

RECEIVED

Feb 11 2026

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Edgefield County

Honorable Kristi F. Curtis, Circuit Court Judge

TIMOTHY W. WHEELER,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001996

JOHNSON PETITION FOR WRIT OF CERTIORARI

Wanda H. Carter
Chief Appellate Defender

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 PRESENTED.....1

STATEMENT.....2

ARGUMENT

Trial counsel erred in failing to object to the solicitor’s closing remarks that connected petitioner to alleged drug possession of narcotics that were not found at the residence searched in the case because these comments referred to prejudicial prior bad acts information and unfavorable character assumptions that were not supported by the evidence presented at trial.....3

CONCLUSION.....4

PETITION TO BE RELIEVED AS COUNSEL.....5

ISSUE PRESENTED

Trial counsel erred in failing to object to the solicitor's closing remarks that connected petitioner to alleged drug possession of narcotics that were not found at the residence searched in the case because these comments referred to prejudicial prior bad acts information and unfavorable character assumptions that were not supported by the evidence presented at trial.

STATEMENT

Petitioner Timothy Wayne Wheeler was convicted of trafficking in methamphetamine, possession with intent to distribute a schedule IV controlled substance, three counts of possession of an unlawful firearm, and five counts of receiving stolen goods per jury trial held during the January 2017 term of the Edgefield County General Sessions Court before Judge Eugene C. Griffith. App. 1-300. Attorney Robert R. Thuss represented petitioner at trial, and Assistant Solicitors Ervin J. Mage and Douglas W. Fender, II, prosecuted the case. Judge Wheeler sentenced petitioner to an aggregate twenty-five-year sentence in the case. Petitioner appealed, and was represented on appeal by former Appellate Defender Taylor D. Gilliam of the S.C. Commission on Indigent Defense. Petitioner's convictions were affirmed on appeal. See State v. Wheeler, Unpublished Op. No. 2019-UP-307 (S.C. Ct. App. Filed August 28, 2019).

On March 23, 2020, petitioner filed a PCR application with the Edgefield County Office of the Clerk of Court. App. 301-307. The respondent filed a Return dated November 12, 2020. App. 308-315. Subsequently, two amended PCR Applications were filed on October 4, 2022, and March 22, 2023. App. 316-319.

A PCR hearing was convened on April 3, 2023, at the Edgefield County Courthouse before Judge Kristi F. Curtis. App. 320-380. Petitioner was present at the hearing and represented by Ashley McMahan, and Assistant Attorney General Taylor Smith appeared on behalf of the state. On September 29, 2025, Judge Curtis filed an Order of Dismissal therein denying petitioner's allegations of ineffective assistance of trial counsel in the case. App. 398-477.

Petitioner appealed Judge Curtis' Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to object to the solicitor's closing remarks that connected petitioner to alleged drug possession of narcotics that were not found at the residence searched in the case because these comments referred to prejudicial prior bad acts information and unfavorable character assumptions that were not supported by the evidence presented at trial.

Based on information submitted to police, a search warrant was executed on December 22, 2015, at a residence where petitioner was present at the time. David Coon was the renter of the residence in question and his daughter Heather Hall, whom petitioner was dating at the time, lived there also. However, petitioner did not assign himself to residency there. App. 72, l. 2 - p. 81, l. 5; App. Tr. 176, l. 3 – p. 188, l. 25. Guns and drugs were found at the scene. The drugs found included xanax, methamphetamine, marijuana, phentermine, and hydrocodone. App. 146, l. 13 – p. 164, l. 22.

During the PCR hearing held in the case, defense counsel admitted that he failed to object to the solicitor's closing argument referencing appellant's connection to drugs that were not found at the scene per the police search of the residence. App. 344, lines 5-14. The solicitor's comments at closing follow:

“Heavy narcotics, methamphetamine, crack, heroin, hard narcotics...right there a bag of human misery.” App. 244, lines 2-3.

To the contrary, neither crack nor heroin ended up being found at the residence searched in the case; and furthermore, the assertions of “hard” and “heavy” narcotics strategically sent an untrue message that there were additional unidentified drugs found at the scene that are too dangerous and horrible to name. Clearly, these comments were exaggerated false statements.


Evidence of other crimes is not admissible to prove the crime charged unless offered to

prove motive, intent, absence of mistake or accident, common scheme or plan or identity. State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Also, Rule 404(b), SCRE, mandates that evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action or conduct in conformity therewith. Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged (See State v. Brown, 344 S.C. 70, 543 S.E.2nd 552 (2001)). Compare State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998), where the Court held that evidence found in the defendant's bedroom that exhibited the defendant's propensity to engage in acts of pedophilia constituted inadmissible character evidence. Here, the solicitor's statements that petitioner had some possession or connection to heroin or crack, neither of which had been found pursuant to the search, and that other equally dangerous drugs were connected to petitioner, which were not found pursuant to the search either, constituted remarks that were extremely prejudicial.

Trial counsel erred in failing to object to the solicitor's prejudicial comments in question made during closing argument, and the failure to do so constituted ineffective legal representation of petitioner at trial in violation of the Sixth Amendment such that but for the omission, a reasonable probability exists that the outcome of petitioner's trial would have ended differently. See Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

Based on the foregoing argument, counsel for petitioner would request that this Court grant the petition and allow full briefing on the above raised issue.



Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of February, 2026.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Feb 11 2026

Certiorari to Edgefield County

S.C. SUPREME COURT

Honorable Kristi F. Curtis, Circuit Court Judge

TIMOTHY W. WHEELER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

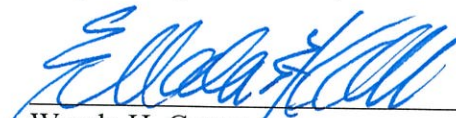
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy Wayne Wheeler states that:

1. She is Interim Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Kristi F. Curtis, which was held on April 3, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Timothy Wayne Wheeler.

Respectfully Submitted,



Wanda H. Carter
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of February, 2026.

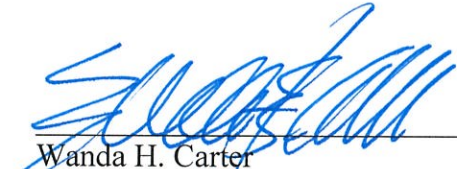
RECEIVED

Feb 11 2026

CERTIFICATE OF COUNSEL

S.C. SUPREME COURT

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



Wanda H. Carter
Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

This 11th day of February, 2026.