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Feb 13 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas
Honorable B. Alex Hyman, Circuit Court Judge
Appellate Case No. 2025-001815

FREDERICK JARVIS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S ISSUES PRESENTED

I. **Petitioner is not entitled to a new trial because he was not denied the right to counsel.**

II. **Petitioner is not entitled to a new trial because he was not denied his right to a jury trial.**

III. **The Post-Conviction Judge properly granted Petitioner a direct appeal under White v. State.**

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). On appellate review, courts give great deference to a post-conviction relief court's findings of fact and will uphold them if there is **any** evidence in the record to support them. Id. at 179, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013); Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Id. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

STATEMENT OF THE CASE

On October 14, 2021, following a bench trial, Petitioner was convicted of driving under the influence in Greenville Municipal Court. Sentencing was deferred, and he was taken into custody following the verdict. On October 21, 2021, a sentencing hearing was had and Petitioner 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 State 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 an order denying petitioner a new trial, but granting petitioner a belated appeal under White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). On December 27, 2024, Petitioner submitted a motion to alter judgment. On January 8, 2025, the State submitted a return to Petitioner's motion. On August 21, 2025, Judge Hyman issued an order denying Petitioner's motion to alter or amend judgement. Petitioner did not appeal under White v. State. Petitioner submitted a timely Petition for Writ of Certiorari on October 15, 2025. This return follows.

RELEVANT FACTS

On October 14, 2021, Frederick Jarvis (Petitioner) appeared before the Greenville Municipal Court before the Honorable Matthew R. Hawley. Petitioner, who did not request a jury trial prior to the proceeding, pled not guilty. Judge Hawley asked for a summary of the case from the presenting officer, Aaron Bowles, the officer that conducted the traffic stop gave the following summary:

> On Saturday October 2nd at approximately 2:34 a.m. while conducting uniform patrol duties myself and Officer Holford observed a 2013 Ford F-150 pick-up bearing South Carolina 154PA at the intersection of Haywood Road and I-385. The F-150 drove through the intersection and onto Northbound I-385 on ramp with an uncontrolled acceleration and squealing its tires. I followed the vehicle which was travelling at a high rate of speed. As I caught up to the vehicle I observed the F-150 unable to maintain its lane and travel crossing from the center line to the left-hand lane multiple times. I activated my blue lights and vehicle pulled over to the right side of the road. I approached the vehicle and identified myself and asked for license, registration, and proof of insurance from the driver, who identified himself as Frederick Jarvis, who is in the court room today. The passenger identified himself as Christopher Pinto, who is not here today, I don't believe. While speaking to the occupants I noted the odor of alcoholic beverage emitting from the vehicle. I observed both occupants to have slurred speech, glossy, blood shot eyes. When I asked, both denied consuming alcohol. I elected to remove Mr. Jarvis from the vehicle in order to interview him independently and assess his potential impairment. Jarvis exited the vehicle and I brought him to the median between the patrol car and his pick-up. I asked Mr. Jarvis if he consumed alcohol tonight and he flatly denied this and said that he was a type 1 diabetic and he needed his insulin. Jarvis claimed his blood sugar was normally 90. While explaining this he has difficulty pronouncing certain words, slurred speech and swayed continually. I went back to the passenger, Pinto, and asked him where they were drinking tonight, and Pinto stated that he was with Jarvis the whole evening and that they started drinking alcohol downtown at approximately 10 p.m. near Stone Pizza and then TD's as well as two other establishments. I asked what they drank, and he said they drank gin and tonics as well as beer. I confronted Jarvis with this information, and he continued to deny drinking and claimed he was having a diabetic reaction and could tell his blood sugar was over 500. I offered Jarvis the opportunity to perform SFSTs and he said he would need to talk to his attorney first. I placed him under arrest for DUI, and I conducted a search of his person before he was secured in the back of my patrol vehicle. While in the back of the patrol car Jarvis questioned as to why he was being arrested and insisted to speak to his attorney and also have his blood sugar checked. He was advised of his Miranda warning and declined to make any statements to us. Pinto was picked up by an Uber driver and his vehicle towed.

> While en route to the jail, Mr. Jarvis continued to demand to speak to his attorney and be evaluated for his blood sugar. As we arrived at the jail, we asked EMS to respond. While in the BA testing room EMS arrived and checked Jarvis' blood sugar which was 333. EMS personnel declined to transport him stating the hospital cannot do anything for him and after a 20-minute observation period I read Jarvis the implied consent advisory and he refused to provide a breath sample. Jarvis also refused to sign any documents. While in jail, medical staff checked Jarvis' blood sugar which was now 327 and elected to give him insulin. While speaking to medical staff Jarvis claimed he was in diabetic ketoacidosis. Medical staff stated the appearance of Jarvis' eyes were inconsistent with DK which is diabetic ketoacidosis and more consistent with having consumed alcohol.

(App. 2-3). At the conclusion of the summary Petitioner asked for a continuance and the judge responded that he had the opportunity earlier, but he was not there so he had just had a bench trial.

Petitioner had been released on a personal recognizance bond on October 2, 2021. Upon his release, Petitioner was given a bond release form that he initialed and signed. (App. 105). Petitioner was booked to be held for sentencing on October 14, 2021. (App. 110) Petitioner was sentenced to time served on October 21, 2021.

Subsequent to his conviction, Petitioner did not appeal, but did initiate a timely PCR action. At the PCR hearing, Petitioner testified that those were his initials and signature on the form. (App. 37). The form states:

> In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
>
> 1. Charges against the defendant and nature of the charges.
> 2. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.
> 3. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet financial poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before GREENVILLE MUNICIPAL COURT located at 426 NORTH MAIN STREET, GREENVILLE, SC 29601 for indigency screening. Defendant is responsible for a statutory fee of $40.00 for indigency screening.

(App. 105). Petitioner testified at the PCR hearing that he received this form upon being released

and between being released and his appearance on October 14, 2021, he did not do anything to try to obtain an attorney. (App. 37-39). He further testified that he was aware that he had that right, (App. 40).

Following the PCR hearing, Judge Hyman issued an Order on December 19, 2024, finding that Petitioner was entitled to a belated direct appeal from his conviction to seek review of the issues arising from his bench trial pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). (App. 94-99).

ARGUMENT

I. Petitioner is not entitled to a new trial because he was not denied the right to counsel.

Petitioner argues that he is entitled to a new trial because he was denied his right to counsel. This argument lacks merit because he did not have a right to counsel and therefore his right to counsel could not have been denied.

In Scott v. Illinois, the United States Supreme Court held that absent a valid waiver, an indigent defendant convicted of a misdemeanor without the assistance of counsel cannot be sentenced to a term of imprisonment. Scott v. Illinois, 440 U.S. 367 (1979). However, the court clarified that when imprisonment is authorized punishment but not actually imposed on an unrepresented defendant convicted of a misdemeanor, there is no abrogation of the right to counsel. Id. at 373-384, 99 S.Ct. at 1162. "In other words, actual imprisonment is the event that triggers the right to counsel." Id.

This Court held in Glaze v. State that imposition of a sentence of time served did not trigger a defendant's constitutional right to counsel. Glaze v. State, 366 S.C. 271,621 S.E.2d 655 (2005). In that case Glaze pled guilty to distribution of crack cocaine in South Carolina. Id. During sentencing, all parties agreed that Glaze qualified as a three-time offender based on his current conviction, a South Carolina crack possession conviction for which he was on probation and a prior New Jersey conviction for marijuana possession. Id. Glaze subsequently filed a post-conviction relief petition claiming ineffective assistance of counsel due to his attorney not objecting to the use of New Jersey conviction for sentence enhancement because it purportedly was obtained in violation his sixth amendment right to counsel. Id. In the New Jersey case, Glaze was an indigent defendant who neither waived his right to counsel nor was provided counsel by the state and spent ten days in jail awaiting trial because he could not post bail and the New Jersey

court sentenced him to time served. Id. Glaze argued that when the New Jersey court sentenced him to "time served" the court ran afoul of Scott v. Illinois[1]. Id. at 274 621 S.E.2d at 656.

Glaze argued that he was imprisoned because after he was arrested, he was unable to post bail and therefore spent ten days in jail while his trial was pending. Glaze v. State, 366 S.C. at 274, 621 S.E2d at 656. This court stated "if Petitioner had not been sentenced to time served, but rather to a fine, then he would now have no basis for saying that the marijuana conviction was improperly used for sentence enhancement.... Nevertheless, Petitioner still would have spent those ten days in jail." Id. at 275, 621 at 657. "The proper inquiry under Scott is whether the uncounseled misdemeanor conviction actually resulted in confinement." Id.

Similarly, in this case, Petitioner's conviction did not result in the imposition of a term of imprisonment, and, therefore he had no right to counsel. Petitioner had his bench trial and then was temporarily held in jail only while awaiting the imposition of his sentence. When that sentence was imposed, it was a time served sentence. If looking at the proper inquiry under Scott of whether the uncounseled misdemeanor conviction resulted in confinement, it did not. Further, Petitioner was advised of his right to counsel on October 3 when he was initially released on bond. He was advised of the court date and instructed on what to do to obtain counsel if he wanted it and could not afford it. He showed up to court knowing that it was a trial date and had all the information to get counsel and have them there and did not do that. Petitioner is essentially taking the position that if someone doesn't go get counsel while having all of the information to do so, he cannot be tried. There was no violation of Petitioner's right to counsel because he never had a right to counsel to begin with. Further, even if he had the right to counsel, no one denied him his right to counsel when he chose not to use the information to obtain counsel. Petitioner's right to counsel was never

[1] Scott v. Illinois, 440 U.S. 367, 99 S.Ct. 1158 (1979).

triggered because he was never imposed a sentence of confinement and he is not entitled to a new trial based on a denial of a right that did not exist.

II. Petitioner is not entitled to a new trial because he was never denied his right to a jury trial.

Petitioner argues he is entitled to a new trial because he was denied his right to a jury trial. This argument lacks merit because he never requested a jury trial and therefore wasn't denied a right.

There is no constitutional right to a jury trial for minor offenses. Article 1, Section 14 of the South Carolina Constitution states "The right of trial by jury shall be preserved inviolate." S.C. CONST. Art. 1, § 14. "The State Supreme court has determined that the State Constitutional provisions establishing the right to a jury trial are applicable only in which the right to a jury trial existed at the time the State Constitution was adopted in 1868." 1989 S.C. Op. Atty. Gen. No. 89-60. See also Pinckney v. Green, 67 S.C. 309, 45 S.E. 202 (1903). "In concluding that inasmuch as a driving under influence first offense did not exist at the time the State Constitution was adopted." Id.

Driving under the influence first offense is considered a minor offense. Pursuant to S.C. Code Ann. 56-5-2040, the maximum penalty cannot exceed 30 days or a fine of one hundred dollars. The United States Supreme Court found the Fourth Circuit determined that in light of the penalties provided, along with the intrinsic nature of the offense, the offense of first offense driving under the influence is not "serious" so that a defendant charged with such offense would not have a right to a trial by jury pursuant to Federal Constitutional Provisions, namely Article III, Section 2 and the Sixth Amendment. See Baldwin v. New York, 399 U.S. 66 (1970). See also Duncan v. Louisiana, 391 U.S. 145 (1968).

There is, however, a statutory right to a jury trial. The right to a jury trial in municipal court is governed by Section 14-25-125 which states "A person to be tried in municipal court, prior to trial, may demand a jury trial, and the jury, when demanded, must be composed of six person drawn from the jury list prepared by the jury commissioners from the latest official list...The right to a jury trial shall be deemed to have been waived unless demand is made prior to trial." S.C. Code Ann. § 14-25-125. Petitioner was not constitutionally entitled to a jury trial and therefore the waiver provisions fell under what the statute provided. The statute provided that the right to a jury trial shall be deemed waived if not demanded prior to trial. Petitioner did not demand a jury trial and therefore waived his right to a jury trial. Consequently, Petitioner is not entitled to a new trial based on denial of right to a jury trial because he waived his right by not demanding one prior to his bench trial.

III. The Post-Conviction Judge properly granted Petitioner a direct appeal under White v. State.

Petitioner argues that he was not informed of his right to appeal, but that the granting of a belated appeal was of no value to petitioner because he did not make any objections at trial and therefore had nothing he could appeal because they would be procedurally unavailable. This Court in White v. State held that if a post-conviction relief court finds that a defendant did not knowingly, intelligently and voluntarily abandon the right to a direct appeal, the defendant should be entitled to a belated review of direct appeal issues. White v. State, 263, S.C. 110, 208 S.E.2d 35 (1974). This ruling establishes that absent a voluntary waiver or abandonment, procedural defaults related to appeal rights may be excused to preserve constitutional protections. The proper remedy was a belated appeal and Petitioner after being granted a belated appeal still chose not to raise any appellate issues.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari. Should this Court grant the petition, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

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