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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Deadra L. Jefferson, Circuit Court Judge

THOMAS BURKHART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000841

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

I. Did the PCR Court err in failing to equitably toll the statute of limitations due to Petitioner's concern over his physical safety as well as the welfare of his relatives due to a reasonable fear of retaliation should he file for PCR and obtain a new trial?

II. Whether the PCR court erred in excusing plea counsel's inadequate investigation of the underlying case against Petitioner when plea counsel failed to connect the dots between the ongoing criminal conduct of law enforcement with the eventual attack on Petitioner by his stepfather which was the basis for the underlying criminal charge?

STATEMENT

Petitioner was indicted in November of 2019 by an Aiken County grand jury for the murder of Joseph Bell on or about October 12, 2018. App. 45-46. He was also indicted for armed robbery and kidnapping of Patty Bell arising out of the same incident. App. 48 – 53. It is undisputed that Joseph Bell was petitioner's stepfather and Patty Bell is his mother. App. 16, ll. 4 – 8; 95, ll. 20 – 21. On October 16, 2020, petitioner appeared before the Honorable William P. Kesley and entered a guilty plea. App. 1. William McKeller represented petitioner during the plea and Jack Hamm appeared on behalf of the State. App. 1. Judge Kesley sentenced petitioner to thirty years imprisonment, concurrent, for each offense. App. 31, l. 17 – 32, l. 15.

On July 3, 2024, petitioner filed the present application for relief alleging ineffective assistance of counsel rendering his guilty plea involuntary. App. 54 – 67. Chelsey Marto was appointed to represent petitioner and filed an amended PCR application dated December 9, 2025. App. 68 – 69. An evidentiary hearing was held before the Honorable Deadra Jefferson on December 15, 2025. App. 90. Ms. Marto continued on behalf of petitioner and Zachary Jones appeared on behalf of the State. App. 90. Judge Jefferson denied relief by formal order dated February 26, 2026. App. 138.

This petition for certiorari follows.

ARGUMENT

I. The PCR Court erred in failing to equitably toll the statute of limitations due to Petitioner's concern over his physical safety as well as the welfare of his relatives due to a reasonable fear of retaliation should he file for PCR and obtain a new trial.

Petitioner does not dispute that his present application was filed more than a year after his underlying guilty plea. Pursuant to S.C. Code Ann. § 17-27-45 (A) (1995), post-conviction relief actions must be filed "one year after the entry of a judgment of conviction." Here, since no appeal was taken following Petitioner's guilty plea, that judgement of conviction date would have been October 16, 2020. However, "the unique conditions of incarceration require a holding that the statute of limitations should be tolled if the circumstances warrant." Mose v. State, 420 S.C. 500, 510, 803 S.E.2d 718, 722 (2017).

At the evidentiary hearing, Petitioner testified regarding the reasons behind his delay in seeking post-conviction relief:

> Q And what is the reason why you were so late filing your application?
>
> A Because I was worried about my family.
>
> Q Could you expand on that a little bit?
>
> A Seeing all that, I was scared what was going to be done to them. And I still am. They going to smile in your face and say it's not going on. They know I can't help them. And my stepdaughter told somebody on the phone when I called them and I don't have any record of this, she told them she wasn't mad at me about what happened to my stepfather. She was mad I wasn't there to protect her grandkids – protect her kids, my step grandkids. And that was the only reason she was mad at her, too.
>
> They scared to death I'm going to face retaliation because I've dealt with so much crap. I got stabbed 25 times less than a year ago and brought back on the same damn yard -- excuse me, sorry. But got put back on the same yard, which I'm all right with. I've got to be

> in prison somewhere. I'm not running from anybody because I don't have no reason to run. But I got stabbed 25 times.
>
> And all the other things I've dealt with because of this and deal with every day because of this same stuff. Because officers are letting certain things go on that's on the outside and it's affecting me on the inside, also. And I could go into more detail about that, but I'll leave that alone for now.

PCR 21, l. 11 – 22, l. 11.

The State did not present any evidence contradicting Petitioner's reasonable fear for his own safety and that of his family related to the allegations of misconduct by law enforcement personnel surrounding the events leading up to his guilty plea. The State did not contradict the physical attacks and injuries suffered by Petitioner while incarcerated. These factors strongly favor a finding of equitable tolling and are of a similar nature to an incarcerated person who, through no fault of their own, is unable to comply with the one year limitation period.

Petitioner would point towards how our Courts handle those whose competency prevents a timely filing:

> Although we have not specifically addressed tolling the statute of limitations in the context of mentally incompetent PCR applicants, case law warrants a holding that, in circumstances in which an applicant demonstrates the failure to timely file for PCR was due to mental incompetency, the statute should be tolled.

Ferguson v. State, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009). Also in support of equitable tolling are actions under the control of the government which inhibit timely compliance. *See* Houston v. Lack, 487 U.S. 266, 276 (1988) ("Indeed, since, as everyone concedes, the prison's failure to act promptly cannot bind a pro se prisoner, relying on receipt in this context would raise yet more difficult to resolve questions whether the prison authorities were dilatory. The prison will be the only party with access to at least some of the evidence needed to resolve such questions-one of the vices the general rule is meant to avoid-and evidence on any of these issues

will be hard to come by for the prisoner confined to his cell, who can usually only guess whether the prison authorities, the Postal Service, or the court clerk is to blame for any delay.").

Since Petitioner was prevented from commencing the present action out of reasonable fear for his own safety and the safety of his family, the PCR court erred in failing to apply equitable tolling to reach the merits of the present application for post-conviction relief.

II. The PCR court erred in excusing plea counsel's inadequate investigation of the underlying case against Petitioner when plea counsel failed to connect the dots between the ongoing criminal conduct of law enforcement with the eventual attack on Petitioner by his stepfather which was the basis for the underlying criminal charge.

A. Petitioner acted in self-defense which caused the death of his stepfather, Joseph Bell.

> Q. What would your self-defense consist of? What did the victim do that made you act in self-defense?
>
> A He pulled a knife out. And I can't remember exactly what was said. After thinking about it, I can't exactly remember what was said. But that's for trial. I mean, this would overturn a guilty plea right there. I don't really know because I'm not going to get hooked up on words in a transcript. I already see all the misconduct that's going on.
>
> It's ridiculous what I've got on Aiken County, absolutely ridiculous. And the City, too. And SLED. I called them to do a well-being check on my family because I thought they were sex trafficked or sex trafficking people.
>
> You know what they told me? They didn't care about none of that. They just wanted to know about something in prison and left two minutes later.

PCR 15, ll. 3 – 18.

B. But for plea counsel's inadequate investigation, Petitioner would not have pled guilty.

In the context of a guilty plea, a PCR applicant is required to show both ineffective assistance of counsel and prejudice. Hill v. Lockhart, 474 U.S. 52 (1985). The "applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness." Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 102 (2013). "The second, or 'prejudice,' requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill, 474 U.S. at 59.

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *see also* Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) ("Moreover, while the scope of a reasonable investigation depends upon a number of issues, 'at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.'").

This case is guided by other cases dealing with witnesses and evidence that would be central to a defense. *See* Martin v. State, 427 S.C. 450, 456, 832 S.E.2d 277, 280 (2019) (finding as a matter of law that Martin's trial attorneys were deficient for not eliciting specific alibi timeline testimony from available witnesses); Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (finding counsel deficient in failing to call witnesses "that would have added significantly to the credibility of petitioner's case."); Weldon v. State, 436 S.C. 69, 82, 870

S.E.2d 183, 190 (Ct. App. 2021) (finding "no evidence supports the PCR court's findings that trial counsel provided effective assistance or implemented—much less articulated—any valid trial strategy with respect to the alibi witnesses."); Bagwell v. State, 410 S.C. 259, 266, 763 S.E.2d 630, 634 (Ct. App. 2014) (finding decision not to test broken glass for DNA prior to trial was unreasonable because the state used the glass as circumstantial evidence of guilt).

During the PCR evidentiary hearing, Petitioner explained the ongoing connection between the criminal misconduct of law enforcement officers and Joseph Bell which would have been discovered had plea counsel conducted a reasonable investigation. Law enforcement sexually assaulted Petitioner's wife during an alleged domestic disturbance call a few days before the fatal confrontation with Joseph Bell.

> *And that's all the same things I told my lawyers to check into that they obviously never did.*
>
> And she went up there on my last video visit with her in the county jail, it showed her and she was all dressed up. And I asked her where she was going and she I'm going to see your lawyer to give a statement. I've got to look good for him, don't I, when I see him. Like it was expected of her to look like that. And then I don't have any statement from her in my case from Mr. McKellar.
>
> And then when the investigator for Mr. McKellar come to see me, before he even stepped foot in the office, he was standing there, he said, look, I ain't got much to show you because what you asked about about the body camera footage -- I told them at the very start that there's no way they don't have body cam footage of what they did. And, of course, there's none from Rushton or Morin in there. And they were at my house two hours on a domestic.
>
> And like I said, you can see them antagonizing me. When they do take me outside after 43 minutes in the house of threatening me, then they were still antagonizing me. That's when he, Officer Morin went in the house by hisself with my wife. And I told him you don't need to go back in my house. They didn't have permission to go back in my house again.

> And he took her in the house for 12 minutes. She come out and she wasn't crying or upset none at all during any of the calls. And when she comes out, she was shaking so bad that you could see her shaking from 60 feet away in the car dash camera and crying. And he told her absolutely, when I said, What did he just do to you? What did he just do to you? Morin told her, Don't say anything to him or I'm going to put you in the back of the car, too.

App. 97, l. 4 – 98, l. 11 (emphasis added).

> A Well, I had it in my mind. And upon information and belief, *I knew she [Petitioner's wife] was sleeping with my stepfather* [Jopseph Bell] *a year before that or so.* And then everything else, once I got there. I thought the whole time, she was seeing somebody online. She wouldn't never put her phone up. But yeah, since I've been in prison, I've found thousands, seriously, thousands of porn videos of my wife and my stepdaughter and some other people in my family.
>
> Q And how would that change your decision to plead versus go to trial?
>
> A Well, that was -- some of that was after, but – I don't know if that would have changed my decision. That's a confusing question for me right there. Now, say that one more time.
>
> Q How would that have changed your decision pleading versus going to trial?
>
> A If my lawyer would have did their job and found out any of that, that would have made the decision right there. He could have found out the same info I did just by doing his job. He's got an investigator. He's got it a little easier than a prison inmate with a contraband cellphone trying to find some information.

App. 109, ll. 4 – 25 (emphasis added).

Plea counsel failed to adequately investigate the connection between the sexual assault of petitioner's wife by law enforcement and the ongoing sexual activity between petitioner's wife and Joseph Bell. Such an investigation would have demonstrated the need for petitioner to act in self-defense when Bell physically attacked him.

> THE WITNESS: That's why I pled guilty, a lot of it. Not the stuff I found out at prison, but all the other stuff I was finding about her getting involved with a lot of people. You know how many people talked to me in the county jail and said my wife was doing this and doing that. They were scared of me. They weren't coming over there and telling me that because they wanted to. So yeah, that's why I took a plea, when I knew he wasn't doing anything.
>
> Q So are you saying that you decided to plea because your counsel didn't do anything about the misconduct you just laid out?
>
> A Yeah, he wasn't doing anything on my case and I knew I was about to get a life sentence if I went to trial. *That's what I said the whole time, I wanted a trial. I wanted to show what them people was doing.* And that was the plan all the way till he comes down there and says we're on the docket for two weeks.

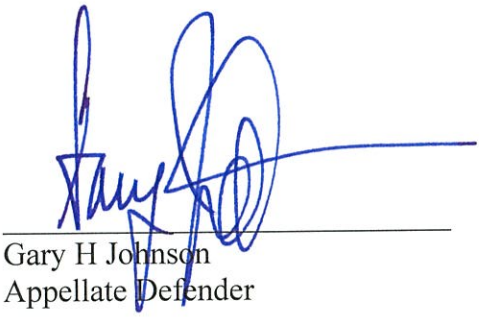
App. 102, ll. 1 – 18 (emphasis added). Petitioner was forced to plead guilty since his public defender was unprepared for trial. "Who's going to go with them numbers right there when you know your lawyer ain't doing nothing for you?" App. 103, ll. 4 – 6.

> Q And you pled to murder because you were afraid of getting a life sentence?
>
> A Yeah, of course. I was afraid because my lawyer wasn't doing anything I thought of or checking on anything I asked, especially about the body camera and stuff. That would have told everything.

App. 107, ll. 8 – 13.

CONCLUSION

Petitioner's plea counsel was ineffective in failing to adequately investigate the connections between law enforcement misconduct and Joseph Bell centered around the sexual assault of petitioner's wife. Had plea counsel conducted a proper investigation, petitioner's self-defense would have been properly presented to a jury during trial. As to the 'prejudice' requirement, the petitioner testified that he "would not have pleaded guilty and would have insisted on going to trial" had plea counsel been effective. Hill, 474 U.S. at 59. This Court should reverse the PCR court, find equitable tolling applies, set aside petitioner's guilty plea and remand this case to the Aiken County Court of General Sessions for a new trial.



Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of September, 2026.

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RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Thomas Burkhart states:

1. He is Appellate Defender 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 Deadra L. Jefferson, which was held on Dec. 15, 2025, 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 Thomas Burkhart.

Respectfully Submitted,

Gary H Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 9th day of September, 2026.

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S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his 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 9th day of September, 2026.