

EXHIBIT B

RECEIVED

Jan 27 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
Jan 27 2026
S.C. SUPREME COURT

Certiorari to Horry County

Honorable Dale Van Slambrook, Circuit Court Judge

MICHAEL J. WALTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001516

AMENDED JOHNSON PETITION FOR WRIT OF CERTIORARI

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

INDEX i

ISSUE PRESENTED1

STATEMENT2

ARGUMENT

The PCR court erred in finding that the statute of limitations
required dismissal of petitioner’s PCR application.3

CONCLUSION.....7

PETITION TO BE RELIEVED AS COUNSEL8

ISSUE PRESENTED

Did the PCR court err in finding that the statute of limitations required dismissal of petitioner's PCR application?

STATEMENT

Petitioner was indicted in Horry County for two counts of second-degree criminal sexual conduct with a minor, and one count of first-degree CSC with a minor and on April 26, 2018, pled guilty before the Honorable Benjamin Culbertson. App. 1. Leigh Andrews represented the State and Ralph Wilson, Sr. represented petitioner. App. 1. Petitioner pled to one count of second-degree CSC with a minor and the State dismissed the other charges. App. 19-20. Judge Culbertson sentenced petitioner to sixteen years' imprisonment. App. 20. On June 27, 2018, Judge Culbertson signed Orders amending the indictment and sentencing sheet to correct "scrivener's errors." App. 44-45. No appeal was filed on petitioner's behalf.

On January 19, 2023, petitioner filed a PCR application. App. 22. On March 19, 2025, a hearing was held before the Honorable Dale E. Van Slambrook. App. 92. Ryan Kowalski and Bryan Hall represented the State. App. 92. Initially, Steven Fowler appeared for petitioner, but Judge Van Slambrook granted petitioner's motion to represent himself and relieved Mr. Fowler. App. 206-207. On April 28, 2025, the PCR court denied petitioner's application. App. 208. On May 22, 2025, petitioner filed a Rule 59(e), SCRCF motion. App. 217. On June 13, 2025, Judge Van Slambrook denied the motion. App. 230. This petition follows.

ARGUMENT

The PCR court erred in finding that the statute of limitations required dismissal of petitioner's PCR application.

The PCR court found that the statute of limitations applied to petitioner's PCR action and that equitable tolling did not apply despite plea counsel telling petitioner that he could not file a PCR because he pled guilty. Because of this finding, the PCR judge did not address any of petitioner's substantive claims except for whether petitioner was entitled to a belated appeal. This Court should reverse the PCR court and remand for consideration of petitioner's substantive issues.

Plea counsel testified at PCR that "when [petitioner] came to me, he had already confessed." App. 149. He said that if petitioner exercised his right to a jury trial and his right to confront the complaining witness, the outcome "would be even worse." App. 149. "But there was no—we had no viable defense, because he had already admitted everything in detail." App. 150.

Petitioner explained to plea counsel that his confession was made under mental duress. App. 138. Petitioner's pastor told him to confess to the police. App. 138. At the PCR hearing, plea counsel dismissed petitioner's contention of mental duress and said that "the only duress he was under was guilt." App. 155. Plea counsel stated he did not believe petitioner had any mental illness, but did not state that his opinion was confirmed by any expert evaluation. App. 155.

Petitioner testified in detail about why he did not file either an appeal or file his PCR within one year. App. 110-112; App. 120-121. Petitioner was sitting in a courtroom and plea counsel pulled him into a room. App. 110. He told petitioner about the offer from the State to plead guilty. App. 110. Petitioner asked him about an appeal. App. 110. Plea counsel responded that "it would be ridiculous to appeal because I'm pleading guilty." App. 111. The judges would look on such an appeal with incredulity. App. 111. Petitioner explained that these statements denigrating his

right to appeal were the only reason he did not file an appeal. App. 111-112. When the PCR judge asked him whether he understood there was a possibility to appeal, petitioner responded, “Not once he told me it would be ridiculous to file one.” App. 112. “He basically, in my mind, negated that possibility.” App. 112.

Plea counsel similarly negated petitioner’s right to file a PCR. App. 120-121. Petitioner learned about PCR when he got to prison. App. 120. When petitioner returned to Horry County for a hearing concerning amending errors in the indictment and sentencing sheet, he asked plea counsel about filing a PCR. App. 120. Petitioner described his lawyer’s response: “He stated that I couldn’t do a PCR because I pled guilty. That’s the very plain statement. He stated that I couldn’t do a PCR because I had pled guilty.” App. 120-121.

Petitioner’s health prevented him from learning that PCR was available. After petitioner’s plea in 2018 and his entry into prison, he began suffering serious health problems. App. 119-120. He had heart trouble, gastrointestinal trouble, and was repeatedly hospitalized during 2020 and lost part of his large intestine. App. 119. Covid prevented his access to the law library. App. 119. His health problems continued through 2022 and it was not until he was finally released into the general population that he could file a PCR. App. 121.

On direct-examination at the PCR hearing, plea counsel testified that he told petitioner he could appeal his guilty plea. App. 149-150. Plea counsel also denied ever telling petitioner (or any other client) they could not file a PCR if they pled guilty. App. 155-156. The PCR court found these statements by plea counsel credible. App. 213-215.

The PCR court’s credibility finding lacks support in the record. Petitioner cross-examined plea counsel on his long legal career and memory. App. 158-159. Plea counsel had been practicing law for forty-eight years at the time of the PCR hearing. App. 158. He had approximately forty

or fifty clients a year during that span. App. 158. He admitted he could not remember the details of every case he handled and that details could slip from his memory. App. 158. As petitioner argued in his closing, he only had one lawyer in his life and contended his memory was better in that respect than a lawyer who had thousands of such conversations over the course of his career. App. 176-177.

The PCR court erred in finding petitioner was not entitled to equitable tolling of the statute of limitations. The statute of limitations in PCR actions is one year. S.C. Code Ann. § 14-27-45(a). South Carolina applies equitable tolling principles to the PCR statute of limitations. See Mose v. State, 420 S.C. 500, 803 S.E.2d 718 (2017).

In Mose, the PCR court summarily dismissed a PCR application as untimely without a hearing. The equitable tolling argument centered on the “prison mailbox rule.” Id. at 509, 803 S.E.2d at 722. The Court declined to adopt a rule that a PCR application was deemed filed when an inmate delivers it to prison authorities for mailing and instead required judges to make “the fact-specific determination of whether equitable tolling is justified.” Id. at 511, 803 S.E.2d at 723.

South Carolina also applies equitable tolling based on the individual circumstances facing an inmate. See Ferguson v. State, 382 S.C. 615, 677 S.E.2d 611 (2009). In Ferguson, the inmate filed a PCR application in 2002 challenging a 1996 guilty plea. Id. at 616, 677 S.E.2d at 601. The six-year delay in Ferguson was longer than the five-year delay in petitioner’s case. The PCR judge dismissed Ferguson’s application as untimely even though Ferguson was mentally incompetent. The Supreme Court held that equitable tolling can apply to cases of mental incompetency and remanded for the PCR court to investigate whether Ferguson’s illnesses affected his ability to file an application. Id. at 619-20, 677 S.E.2d at 602.

The individual circumstances before the PCR court demonstrated that equitable tolling applied and petitioner's application was timely. First, petitioner testified he was given manifestly incorrect advice about his ability to file a PCR by plea counsel. Plea counsel's testimony at the PCR hearing indicated he dismissed any chances of a favorable outcome because petitioner gave incriminating statements before hiring him. Second, petitioner testified about the numerous serious health problems he encountered when he entered prison. Third, the delay period was exacerbated by the Covid pandemic which caused inmates across the state to be locked down and to lose their access to legal materials. Once petitioner overcame these problems, he filed his application.

The State also suffered no prejudice from the delay. Plea counsel was present, still practicing law, and testified at the PCR hearing. The PCR court allowed petitioner to present evidence and argument on his claims and the State had ample opportunity to challenge the evidence. The PCR court erred in finding that equitable tolling did not apply. The proper remedy in this case is reversal of the lower court's judgment that the statute of limitations bars petitioner's claims and a remand for the PCR court to draft findings of fact and conclusions of law as to those claims. See Fishburne v. State, 427 S.C. 505, 832 S.E.2d 584 (2019).

CONCLUSION

For the foregoing reasons, the judgment of the PCR court should be reversed and this case remanded for further consideration of petitioner's PCR claims.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 27th day of January, 2026.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jan 27 2026

S.C. SUPREME COURT

Certiorari to Horry County

Honorable Dale Van Slambrook, Circuit Court Judge

MICHAEL J. WALTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

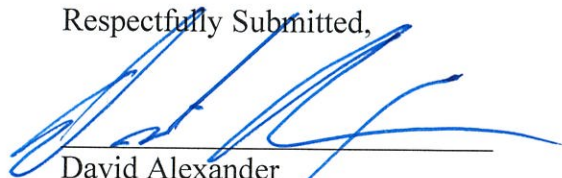
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael Walton 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 Dale Van Slambrook, which was held on , 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 Michael Walton.

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 27th day of January, 2026.

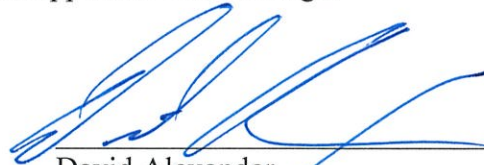
RECEIVED

Jan 27 2026

CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

The undersigned certifies that to the best of his ability this Amended 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."



David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 27th day of January, 2026.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Horry County

Honorable Dale Van Slambrook, Circuit Court Judge
—————

MICHAEL J. WALTON,

PETITIONER

V.

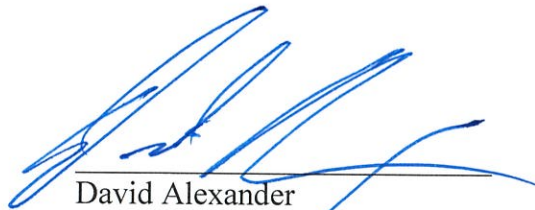
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001516
—————

CERTIFICATE OF SERVICE
—————

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies true copies of the Amended Johnson Petition for Writ of Certiorari and Amended Appendix in the above-referenced case have been served upon D. Russell Barlow, II, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Michael Walton, #376160, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 27th day of January, 2026.



David Alexander
Deputy Chief Attorney For Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER