitioner asserts that in the petition for rehearing he only stated the Circuit Court's statement of no evidentiary support and facts as they were stated in the appeal and Juror misconduct motion that was filed with the Circuit Court. rehearing petition (pg. 3 of 9 and 5 of 9)

The other sole subject of the rehearing is that this Court had overlooked statute 14-3-330(2)(b) as it relates to judgments and new trial motions.
(Attachment #6)

- Respondent's Return (pg. 2, L. 1-3) Respondent states that in Petty's pro-se petition for rehearing, petitioner contends that the trial Court rejected his post-trial new trial motions that were submitted pursuant to rule 29(b) SCRP.

Petitioner asserts that all motions stated in petition for rehearing were not submitted pursuant to rule 29(b) SCRP and stated to be untimely by statute of limitations; as there was only the juror misconduct motion for a new trial which has its own standard of review, see (McCoy, 737 S.E.2d 623), (State v. Powell, 444 S.C. 109)

That was stated in the petition for rehearing.

Furthermore, the respondent doesn't address nor mention this juror misconduct motion that the Circuit Court stated it would not schedule a hearing for

- Respondent's Return (pg. 2, L. 5-6) Respondent states that petitioner contends that a final and reviewable judgment was supposedly issued in his case in connection to those motions.

Petitioner asserts that the Circuit Court's denial of a hearing on Judge misconduct motion for a new trial to determine if a new trial should be granted was a denial of the entire motion for a new trial, a final and reviewable judgment pursuant to statute 14-3-330(2)(b), and Rule 201 SCRC, stating that motions for new trial are appealable.

- The respondent also states that the remittitur has already been sent to the lower court based on the Access to Justice Post Conviction DNA Testing Act, and this court is without jurisdiction to rule on case, pg. 2, L. 7-11)

However, this court still retains jurisdiction of petitioner's case as there has been no remittitur sent down for appellate case no. 2025-001324, which can not happen until petition for rehearing has been acted on pursuant to Rule 221(b) SCRC, Remittitur and Rule 242(c) SCRC.

- Appellate case no. 2025-001306, see (Attachment # 1) - This was petitioner's attempt to seek an appeal in reference to the statement about DNA made by the Circuit Court in its letter to petitioner, pg. 24 of 32; Attachment # 5)

Petitioner Petty had not petitioned for rehearing as there was no appealable Judgment that was REVIEWABLE by this Court. The remittitur for this attempted appeal has been sent down to the lower Court, this is what Respondent has referred to in its RETURN (pg. 2, L. 7-11) (Attachment #7)

Furthermore, Petitioner asserts that there is an access to justice post conviction DNA testing ACT application that is currently pending in the Spartanburg County Circuit Court, filed Jan. 17th, 2024 and the state made its RETURN MAR. 22, 2024. SEE (Attachment #8)

Petitioner's petition for rehearing should be granted as petitioner has made the required showing that there was and appealable Final Judgment, and a Juror misconduct motion that requires a hearing due to petitioner being denied the fundamental right to a trial by an impartial jury, and due process.

Petitioner's Juror misconduct motion hearing denial Judgment has went unanswered with no defense to the trial Court's decision, indicating that the Respondent has conceded this point in the rehearing petition.

Petitioner should also be granted an appeal bond as
petty standards convicted by a jury that was not impartial
and due to the facts stated a successful rehearing
and appeal would result in a remand of petty's case
to the Circuit Court for a hearing on Judge misconduct
with a new trial granted [2 yrs. and 12 mo. served], the
respondent has also misstated statute, 18-1-90.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 03, 2025

Mr. Mark Reynolds Farthing, Esquire
PO Box 11549
Columbia SC 29211-1549

Mrs. Wanda H. Carter, Esquire
Appellate Defense
PO Box 11589
Columbia SC 29211

Re: Gary Lamont Petty v. The State
Appellate Case No. 2025-001324

Dear Counsel:

We received petitioner's petition for rehearing on August 7, 2025, and supplement to his petition for rehearing on August 11, 2027. The Court requests a return within ten (10) days of the date of this letter.

Very truly yours,

Catherine Harrison, deputy
CLERK

(13 of 32)

The South Carolina Court of Appeals

Gary Lamont Petty, Petitioner,

v.

The State of South Carolina

Appellate Case No. 2025-001324

The Honorable J. Mark Hayes, II
Spartanburg County
Trial Court Case No. 1999GS4202358

ORDER

The request for an extension to serve and file a return to the petitioner's petition for rehearing is granted and extended until September 22, 2025. Pursuant to the order of the Supreme Court of South Carolina dated March 18, 2009 (www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-03-18-01), any further extension request must be based on a showing of good cause.

BY

FOR THE COURT
Catherine J. [unclear], deputy
CLERK

Columbia, South Carolina
September 17, 2025

cc:
Barry Joe Barnette, Esquire
Mark Reynolds Farthing, Esquire
Wanda H. Carter, Esquire
Gary L. Petty, 264235

(14 of 32)



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

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September 23, 2025

Mr. Mark Reynolds Farthing, Esquire
PO Box 11549
Columbia SC 29211-1549

Re: Gary Lamont Petty v. The State
Appellate Case No. 2025-001324

Dear Counsel:

Upon reviewing your return to pro se petition for rehearing, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your filing will not be considered:

- The proof of service does not show that Mr. Petty was served with this return. (It is this Court's policy to notify both Appellate Defense and the Attorney General's Office of all notices for criminal and DNA appeals.)

Very truly yours,

A handwritten signature in cursive script that reads "Catherine Harrison, deputy".

CLERK

(15 of 32)

cc: Barry Joe Barnette, Esquire
Wanda H. Carter, Esquire
Gary L. Petty, 264235



Mark R. Farthing, SADAG
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211-1549

30224

(7 of 32)

Gary Lamont Petty, #264235
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

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(Attachment #4)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Petition for Writ of Certiorari to the Court of General Sessions
Appeal from Spartanburg County
Honorable J. Mark Hayes, II, Circuit Court Judge
Appellate Case No. 2025-001324

GARY LAMONT PETTY,

Petitioner,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITIONER'S PRO SE PETITION FOR REHEARING

Through an order issued on July 29, 2025, this Court dismissed an Access to Justice Post-Conviction DNA Testing Act appeal initiated in a pro se capacity by the petitioner, Gary Lamont Petty, after he received a letter from a circuit court judge about insufficiencies with a number of filings he had submitted at the circuit court level. In dismissing the appeal, this Court concluded there did not appear to be a final order that was reviewable on appeal in Petty's case. Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Petty has now submitted a pro se petition for rehearing along with requests for rehearing en banc and to be granted an appeal bond to this Court, and this Court has asked the State to file a return to Petty's petition. For the reasons that follow, Petty's pro se rehearing petition should be denied.

First, Petty's pro se petition for rehearing should be rejected because Petty did not actually raise any arguments in it related to any ruling of the circuit court judge—final or

(18 of 32)

otherwise—concerning Petty’s application for post-conviction forensic DNA testing, which is the sole subject to which the matter currently before this Court relates. Instead, through his pro se petition for rehearing, Petty contends the circuit court judge rejected his post-trial *new trial motions* that were submitted pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure as untimely and, thus, a final and reviewable judgment was supposedly issued in his case in connection to those motions. (Pet. for Reh. pp. 1-5; Amended Pet. for Reh. pp. 1-4).

Importantly though, Petty’s appeal related to his post-trial new trial motions was an entirely *separate* matter that was also recently before this Court, but, since Petty did not properly seek rehearing in that particular matter, this Court has already issued the remittitur, which brought that distinct appeal to an end. Appellate Records for State v. Gary Lamont Petty, South Carolina Appellate Court Public Index, <https://ctrack.sccourts.org/public/caseView.do?csIID=83727>. Therefore, since Petty’s pro se petition for rehearing is substantively only seeking rehearing in connection to a matter over which this Court no longer has jurisdiction, it should be denied as moot. See Sullivan v. Speights, 14 S.C. 358, 360 (1880) (“After the *remittitur*, however, is sent down, the case passes beyond the reach of this court and its jurisdiction is lost, and no motion can be heard by this court on the matter thereafter.”); see also Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”); Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (“A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.”); DeWitt v. South Carolina Dep’t of Highways and Pub.

Transp., 274 S.C. 184, 187, 262 S.E.2d 28, 30 (1980) (“The acts of a court without jurisdiction are without effect.”).

Second, just as this Court has already found when dismissing Petty’s appeal, the circuit court judge does not appear to have issued any final appealable orders on Petty’s application for post-conviction forensic DNA testing. Resultantly, notwithstanding any other procedural or substantive issues with Petty’s pro se petition, Petty’s petition for rehearing should be denied due to the absence of an appealable final judgment.

Generally speaking, an appeal may only be pursued after a party has obtained a final judgment or has otherwise satisfied the terms Section 14-3-330 of the South Carolina Code of Laws. State v. Wilson, 387 S.C. 597, 599, 693 S.E.2d 923, 924 (2010); see Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (“An appeal ordinarily may be pursued only after a party has obtained a final judgment.”); State v. Miller, 289 S.C. 426, 427, 346 S.E.2d 705, 706 (1986) (“In order to exercise his statutory right to appeal, a defendant must come within the terms of the applicable statute.”). And, critically, in the context of a ruling on an application for testing made pursuant to Access to Justice Post-Conviction DNA Testing Act, an appealable final judgment means “a final order denying or granting DNA testing[.]” S.C. Code Ann. § 17-28-90(G).

Here, through the letter Petty is currently attempting to challenge on appeal, the circuit court judge did *not* finally grant or deny Petty’s application for additional post-conviction DNA testing on the merits but, instead, appeared to simply advise Petty his application was insufficient in its current form. (June 2025 Letter pp. 1-2). Accordingly, the circuit court judge’s letter does not appear to constitute a final ruling that was appealable pursuant to the plain language of the Access to Justice Post-Conviction DNA Testing Act. See S.C. Code Ann. § 17-28-90(G) (“The

applicant and the solicitor or Attorney General, as applicable, shall have the right to appeal a final order denying or granting DNA testing by a writ of certiorari to the Court of Appeals or the Supreme Court as provided by the South Carolina Appellate Court Rules.”).

Third and finally, to the extent Petty is seeking the grant of an appeal bond, that request should respectfully also be rejected. Significantly, a defendant has no right to an appeal bond, and a court ordinarily will only issue one with “extreme caution.” Nichols v. Patterson, 202 S.C. 352, ___, 25 S.E.2d 155, 156 (1943) (citation and internal quotations omitted). Here, Petty stands convicted by a jury of his peers of a litany of highly-serious and heinous offenses, including first-degree burglary and first-degree criminal sexual conduct, and is currently serving an aggregate sentence of *life without the possibility of parole*. See, e.g., State v. Johnson, 350 S.C. 543, 547, 567 S.E.2d 486, 488 (Ct. App. 2002) (characterizing first-degree burglary as a grave offense). Meanwhile, his current appeal is not a direct appeal but, instead, is a collateral appeal of a letter addressing—amongst other things—insufficiencies with his application seeking *further* post-conviction DNA testing, which—if Petty’s appeal was somehow ultimately successful and that application was ever granted—would only result in, at best for Petty, further testing and the discovery of a *potential* basis upon which a post-trial motion seeking a new trial could be filed. See S.C. Code Ann. § 17-28-100(B) (“If the results of the DNA test are exculpatory, the applicant may use the exculpatory results of the DNA test as grounds for filing a motion for new trial pursuant to the South Carolina Rules of Criminal Procedure.”). Under such circumstances, Petty cannot possibly demonstrate what is necessary to warrant the extraordinary—and disfavored—relief of the grant of an appeal bond, and his request for one should be flatly denied. See Nichols, 202 S.C. at ___, 25 S.E.2d at 156 (explaining an appellate court—when deciding whether to grant an appeal bond—should consider the following factors:

(1) the probability of success on appeal; (2) the nature and seriousness of the criminal offense committed; (3) the danger the defendant may pose to the community if he or she is released; (4) the likelihood the defendant may forfeit bail or flee if released; (5) the character and circumstances of the defendant; and (6) the defendant's "personal attitude toward society and government."); see also S.C. Code Ann. § 18-1-90 ("Bail may be allowed to the defendant in all cases in which the appeal is from the trial, conviction, or sentence for a criminal offense.

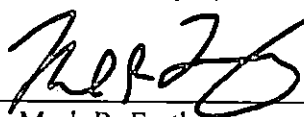
However, bail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years.").

Accordingly, for all those reasons, this Court should deny Petty's pro se petition for rehearing and uphold its earlier decision to dismiss his appeal. Furthermore, to the extent Petty is seeking release from his life-without-parole sentence on an appeal bond, this Court should deny that request, too.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

By: 
Mark R. Farthing
S.C. Bar Number 76901

September 23, 2025

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Petition for Writ of Certiorari to the Court of General Sessions
Appeal from Spartanburg County
Honorable J. Mark Hayes, II, Circuit Court Judge
Appellate Case No. 2025-001324

GARY LAMONT PETTY.

Petitioner.

vs.

THE STATE OF SOUTH CAROLINA.

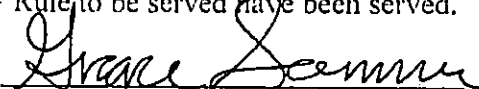
Respondent.

PROOF OF SERVICE

I, Grace Sommer, certify I have served the within Return to Petitioner's Pro Se Petition for Rehearing on Petitioner by mailing a copy to the following individual:

Gary Lamont Petty, # 264235
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

I further certify all parties required by Rule to be served have been served.
This 23rd day of September, 2025.


GRACE SOMMER
Legal Assistant
Office of the Attorney General

(Attachment #5)



State of South Carolina
Circuit Court Judge, At-Large, Seat 5

J. MARK HAYES, II
JUDGE

180 MAGNOLIA STREET, 2ND FLOOR
SPARTANBURG, SOUTH CAROLINA 29306
TELEPHONE: (864) 562-4144
FAX: (864) 562-4142
E-MAIL: mhayesj@sccourts.org

June 6, 2025

Gary Lamont Petty, #264235
Perry Correctional Institute
430 Oaklawn Road
Pelzer, South Carolina 29669

Re: 1999-GS-42-02357 to 59

Dear Mr. Petty:

The motions you filed with the Spartanburg County Clerk of Court's Office over the past year were forwarded to me to review. They were sent to me in my capacity as the Seventh Circuit Chief Administrative Judge for General Sessions matters.

After reviewing the numerous motions and filings, please be advised that, by copy of this letter to the Spartanburg Clerk of Court, I am instructing the Clerk to not schedule any of the motions for a hearing.

I write to you to advise you of my instructions in the event you desire to seek additional judicial review before other courts. If you wish to appeal my decision, please do so in a timely manner. I also wished you to have this letter so that you can also share it with the lawyer of your choice. My belief is that any lay person benefits from receiving independent legal advice—especially matters that are important as the ones you raise in these motions. I realize in the past you were represented by Joseph McCulloch of the Palmetto Innocence Project and William Yarborough of the Greenville Bar when you raised issues related to DNA. Mr. McCulloch and Mr. Yarborough should be considered by you as appropriate legal resources to share the content of this letter and advise you of your rights. These two lawyers are just my suggestions, please consult with whichever lawyer you feel best serves you.

As reflected in the materials, you received a life sentence to a Burglary First Degree and a 30-year sentence on a Criminal Sexual Conduct charge (the 5-year sentence for grand larceny has expired because of the time you have served). Since the time you were sentenced, you and your lawyers have filed numerous actions in circuit court and other courts challenging various aspects of your case. A review of the records indicates that you have been unsuccessful with your challenges. It does appear that additional DNA testing was accomplished in 2017. This DNA report indicated the following; "the major component DNA profile matches the DNA profile obtained from sample CCC 1666-0364-R03 (Gary Petty)".

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(24 of 32)

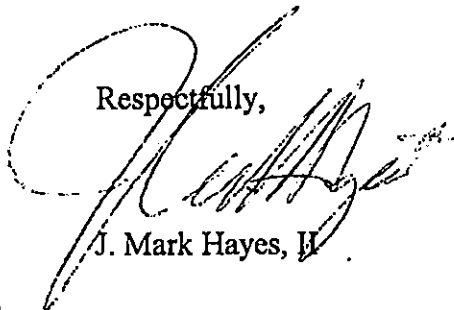
PAGE TWO
GARY LAMONT PETTY, #264235
JUNE 6, 2025

The new motions, in my opinion, are not properly filed and/or do not contain the required substantive claims to necessitate the scheduling of addition hearings by the circuit court. Expressed in more legal terms, a prima facie showing has not been made to justify conducting a hearing. Having reviewed the materials, these new motions, on their face, do not meet the standard for conducting a SCCrimR 29(b) review. Viewing the issues you raised in a manner most favorably to you, these issues, if true, should have been raised in your previous filings. Statute of limitations is a problem for you. Additionally, even though you assert you did not know of this information (jury information) until recently, the nature and existence of the information was available at the time of your trial, or at least within 12 months afterwards. Additionally, the affidavit filed is your own affidavit and contains inadmissible hearsay statements from your cousin. Additionally, your assertion through a Rule 29(b) motion of third party guilty of another man convicted of similar crimes that occurred during the same time as the ones you were convicted is, again, untimely, based upon inadmissible information—newspaper accounts—and is, at best, speculative—especially given the DNA information previously obtained. Again, no prima facie showing. Also, the issue of needing an actual “injury” to support a burglary conviction is not support in law.

The above is a brief summary of my reasons for instructing the Clerk of Court that no hearing will be needed on the motions you have filed.

Even though my decisions are not favorable and no hearing will be conducted, I understand these issues are important to you. Thus, I, again, encourage you to seek legal advice with an attorney. Please share this letter with them and your prior filings.

I wish you only the best.

Respectfully,

J. Mark Hayes, II

CC: The Honorable Amy Cox
Spartanburg County Clerk of Court
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306

CC: The Honorable Barry Barnette
Solicitor, Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306

JMH/smw

(9 of 9)
(25 of 32)

The South Carolina Court of Appeals

Gary Lamont Petty, Petitioner,

v.

The State of South Carolina

Appellate Case No. 2025-001324

ORDER

This appeal arises out of a letter from a circuit judge declining to rule on motions that were improperly filed with the circuit court. From our review of the public index, there is not a final order reviewable on appeal. Accordingly, this appeal is dismissed. *See* S.C. Code Ann. § 14-3-330 (2007). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.



FOR THE COURT

Columbia, South Carolina

FILED
Jul 29 2025

cc:

Barry Joe Barnette, Esquire
Mark Reynolds Farthing, Esquire
Wanda H. Carter, Esquire
Gary L. Petty, 264235

(7 of 9)

(26 of 32)

(Attachment # 7)

The South Carolina Court of Appeals

The State, Respondent,

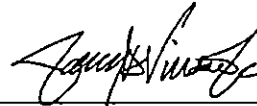
v.

Gary Lamont Petty, Appellant.

Appellate Case No. 2025-001306

ORDER

Appellant filed a *pro se* notice of appeal. From our review of the public index, there is not a final order reviewable on appeal. Accordingly, this appeal is dismissed. *See* S.C. Code Ann. § 14-3-330 (2007). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.



, J.

FOR THE COURT

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Gary L. Petty, 264235

FILED
Jul 16 2025

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF SPARTANBURG)	FOR THE SEVENTH JUDICIAL CIRCUIT
)	
Gary Lamont Petty,)	
)	
Applicant/Defendant)	State's Return to Applicant/Defendant's
)	Application for Forensic DNA Testing
vs.)	dated January 17, 2024
)	
The State of South Carolina,)	Indictment No.: 1999-GS-42-2358
)	
<u>Respondent.</u>)	

The State responds to Applicant/Defendant's Application for Forensic DNA Testing pursuant to Section 17-28-50(8) of the Code of Laws of South Carolina, 1976, as amended. The State respectfully asks the Court deny the application on the following grounds:

At the Applicant/Defendant's trial, the jury was firmly convinced of the Applicant/Defendant's identity as the perpetrator of the crimes. During the four day trial from February 7 to February 10, 2020, evidence was presented proving beyond a reasonable doubt that Applicant/Defendant Gary Lamont Petty committed Burglary in the First Degree and Criminal Sexual Conduct in the First Degree. The Honorable Lee S. Alford presided over the trial and sentenced the Applicant/Defendant (hereafter "Petty") to life in prison for Burglary in the First Degree, thirty (30) years in prison concurrent for Criminal Sexual Conduct in the First Degree, and five (5) years in prison concurrent for the Grand Larceny in this case. The South Carolina Court of Appeals affirmed his conviction and sentence in *State v. Petty*, Op. No.: 2002-UP-359 (S.C. Ct. App. Filed May 21, 2002). The remittitur was issued on June 6, 2002.

The first post-conviction relief (hereafter "PCR") application by Petty was filed on May 19, 2003 (2003-CP-42-1781). Two amendments were filed on the first PCR. An evidentiary hearing into the matter was convened on April 7, 2005, at the Spartanburg County Courthouse. On June 10, 2005, the Honorable John M. Milling, presiding judge, issued the Order of Dismissal denying Petty's PCR application.

On April 20, 2006, Wanda H. Carter, Esquire, filed a petition for writ of certiorari and a petition to be relieved as counsel in the South Carolina Supreme Court on behalf of Petty pursuant to *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court transferred the case to the South Carolina Court of Appeals. On September 28, 2007, the South Carolina Court of Appeals denied the petition for writ of certiorari and granted the petition to relieve counsel. The remittitur was issued on October 16, 2007.

Petty then filed a federal writ of habeas corpus (9:08-2967-RBH-P) on September 4, 2008. After the report and recommendation was issued, Petty filed objections on August 26, 2009. The

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United States District Court of South Carolina dismissed the petition by written order on September 21, 2009.

Petty filed his second PCR application on August 7, 2009. The State of South Carolina filed its Return and Motion to Dismiss on May 13, 2010, requesting the matter be summarily dismissed for successiveness and untimeliness. On August 3, 2010, a Conditional Order of Dismissal was signed by the Honorable J. Derham Cole, conditionally dismissing the application for failure to state a claim, successiveness, and untimeliness. The Final Order dismissing the case was signed by the Honorable J. Mark Hayes, II and filed on February 3, 2011.

Before the Final Order in his second PCR was signed, Petty filed his third PCR application on January 21, 2011. The State of South Carolina filed its Return and Motion to Dismiss, moving to summarily dismiss Petty's third PCR application for successiveness, untimeliness, failure to establish a *prima facie* case of newly discovered evidence, and as barred by the doctrine of *res judicata*. On January 14, 2013, the Honorable J. Derham Cole signed the Final Order dismissing Petty's third PCR application.

Petty filed a notice of appeal on February 8, 2013. The South Carolina Supreme Court dismissed the appeal because Petty failed to show there was an arguable basis for asserting the determination by the lower court was improper, as required by Rule 243(c), SCACR. The remittitur was issued on March 11, 2013.

Petty filed his fourth PCR application on May 7, 2013. The State of South Carolina made its Return and Motion to Dismiss on February 20, 2014, arguing the PCR application was successive and untimely. On March 12, 2014, the Honorable J. Derham Cole issued a Conditional Order of Dismissal. The Honorable J. Mark Hayes, II, issued a Final Order of Dismissal on February 1, 2016, denying and dismissing the matter with prejudice.

Petty, through retained counsel of William G. Yarborough, III, subsequently filed a second petition for habeas corpus under 28 United States Code Section 2254 on October 29, 2015 (C.A. No. 0:15-4192-RBH-PJG). On October 29, 2015, the Honorable Paige J. Gossett, United States Magistrate Judge, issued a report and recommendation that the petition be dismissed without requiring Respondent to file a return. Thereafter, on November 2, 2015, Petty filed a "Motion to Withdraw Petition for Writ of Habeas Corpus and Stay Timely Filing Limit" through counsel. In that Motion to Withdraw, Petty sought time to properly file a motion pursuing authorization for a successive application. On November 3, 2015, the Honorable R. Bryan Harwell, United States District Judge, granted Petty's Motion to Withdraw and denied Petty's Motion to stay time limits, citing the Court's lack of jurisdiction.

On November 5, 2015, Petty through his attorney, William G. Yarborough, III, filed a motion pursuant to 28 United States Code Section 2224 in the Fourth Circuit Court of Appeals, seeking authorization for district court consideration of a successive application. The Court denied that motion by order filed November 18, 2015.

Petty through his attorney, William G. Yarborough, III, subsequently filed his fifth PCR application on November 24, 2015. Respondent, the State, made its Return and Motion to Dismiss

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on March 24, 2017, arguing the application was successive, moot, untimely, and failed to state a cognizable claim. On March 30, 2017, the Honorable J. Derham Cole issued a Conditional Order of Dismissal. Judge Cole issued a Final Order of Dismissal on May 19, 2017, dismissing the matter with prejudice.

On May 30, 2017, Petty filed a Notice of Appeal. On June 6, 2017, in a written order the South Carolina Supreme Court dismissed the appeal because Petty did not file a response to the Conditional Order of Dismissal. The remittitur was issued on June 23, 2017.

A sixth PCR application (19-CP-42-4184) was filed by Petty on November 26, 2019. The Honorable R. Keith Kelly conditionally dismissed the sixth PCR application based on *res judicata*, statute of limitations, successive, and Petty's failure to establish any sufficient reason why he could not have raised those allegations in his previous PCR application(s). On October 25, 2021, the Honorable Grace Gilchrist Knie issued a Final Order of Dismissal that the sixth PCR application be hereby denied and dismissed with prejudice based on the reasons stated in the Conditional Order of Dismissal filed by the Honorable R. Keith Kelly on July 30, 2021.

Petty filed a seventh PCR application (24-CP-42-410) on January 31, 2024, with the Spartanburg County Clerk's Office. In this seventh application, Petty makes reference to a Consent Order for Retesting of Evidence Held in Storage at the Seventh Judicial Circuit Clerk of Court's Office. The Consent Order (attached as Exhibit #1) signed by Solicitor Barry J. Barnette for the State and Petty's attorneys, William G. Yarborough, III and Joseph M. McCulloch, II, and issued by the Honorable R. Keith Kelly provided for the re-testing of the items listed in the Consent Order. The items were submitted for testing at Bode Cellmark Forensics in Lorton, Virginia. Bode Cellmark Forensics issued a report on February 8, 2017 (attached as Exhibit #2). Page 1 of the February 2017 report from Bode Cellmark Forensics states the following:

The evidence was processed for DNA typing using the Applied Biosystems AmpFLSTR Identifier Plus kit.

- 1. A DNA profile was obtained from sample CCC-1666-0364-R03 (Gary Petty).*
- 2. The DNA profile was obtained from the epithelial fraction (EF) of sample CCC1666-0364-E01 is consistent with a female contributor and will be used as the victim reference sample (Brenda K. Bishop).*
- 3. The DNA profile obtained from the sperm fraction (SF) of sample CCC1666-0364-E01 is consistent with a mixture of two individuals including a major male contributor (Male 1) and alleles consistent with the victim.*

This major component DNA profile matches the DNA profile obtained from sample CCC1666-0364-R03 (Gary Petty).

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The whole and complete report from Bode Cellmark Forensics is attached as Exhibit #2 to this Return.

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The State would attach additional exhibits to this Return and would incorporate them into the State's Return as listed:

- Exhibit #3- Order of Dismissal with Prejudice (03-CP-42-1781) dated June 10, 2005
- Exhibit #4- Conditional Order of Dismissal (09-CP-42-4363) dated August 3, 2010
- Exhibit #5- Final Order (09-CP-42-4363) dated February 3, 2011
- Exhibit #6- Conditional Order of Dismissal (11-CP-42-0251) dated March 6, 2012
- Exhibit #7- Final Order (11-CP-42-0251) dated January 14, 2013
- Exhibit #8- Final Order of Dismissal (13-CP-42-2165) dated February 1, 2016
- Exhibit #9- Conditional Order of Dismissal (15-CP-42-4889) dated March 30, 2017
- Exhibit #10- Final Order of Dismissal (15-CP-42-4889) dated May 19, 2017
- Exhibit #11- Conditional Order of Dismissal (19-CP-42-4184) dated July 30, 2021
- Exhibit #12- Final Order of Dismissal (19-CP-42-4184) dated October 25, 2021.

The State would argue that this current Application for Forensic DNA Testing made by Petty does not bring forward any additional information and should be dismissed for all of the reasons stated in this Return as well as all of the reasons stated in the attachments incorporated into the State's Return. The currently requested DNA testing would actually be the third testing done in this matter considering the original testing that was done by SLED and then the testing done by Bode Cellmark Forensics. Further, the State would argue the current Application for Forensic DNA Testing fails to provide sufficient reason why the second re-testing, agreed to by all parties (Exhibit #1) and done by Bode Cellmark Forensics (Exhibit #2), was not an adequate re-testing.

A hearing to consider additional re-testing of DNA would once again open the victim and her family to pain and suffering that this crime and Petty inflicted. Petty was properly given his day in court; he has also had ample access to the post-trial process. This current Application for Forensic DNA Testing fails to make a prima facie showing and fails to reveal any new information in this case separate and apart from anything argued in previous PCR actions – all of which have been denied and dismissed by the courts. The State would also argue this Application for Forensic DNA Testing is barred by the statute of limitations under the South Carolina Code of Laws, the case law of our state, and/or the doctrine of *res judicata*. Additionally, the State would argue this current application is successive and moot given the re-testing that has already occurred (Exhibit #2) as well as the reasoning discussed by the numerous courts in the orders denying Petty's PCR matters, prior appeals, and Federal Habeas Corpus petitions as well as motions under 28 U.S.C. Section 2244 of the United States Federal Code.

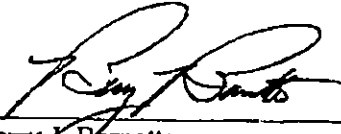
The State respectfully asks this Honorable Court to rule on this matter without a hearing as allowed under 17-28-50(C), Code of Laws of South Carolina, 1976, as amended, and summarily dismiss this Application for Forensic DNA Testing with prejudice. The State would also ask that

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Petty be barred from any additional applications based on his prior history as shown by the Exhibits made a part of this Return.



Barry J. Barnette
Solicitor for the 7th Judicial Circuit

Spartanburg, South Carolina
March 22, 2024

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SPARTANBURG COUNTY
AMY W. COX

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ATTN Honorable Clerk

OCT 09 2025

SC Court of Appeals

Please find enclosed my reply to
the states return and proof that
all parties have been served,

Thank you for ur time,

Mr. Gray Lambert Petty
Petty Clerk, Just.
430 Oakland Rd.
Peterson, SC 29669

This 2nd day of October, 2025

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name: <i>GARY PATTY</i>	SCDC #: <i>264235</i>	Housing Unit: <i>Q3B 224</i>	Date: <i>10/2/25</i>
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GENERAL MATERIAL

** Inmate must have the funds in his/her account to pay for the materials.

To be completed by
SCDC staff:

Item	Amount	Cost
Envelope		<i>SCAtt, General Barry Barnett SC Court of Appeals</i>
Pen		
Paper		
Postage		
Tape		
Box		
Electronic Repair		
Other		
Sub-Total:		

LEGAL MATERIAL

** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.

To be completed by
SCDC staff:

Item	Amount	Cost
Envelope		<i>Severed Mark Frithing Barry Barnett</i> RECEIVED OCT 09 2025 SC Court of Appeals
Pen		
Paper		
Postage		
Other		
Sub-Total:		

PHOTOCOPIES

** Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.

To be completed by
SCDC staff:

Item	Amount	Cost
Photocopies		PAID
		<i>Exp. Based only</i>

STATE of South Carolina
In the Court of Appeals

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OCT 09 2025

Appeal From Spartanburg County
Court of General Sessions

SC Court of Appeals

Honorable J. Mark Hayes, II, Circuit Court Judge

APPELLATE CASE NO. 2025-001324

GARY LAMONT PETTY PETITIONER

v.

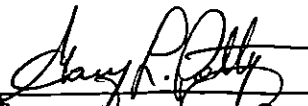
THE STATE OF SOUTH CAROLINA RESPONDENT

PROOF OF SERVICE

I, Gary Lamont Petty, Certify I have served the Reply to Respondent Petition to petition for rehearing on all parties by mailing a copy to the following individuals:

- ① Barry Joe Baenette, Esq.
Att. Gen. Solicitor
180 Magnolia St.
Spartanburg, SC 29306
- ② Mark Reynolds Frithing
S.C. Attorney General's Off.
P.O. Box 11549
Columbia, SC 29211

I further certify that all parties have been served on this 2nd day of October, 2025.


GARY LAMONT PETTY (PRO-SE)

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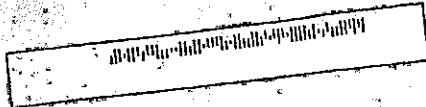
Gregory Lamont Petty, # 2016235/03(b) 234
Petty, Core, First
420 Oaklawn Rd.
Petty, S.E. 29669



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SC Court of Appeals

South Carolina Court of Appeals
1220 SENATE ST.
Columbia, S.C. 29201



LEGAL MAIL