

RECEIVED

JUL 09 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2025-001815
Circuit Court Case No. 2022-CP-23-01152

Frederick Jarvis,

Petitioner,

v.

State of South Carolina,

Respondent.

PETITIONER'S BRIEF

Stephen Henry
406 Pettigru Street
Greenville, South Carolina 29601
(864) 232-9700
Attorney for Petitioner

TABLE OF CONTENTS

	Page
STATEMENT OF ISSUES ON APPEAL.....	4
I. PETITIONER IS ENTITLED TO A NEW TRIAL BECAUSE HE WAS DENIED THE RIGHT TO COUNSEL	
II. PETITIONER IS ENTITLED TO A NEW TRIAL BECAUSE HE WAS DENIED THE RIGHT TO A TRIAL BY JURY	
STATEMENT OF THE CASE.....	5
STANDARD OF REVIEW.....	6
ARGUMENT.....	7
CONCLUSION.....	11

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

U.S. Constitution Amendment VI.....	6-11
-------------------------------------	------

STATE PROVISIONS

S.C. 13th Judicial Circuit Standing Order 2-2009.....	8
S.C. 13th Judicial Circuit Standing Order 2-2010.....	8
S.C. Code § 22-2-150 (2025).....	11

FEDERAL CASES

<u>Alabama v. Shelton</u> 535 U.S. 654 (2002).....	7
<u>Argersinger v. Hamlin</u> 407 U.S. 25 (1972).....	7
<u>Faretta v. California</u> 422 U.S. 806 (1975).....	8
<u>Gideon v. Wainwright</u> 372 U.S. 335 (1963).....	7
<u>Rothgery v. Gillespie County</u> 554 U.S. 191 (2008).....	8
<u>Scott v. Illinois</u> 440 U.S. 367 (1979).....	7

STATE CASES

<u>Gardner v. State</u> 570 S.E.2d 184, 351 S.C. 407 (S.C. 2002).....	9
<u>State v. Dixon</u> 236 S.E.2d 419, 269 S.C. 107 (S.C. 1977).....	8
<u>Watts v. State</u> 465 S.E.2d 359, 347 S.C. 399 (S.C. 2001).....	9

STATEMENT OF ISSUES ON APPEAL

Under the Sixth Amendment, the United States Supreme Court requires that courts appoint counsel to indigent defendants who face the possibility of imprisonment or loss of physical liberty. On October 14, 2021, Frederick Jarvis (Appellant), an unrepresented indigent defendant, was found guilty of driving under the influence during a bench trial in the Greenville Municipal Court. Appellant was held in jail for a week before being sentenced to time served on October 21, 2021. After he was sentenced Appellant did not file a direct appeal. Instead he filed a post-conviction relief action which was denied following a hearing before the Honorable B. Alex Hyman. Appellant's petition for certiorari was granted which led to this appeal.

Should the post-conviction relief judge's order dismissing Appellant's post-conviction relief action be reversed because the evidence presented at Appellant's post-conviction relief hearing demonstrated that Appellant was denied his right to counsel and/or his right to a jury trial?

STATEMENT OF THE CASE

Appellant, Frederick Jarvis, appeared before the Greenville Municipal Court on the morning of October 14, 2021, for his first court appearance (Appx. p. 103) on a charge of driving under the influence. He appeared at the assigned date and entered a plea of not guilty (Appx. p. 1). Greenville City police officer Aaron Bowles testified about Appellant's arrest. Once Officer Bowles had completed his testimony, the judge then asked appellant if he had anything to say. Appellant was not offered a chance to question the officer. Appellant asked for a continuance which was denied by the trial judge who said it was too late and that Appellant had "just had [his] bench trial" (Appx. p. 3). Appellant did not realize that he had been in a bench trial. The appellant was then taken to jail until he was returned to court and sentenced to time served on October 21, 2021.

With the help of the non-profit corporation Law in Action, Appellant filed an action for post-conviction relief. The state filed a return and a motion for partial summary dismissal.

A post conviction relief hearing was held on May 16, 2024 before the Honorable Judge Alex Hyman. On December 19, 2024 Judge Hyman denied the appellant's application for post-conviction relief. Appellant then filed a petition for writ of certiorari with the South Carolina Court of Appeals, which was granted. This appeal followed.

STANDARD OF REVIEW

The standard of review for this case shall be *de novo* on issues of law and presumptive correctness for the post-conviction relief judge's factual findings.

ARGUMENT

I. PETITIONER IS ENTITLED TO A NEW TRIAL BECAUSE HE WAS DENIED THE RIGHT TO COUNSEL

"From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him." United States Supreme Court Justice Hugo Black, writing the majority decision in Gideon v. Wainwright, 372 U.S. 335 (1963).

Appellant should have been advised by the trial court judge of his right to counsel, including free counsel, prior to trial. That did not happen.

In 1972, the Supreme Court expanded on the Gideon principle, requiring courts to appoint counsel for indigent criminal defendants charged with misdemeanors when there is a real threat of imprisonment. Argersinger v. Hamlin, 407 U.S. 25 (1972). See also Scott v. Illinois 440 U.S. 367 (1979) where the court emphasized the "central premise of Argersinger" as sentencing to imprisonment as the trigger for the right to counsel.

The Supreme Court strengthened the right to appointed counsel in Alabama v. Shelton, 535 U.S. 654 (2002), holding that courts must appoint counsel for indigent defendants before the activation of a suspended sentence. In Shelton, the court recognized the necessity of "the guiding hand of counsel... when one's liberty is in jeopardy" for the defendant, emphasizing the threat of any term of imprisonment as the trigger for constitutional right to counsel in misdemeanor cases. The right to counsel is

determined at the time the prosecution proceeds against the defendant, not by hindsight after a sentence is imposed. At the time of trial, Appellant faced the possibility of incarceration and in fact was immediately jailed following the proceeding. There can be no doubt that Appellant was entitled to be advised of his right to an attorney and screened for a free lawyer.

In Rothgery v. Gillespie County, 554 U.S. 191 (2008) the Supreme Court held that the Sixth Amendment right to counsel attaches at the defendant's initial appearance before a judicial officer, where he is informed of the accusation against him and liberty restrictions may be imposed. This holds when adversarial proceedings begin even when the case as here was prosecuted by a police officer.

In 2009 and 2010, the judges of the 13th judicial circuit issued two standing orders concerning the right to counsel for indigent criminal defendants in magistrate and municipal courts. S.C. 13th Judicial Circuit Standing Order 2-2009. S.C. 13th Judicial Circuit Standing Order 2-2010. Appellant should have been offered a free attorney pursuant to these orders.

There is no evidence in this record that Appellant was informed of his right to counsel or that he waived that right. The United States Supreme Court requires that, in order to waive the right to counsel, the accused must be both advised of the right to counsel and warned of the dangers of self-representation. Faretta v. California 422 U.S. 806 (1975). In Appellant's case he did not choose self-representation, he was thrust into a trial situation without a lawyer. In South Carolina, as established by State v. Dixon 236 S.E.2d 419, 269 S.C. 107 (S.C. 1977), a waiver of a lawyer must also be intelligent and competent and prior contact with the legal system is not enough to constitute a waiver.

Gardner v. State 570 S.E.2d 184, 351 S.C 407 (S.C. 2002) The municipal court trial judge never discussed self-representation with Appellant. Faretta, supra, Watts v. State, 556 S.E.2d 368, 347 S.C. 399 (S.C. 2001).

The 2009 standing order from the 13th circuit established that, before being detained in jail, the city court judge (or magistrate) must ask the defendant if they would like the assistance of counsel. If the defendant says yes, the judge must immediately fill out a Defense of Indigents Act Form IV and fax it to the Greenville Office of Indigent Defense. Upon receipt, the office will interview the inmate to determine his eligibility for a court-appointed attorney. (Appx. p. 70) Appellant was never interviewed for a court-appointed attorney by the Office of Indigent Defense. (Appx. p. 71). Curiously the city court judge completed a Form IV on Appellant four days after Appellant's bench trial and conviction. Even that late form was not forwarded to the Office of Indigent Defense (Appx. p. 112).

Appellant should be given a new trial due to being denied his right to counsel.

II. PETITIONER IS ENTITLED TO A NEW TRIAL BECAUSE HE WAS DENIED THE RIGHT TO A TRIAL BY JURY

The appellant had the right to a trial by jury and the trial judge erred in not offering him that option. The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to a... trial, by an impartial jury of the State." Under the S.C. Code § 22-2-150 (2025), "[e]very person arrested and brought before a magistrate charged with an offense within his jurisdiction shall be entitled on demand to trial by jury." This applies to municipal court cases as well South Carolina law

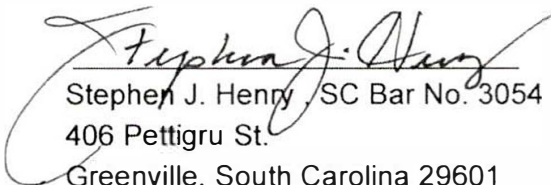
grants the appellant the right to demand a jury trial, and the record fails to demonstrate that he knowingly waived his statutory and constitutional right (Appx. p. 1-3).

Appellant should be given a new trial due to being denied his right to trial by jury.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court vacate his conviction and sentence and remand this matter for a new trial consistent with the requirements of the United States Constitution, the South Carolina Constitution, and the laws of South Carolina.

Respectfully submitted,



Stephen J. Henry, SC Bar No. 3054
406 Pettigru St.
Greenville, South Carolina 29601
(864) 232-9700
Director of Law in Action
Counsel for Appellant

Dated: June 17, 2026