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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2025-001815
Circuit Court Case No. 2022-CP-23-01152

Frederick Jarvis, Petitioner,

v.

State of South Carolina, Respondent.

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was Petitioner entitled to a new trial because he was denied the right to counsel?

2. Was Petitioner entitled to a new trial because he was denied his right to a jury trial?

3. Did the post-conviction judge err by not granting Petitioner a new trial?

STATEMENT OF THE CASE

On October 14, 2021, following a bench trial, petitioner was convicted of driving under the influence in Greenville Municipal Court. He was taken to jail following his conviction and returned to court on October 21, 2021, when he was sentenced to time served. He did not file a direct appeal. In March 2022 he filed an application for post-conviction relief and in July 2022 he filed an amended application for post-conviction relief. The respondent filed a timely return to petitioner's application.

On May 16, 2024, a post-conviction relief hearing was held in the Greenville County Circuit Court before the Honorable B. Alex Hyman. On December 19, 2024, Judge Hyman issued a Judicial Order denying petitioner a new trial but granting petitioner a belated appeal under White v. State, 263 S.C. 110 (1974). On December 27, 2024, petitioner submitted a motion to alter judgment to which respondent submitted a return. On August 21, 2025, Judge Hyman issued an order denying petition's motion to alter or amend judgment. Petitioner did not appeal under White v. State but is submitting this petition for certiorari instead.

ARGUMENT

1. PETITIONER IS ENTITLED TO A NEW TRIAL BECAUSE HE WAS DENIED HIS RIGHT TO COUNSEL

In his judicial order the post-conviction relief judge made the following findings:

a. The trial judge "did not discuss the Applicant's right to a jury trial or his eligibility to have an appointed lawyer" (Appendix, p. 95),
b. "after the Applicant was convicted, the city judge completed a Form IV but did not send the form to the Office of Indigent Defense for financial screening" (Appendix p. 95),
c. "if the trial judge had raised the issue of a free lawyer for the Applicant, the Applicant would have been screened and assigned a lawyer" (Appendix pgs 95-96),
d. "During the officer's testimony, he repeatedly offered inadmissible hearsay evidence including a statement allegedly made by the Applicant's passenger" (Appendix p. 96),
e. "The Pinto 'statement' was also extremely damaging in the Applicant's driving under the influence trial since, per the officer, Pinto said that he and the Applicant had been drinking all day" (Appendix p. 96),
f. "Mr. Mauldin reviewed the bench trial transcript and testified that the officer's statements from the passenger, EMS, and jail personnel were inadmissible hearsay. Further, the Court reached the same conclusions on the record as to the inadmissible hearsay testimony by Officer Bowles" (Appendix p. 96)
g. "The bench trial record is clear that the trial judge did not address the Applicant's right to counsel or his right to a jury trial" (Appendix p. 96),
h. "There was no waiver of either of these rights on the record." (Appendix p. 96)

The petitioner was facing time in jail for his driving under the influence charge. He in fact received a jail sentence to time served. He was entitled to a free

lawyer if he qualified financially. Alabama v. Shelton, 535 U.S. 654 (2002); Rothgery v. Gillespie, 554 U.S. 191 (2008).

Petitioner appeared in city court on his first court appearance date without a lawyer. The trial judge did not ask petitioner if he wanted to be screened for a court appointed attorney and asked no questions about his possible eligibility for a free lawyer.

That petitioner would likely have qualified for a free lawyer was determined by the post-conviction judge as follows: "if the trial judge had raised the issue of a free lawyer for the Applicant, the Applicant would have been screened and assigned a lawyer". (Appendix pgs 95-96) That the petitioner would have qualified for the appointment of counsel was supported by petitioner's testimony that he was unemployed at the time of his bench trial (Appendix p. 95) and by the fact that the trial judge later completed a Form IV for indigent screening. (Appendix p. 95)

Petitioner did not waive his right to counsel. Dearybury v. State, 367 S.C. 34, 625 S.E.2d 212 (S.C. 2006).

The negative impact on petitioner's case when he was forced to represent himself was clear. At several important points in the trial, any lawyer representing petitioner would have objected to the officer's hearsay testimony as both petitioner's witness John Mauldin and the post-conviction judge concluded. (Appendix p. 96) The post-conviction judge concluded that hearsay testimony was presented at trial by the officer. That hearsay testimony included statements from petitioner's passenger, EMS and jail personnel. None of the officer's hearsay testimony would have been admitted at trial over an objection. Rule 801 South Carolina Rules of Evidence.

2. PETITIONER IS ENTITLED TO A NEW TRIAL BECAUSE HE WAS DENIED HIS RIGHT TO A JURY TRIAL

Among the post-conviction judge's findings was the following: "the bench trial record is clear that the trial judge did not address the Applicant's right to counsel

or his right to a jury trial" (Appendix p. 96) and "there was no waiver of either of these rights on the record." (Appendix p. 96)

Petitioner was entitled to a jury trial if he requested one. The trial judge did not inform petitioner of his jury trial right.

3. THE POST-CONVICTION JUDGE ERRED BY GRANTING PETITIONER A DIRECT APPEAL UNDER WHITE v. STATE INSTEAD OF ORDERING A NEW TRIAL

While it was clear that petitioner was not informed of his right to appeal, the granting of a White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) belated appeal was of no value to petitioner. In the White case the defendant had a lawyer. He had someone who could make objections upon which a direct appeal could have been based. Petitioner did not have a lawyer or a clue as to what was happening in city court. What was petitioner to appeal? Petitioner did not object to the repeated hearsay testimony. He did not know how to do that. He needed a lawyer to do that for him.

The post-conviction relief judge recognized the ineffectiveness of the belated direct appeal "relief" himself when he wrote in his order as follows: "... and the record shows that there are arguably potential issues appropriate for direct appellate review – though ultimately likely to be found procedurally unavailable."

There is no direct appeal available for a defendant who makes no objections to evidence introduced at trial.

CONCLUSION

For the reasons stated, petitioner asks this Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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