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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Georgetown County

Honorable Roger M. Young, Circuit Court Judge

JODY LYNN WARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001703

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Whether the circuit court erred in denying Petitioner's application for post-conviction DNA testing without a hearing where the application was sufficient on its face to warrant a hearing?

STATEMENT

Petitioner was indicted in July 2003 by a Georgetown County grand jury for two counts of murder in the deaths of Wilfred Brown and Elton Rutledge, Jr. The deaths were alleged to have occurred on or about August 3, 2002. App. 818-821. The state, represented by J. Greogry Hembree and Robert B. Bryan, called the case to trial before the Honorable Paula H. Thomas and a jury on March 15, 2004. Petitioner was represented by Margaret Ann Kneece and J. Wesley Locklair, III. App. 1.

At trial, the state alleged Petitioner shot and killed the two men over \$1050 and a pound of marijuana. App. 178, l. 6 – 179, l. 4. In support of that theory, largely circumstantial evidence was presented at trial showing that Petitioner, Brown, and Rutledge were all together in Petitioner's Suzuki Sidekick the day Brown and Rutledge went missing, App. 195, ll. 13-15; 332, ll. 5-13; that Petitioner was trying to purchase marijuana, had given Brown money for the drug deal, and Brown had purportedly stolen the money from him which angered Petitioner, App. 194, ll. 15-21; 196, ll. 19-24; 198, ll. 7-15; that Petitioner stated to a friend he would kill Brown if he did not get his money or his marijuana, App. 198, ll. 18-24; that Petitioner stated to three individuals that he had taken care of/killed the two men, App. 203, ll. 15-24; 263, l. 21 – 264, l. 6; 424, ll. 4-23; that Petitioner and his wife reported the Suzuki Sidekick as stolen by Brown and Rutledge the following day, App. 331, l. 11 – 333, l. 14; that the Sidekick was sunk in Lake Dawhoo by Petitioner and subsequently recovered by police, App. 203, ll. 23-24; 359, l. 14 – 360, l. 21; that the recovered Sidekick had bullet holes in the frame and interior, a single projectile in the front passenger seat, and blood stains on the back seat, App. 379, l. 11 – 387, l. 14; that Petitioner had owned a TEC-9 handgun which matched the caliber of bullet used to commit the murders, App. 204, ll. 7-10; 488, l. 23 – 489, l. 6; 494, l. 8 – 495, l. 3; and that

Petitioner had gathered the skeletal remains of the two men in a burlap bag and moved them to a second location a little over a month after their deaths, App. 410, l. 12 – 422, l. 24.

No DNA evidence was used during the trial. App. 93, ll. 10-11. The state was able to definitively identify Wilfred Brown through dental records. His cause of death was a gunshot wound to the left back of the head, behind the ear. App. 478, l. 1 – 479, l. 19. The state was unable to definitively identify Elton Rutledge, Jr. from dental records or DNA. App. 490, l. 20-480, l. 6. At trial, Steve Lambert with South Carolina Law Enforcement Division (SLED), testified that the mandible bone sent for DNA testing was too decayed for a sample to be obtained. He also testified that the blood stain from the backseat of the Suzuki could not be confirmed as human blood or further tested because it was “very diffuse, very dilute” as if it had been dissolved in water. App. 483, ll. 14 – 485, l. 10. The state ultimately identified the second set of remains as Rutledge by having Rutledge’s family members identify the tennis shoes that were recovered with the bones as belonging to him. App. 520, l. 8 – 522, l. 4.

After a four-day trial, Petitioner was found guilty as indicted. App. 651, ll. 1-19. Judge Thomas sentenced him to concurrent terms of life imprisonment. App. 659. Petitioner’s direct appeal was dismissed pursuant to Anders v. California.¹ State v. Ward, 2007-UP-048 (S.C. Ct. App. filed Jan. 26, 2007). Petitioner timely pursued post-conviction relief, which was denied, as was the subsequent petition for writ of certiorari. On January 2, 2018, Petitioner filed an application for DNA testing pursuant to S.C. Code Ann. §§ 17-28-10 *et. seq.*, the Access to Justice Post-Conviction DNA Testing Act (DNA Act). App. 661-666. Petitioner sought testing of a pair of Adidas tennis shoes and all of the bones recovered in the case to definitively show the identity of the second body as that of Elton Rutledge, Jr. App. 662. The state filed a

¹ 386 U.S. 738 (1967)

response to Petitioner's application on March 28, 2018, and a supplemental response and motion to dismiss on October 28, 2022. App. 667-674. Petitioner filed a *pro se* memorandum of law in support of DNA testing as well as *pro se* amendments and supplements to the application. App. 675-812. The Honorable Roger M. Young, Sr., entered an order denying Petitioner's application for testing under the DNA Act on July 15, 2025. Judge Young found that Petitioner's application did not meet the statutory requirements for a hearing and summarily dismissed the application. App. 813-817.

ARGUMENT

The circuit court erred in denying Petitioner's application for post-conviction DNA testing without a hearing where the court did not follow the statutory procedures outlined in S.C. Code Ann. § 17-28-10, et. seq.

The procedures to be followed when filing and reviewing an application under the DNA Act are set forth in S.C. Code Ann. §§ 17-28-40, 17-28-50, and 17-28-90. Section 17-28-40 provides that the application for post-conviction DNA testing be made on a form prescribed by our Supreme Court. The section then details eight requirements that must be included on the application. Among the required explanations are why the identity of the applicant was or should have been a significant issue during the original court proceedings and how the requested DNA testing would provide a substantially more probative result than the evidence submitted at trial.

After an application has been filed but before any judgment has been rendered, the court may issue orders for “amendment of the application and for any documents related to the application.” S.C. Code. Ann. § 17-28-50(C). After review of the application, responses, and any motions by the parties, the court may determine that “the applicant is not entitled to DNA testing and no purpose would be served by any further proceedings, it may indicate...its intention to summarily dismiss the application and its reasons for so doing.” If the court intends to dismiss the application without a hearing, the court “shall make specific findings of fact and expressly state its conclusions of law.” *Id.* The applicant will be given an opportunity to reply to the proposed dismissal. “In light of the reply, or on default thereof, the court may order the application dismissed, grant leave to file an amended application, or direct that the proceedings otherwise continue.” *Id.*

If the court determines that further proceedings are necessary, the “application must be heard in, and before a judge of, the general sessions court ... in which the conviction...took place. A record of the proceedings must be made and preserved.” S.C. Code Ann. § 17-28-90(A). At the hearing, an applicant must prove each of the seven factors in S.C. Code Ann. § 17-28-90(B) by a preponderance of the evidence to obtain the requested testing.

Pursuant to 17-28-50(C), the court was required to allow Petitioner to reply to the proposed order of dismissal before it became final. This mechanism exists so that a *pro se* applicant can, when needed, clarify or amend the application prior to its dismissal. The record does not reflect that Petitioner was ever given an opportunity to respond to a proposed order of dismissal of his application for DNA testing. This was error.

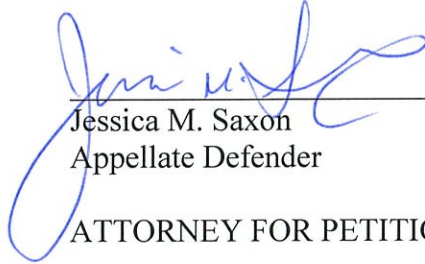
Additionally, the DNA Act places specific duties upon the state, the circuit court, and the custodian of evidence upon receipt of an application for DNA testing to preserve and inventory the evidence in a case. S.C. Code Ann. §17-28-50 requires the Solicitor to notify the custodian of the evidence that an application for DNA testing has been filed so that the evidence will be preserved. Similarly, S.C. Code Ann. §17-28-70 requires the circuit court to order the custodian of evidence to preserve all physical evidence and biological material related to an applicant’s conviction. Section 17-28-70 further requires that the custodian of the evidence prepare a written inventory for the parties of the physical evidence and biological material related to the case.

When a custodian of evidence asserts that physical evidence or biological material has been lost or destroyed, the court shall order the custodian of evidence “to locate and provide the applicant and the solicitor or Attorney General, as applicable, with a copy of any document, note, log, or report relating to the physical evidence or biological material.” S.C. Code Ann. 17-28-

70(C). Additionally, “[i]f no physical evidence or biological material is discovered, the court may order a custodian of evidence, in collaboration with law enforcement, to search physical evidence and biological material in the custodian of evidence's possession that would reasonably be expected to produce relevant physical evidence or biological material.” S.C. Code Ann. 17-28-70(D). Importantly, the language used by the legislature in S.C. Code Ann. §§17-28-70(A)-(C) is mandatory, not permissive. There is an affirmative duty placed upon the state, the court, and the evidence custodian to compile the relevant information and produce it for the applicant. There is nothing in the record that shows these duties were met prior to the denial of Petitioner’s application. The failure to perform the mandatory duties prior to dismissing the application was error.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to allow full briefing of the issue.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 8th day of July, 2026.

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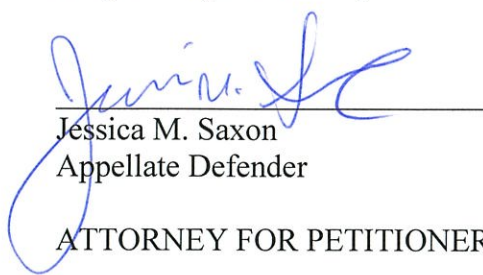
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jody Lynn Ward states:

1. She is 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 application for DNA testing, and, in her opinion, the appeal is without legal merit sufficient to warrant the granting of DNA testing pursuant to S.C. Code Ann. § 17-28-10 et. seq.
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 application for DNA testing process.

Therefore, counsel requests that the Court relieve her as counsel for Jody Lynn Ward.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 8th day of July, 2026.

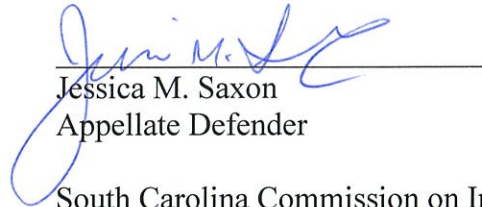
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CERTIFICATE OF COUNSEL

SC Court of Appeals

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."



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This 8th day of July, 2026.