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**Dec 18 2025**

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Charleston County

Honorable Cordell Maddox, Jr., Circuit Court Judge

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ROBERT WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000605

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PETITION FOR WRIT OF CERTIORARI  
PURSUANT TO AUSTIN V. STATE  
AND JOHNSON V. STATE

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ATTORNEY FOR PETITIONER

**INDEX**

ISSUE PRESENTED.....1

STATEMENT.....2

ARGUMENT

**Petitioner's withdrawal of his initial PCR application was not  
voluntary as there were insufficient procedural safeguards to  
protect his important right to PCR review and appeal.....4**

CONCLUSION.....6

PETITION TO BE RELIEVED AS COUNSEL.....7

## **ISSUE PRESENTED**

1. Did the PCR court err by allowing Petitioner to withdraw his PCR application without first warning him doing so would forever waive his claims and any claims that could have been raised, thus rendering his withdrawal involuntary?

## STATEMENT OF THE CASE

Petitioner Robert Wilson was indicted for two counts of armed robbery by the Charleston County Grand Jury in April of 2015. App. 386-89. On January 6 and January 7, 2016, he proceeded to trial before Judge Kristi L. Harrington and a jury. App. 1. He was represented by Russell Hilton, and David Osborne prosecuted the case for the state. App. 2. He was ultimately found guilty as charged. App. 376:13-377:2. The trial court issued concurrent thirteen-year-sentences. App. 384, 496.

Petitioner appealed his convictions, and the Court of Appeals affirmed in an unpublished opinion. *State v. Wilson*, Op. No. 2017-UP-444 (S.C. Ct. App. filed Nov. 29, 2017).

On April 3, 2018, Petitioner filed an application seeking post-conviction relief. App. 390. In summary, he alleged the following: (1) trial counsel was ineffective in various ways related to his failure to cross-examine a state's witness about prior charges that were dismissed, and (2) prosecutorial misconduct related to a failure to disclose that those charges were dismissed. App. 392, 418:21-420:13, 496.

The application went before Judge Cordell Maddox, Jr. for consideration. App. 409. He held an evidentiary hearing on January 24, 2019. App. 409. Petitioner was represented by Christopher Murphy, and the state was represented by Benjamin H. Limbaugh. App. 409. During the hearing, Petitioner, his counsel, and the Court discussed the reality that he is serving a relatively short sentence that was likely to run its course by the time any PCR appeal concluded, or at least shortly thereafter, while a successful PCR application carried a risk of substantially increased sentences. App. 412:23-415:15, 417:1-418:20. Ultimately PCR counsel stated, "[M]y client says he does want to withdraw [the application]; which I think is a very wise decision." App. 421:18-20. The Court responded: "Yeah, I do too." App. 421:21. They also discussed a

proposal that those serving "85% time" might be reduced to serving only 65%. App. 413:11-14, 422:4-10. On March 4, 2019, the PCR court ultimately entered a form order dismissing the case because of the withdrawal. App. 425. There was no appeal from that order.

At a subsequent PCR hearing, the state conceded Petitioner is entitled to belated appellate review of the dismissal of his initial application. App. 491:12-18. The second PCR court issued an order finding Petitioner is entitled to belated review pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). App. 498-99.

This petition for a writ of certiorari follows.

## ARGUMENT

### **I. Petitioner's withdrawal of his initial PCR application was not voluntary as there were insufficient procedural safeguards to protect his important right to PCR review and appeal.**

Like a guilty plea, a withdrawal of a PCR application should be accepted only after it is clear on the record that the withdrawal is voluntary and knowingly made. By the filing of an application for PCR, an applicant has asserted he is being held in violation of the constitutions and laws of the state and nation. He has sought relief from confinement and from judgment. He has asserted an important interest that requires legitimate consideration. It should not be easily set aside with little fanfare.

Practically speaking, PCR is the only potential for relief for many, many inmates. If they withdraw their application, they will in almost all circumstances await potentially decades of imprisonment with no further possible avenue for relief. *See* S.C. Code Ann. § 17-27-90 ("All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application . . ."); *O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999) ("Before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust his remedies in state court."); *Gibson v. State*, 329 S.C. 37, 42, 495 S.E.2d 426, 428 (1998) (citation omitted) ("Procedurally, a petitioner seeking habeas corpus must first exhaust all available PCR remedies."). Thus, a defendant's decision to withdraw his PCR application is extremely important. If a defendant proceeded to trial rather than plea guilty, it is perhaps the only important decision he will make. The decision must be made intelligently and voluntarily. 67

Corpus Juris, *Waiver* § 2, at 298 (1934) ("A waiver always contemplates that a party has *in the knowledge* of his rights voluntarily surrendered them." (emphasis added)).

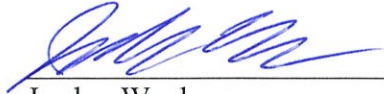
Petitioner did not knowingly and voluntarily withdraw his application because he was never warned he would be unable to successfully file a subsequent application as it would be either impermissibly successive or untimely. § 17-27-90. At the PCR hearing counsel asserted, "It's in his best interest to withdraw the claim, which I've explained to him." App. 413:10-11. The trial court agreed: "I also don't want you to make a bad mistake; just man to man and put yourself in a worse position than you are now." App. 418:5-9. Although the PCR counsel and the court offered reasons it might be tempting to withdraw his application—because he was likely to "max out" his sentence before resolution—it was not explained that withdrawal was irrevocable and would forever waive his claims. He was not told this would be his only shot and that if he withdrew the application, he would not be able to later change his mind. *See Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

Further, to the extent Petitioner was given some idea about the nature of a withdrawal, he was improperly focused solely on the time he would spend in prison. But even if he is likely to be released before any final determination on the PCR action would have occurred, he is still going to have two armed robbery convictions on his record. Those carry substantial collateral consequences of which he should have been made aware before permanently abandoning any potential relief.

By seeking post-conviction relief, a defendant asserts an important statutory right underpinned by critical constitutional protections. Withdrawal of those assertions should be accompanied by similarly substantial on-the-record warnings which ensure a knowing, intelligent, and voluntary waiver.

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests this Court grant his petition for a writ of certiorari and review the PCR court's dismissal of his application.



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Jordan Wayburn  
Appellate Defender

ATTORNEY FOR PETITIONER

This 18<sup>th</sup> day of December, 2025.

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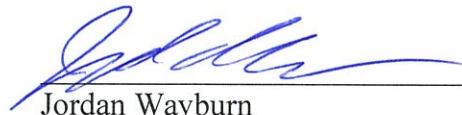
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PETITION TO BE RELIEVED AS COUNSEL  
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Counsel for Robert Wilson states:

1. He is an Appellate Defender 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 Cordell Maddox, Jr., which was held on January 24, 2019, and, in his opinion, the appeal is without legal merit sufficient to warrant relief.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arises from this post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Robert Wilson.

Respectfully Submitted,



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Jordan Wayburn  
Appellate Defender

ATTORNEY FOR PETITIONER

This 18<sup>th</sup> day of December, 2025.

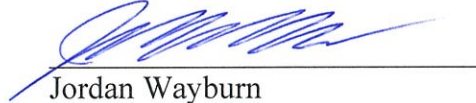
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CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of his ability this Petition for a Writ of Certiorari pursuant to Austin v. State and Johnson v. State 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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