

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM COLLETON COUNTY
General Sessions Court
Robert J. Bonds, Circuit Court Judge

DEC 15 2025

SC Court of Appeals

Appellate Court Case No.: 2024-000432
Opinion No.: 2025-UP-387

State of South Carolina, Respondent

v.

Antwan Demetric McMillan, Appellant

APPELLANT’S PETITION FOR REHEARING

APPELLANT ANTWAN MCMILLAN respectfully petitions for rehearing pursuant to Rule 221(a), SCACR, on the basis that this Court overlooked and misapprehended material facts and principles of law in its unpublished per curiam opinion affirming the denial of his motion for a new trial. *State v McMillan*, 2025-UP-387 (SC Ct App. November 26, 2025).

Appellant is requesting that this Court rehear this matter because the opinion does not address the errors of law raised in his brief and instead reduces the Appellant’s entire argument to one relying upon the credibility of a post trial statement of a co-defendant who cooperated with the State.

BRIEF FACTUAL CONTEXT

As a matter of context, the State presented one witness who identified Appellant as a culpable party to the shooting and attempted robbery spree which was the subject of the 2011

criminal trial. ROA 400 - 401. This witness was James Davis (Davis). ROA 396 - 397.

Davis testified at trial that he was offered a deal to stay out of prison if he cooperated but that this deal had expired. ROA 258. He did not testify that the charges against him would be dismissed. *Id.* He stated at trial that his testimony was not the result of a deal between him and the state. ROA 258 - 259.

Davis later provided a statement to a private detective hired by co-defendant Jakes. ROA 281. In this statement, he indicated that he had struck a deal with the state. *Id.* After learning of this statement, undersigned¹ learned that Davis' charges were no longer listed on the public index. R. p. 90, lines 5-11.

Only after the trial court entertaining the Rule 29(b) motion ordered that the 14th Circuit Solicitor's Office and the Colleton County Sheriff's Office provide any evidence regarding the disposition of the charges against Davis did Appellant learn that the charges against Davis were dismissed. ROA 46 - 47.

This knowledge came from the only item produced by this order, an order expunging Davis' charges because they were dismissed by the State after Appellant's trial. ROA 48 - 49. This expungement order indicated that Davis' charges were dismissed less than one month of his testimony. ROA 48 - 49. Further, this dismissal was made without any further hearings in Davis' case. No documentation regarding the reasons the charges were dismissed was produced.

When questioned during the merits hearing on the new trial motion about the deal he had with the State, Davis repeatedly invoked his Fifth Amendment rights to not be compelled to incriminate himself. ROA 95 - 106.

¹Undersigned became counsel for Appellant in 2017 for the purposes of Petition for a Writ of Certiorari to challenge the denial of his PCR claims. This petition was granted and oral argument was held. Ultimately, the Court of Appeals denied relief.

ARGUMENT

This Court should rehear Appellant's argument because the circumstances of the dismissal of Davis' charges alone creates sufficient evidence of an undisclosed deal to grant Appellant relief. While the opinion issued by this Court references Davis' lack of credibility, Appellant agrees with this point in full. It appears that Davis will say anything to anyone at any time.

But it strains credulity to believe that a wink-wink deal was not in place. Further, as argued in Appellant's brief but not mentioned in the opinion from this Court, Davis' only criminal exposure for which he would conceivably invoke his Fifth Amendment rights would be if he lied in trial about either the deal with the State or Appellant's involvement. Merely lying to a private investigator when he wrote the statement which led to this motion would not be a crime.

It is proper for a court to construe a witness' invocation of his rights to remain silent as an admission of wrongdoing. Since the only issue before the trial court when Davis invoked his rights concerned the existence of the plea deal, this Court should find that inference sufficient to carry the day for Appellant. This is even more true given the circumstances of the dismissal of Davis' charges in such temporal proximity to his testimony during Appellant's trial.

None of this evidence depends on the credibility of Mr. Davis or his "recantation." To the extent this Court's denial of relief is based upon Davis' lack of credibility instead of the evidence noted in the paragraphs above, undersigned urges this Court to rehear and reconsider the evidentiary basis supporting Appellant's appeal.

Finally, undersigned urges this Court to reconsider its ruling because the trial court's order was based upon errors of law. As a summary of Appellant's argument in this regard, the trial court was mistaken as to the law in two relevant areas. First, the trial court committed a

mistake of law when he misconstrued the law concerning new trials. Appellant's Brief, pg. 5 - 6. Second, the trial court committed a mistake of law when he relied upon the law concerning recantations instead of the law concerning due process violations involving a prosecutor's failure to correct false testimony. Appellant's Brief, pg. 6.

In sum, Appellant's chief complaint is that the evidence demonstrates false testimony was used to convict him at trial and that this false testimony concerned an undisclosed plea deal to dismiss Davis' charges if he testified against Appellant. The proof of this deal did not depend upon Davis' post-trial statement made to an investigator. In fact, that statement was the mere conduit for Appellant's discovery of the evidence of this wink - wink deal. Davis' invocation of his rights to remain silent highlights the probative value of the quick dismissal following the testimony of Davis at Appellant's trial.

CONCLUSION

Thus, undersigned asks this Court to reconsider his appeal with a focus on the claim of false testimony concerning the relationship between Davis' cooperation and the State's dismissal of his charges as well as the trial court's errors of law and grant Appellant a new trial.

Respectfully submitted by,

/s/ James A. Brown, Jr.
Attorney for Appellant
SC Bar Number: 12213

December 11, 2025

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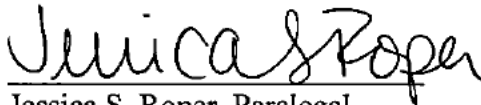
State of South Carolina, Respondent

v.

Antwan McMillan, Appellant

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on the Respondent on December 11, 2025 by providing an electronic copy to Mark R. Farthing, SC Attorney General's Office, at mfarthing@scag.gov as listed in the Lawyers Desk Book, and by providing a copy, postage prepaid to Mark R. Farthing, SC Attorney General's Office, PO Box 11549, Columbia, SC 29211.



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VIA EMAIL & USPS Mail: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings

Clerk, South Carolina Court of Appeals

Post Office Box 11629

Columbia, South Carolina 29211

Re: State of South Carolina v. Antwan McMillan
Petition for Rehearing
Case No.: 2024-000432

Dear Ms. Kitchings:

Under cover of this letter, I have enclosed a Petition for Rehearing and a Proof of Service in the above-referenced case.

Thank you for your assistance in this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

/s/James A. Brown, Jr.

James A. Brown, Jr.

Law Offices of Jim Brown, P.A.

Enclosures (noted)

cc: Mark Farthing, Office of the SC Attorney General's Office, via Email and USPS Mail

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CHARLESTON SC 294

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