

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JAN 16 2014

Certiorari to Charleston County
Deadra L. Jefferson, Circuit Court Judge

S.C. Supreme Court

LATRON BRYANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001850

JOHNSON PETITION FOR WRIT OF CERTIORARI

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South Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether petitioner's plea of guilty to first-degree burglary is valid after the State dismissed a related weapons charge?

STATEMENT

On April 4, 2011, a Charleston County grand jury indicted petitioner for first-degree burglary. App. 48. He was also indicted for a related weapons charge. App. 35, l. 23 – 36, l. 9. On June 21, 2011, petitioner pled guilty before the Honorable L. Casey Manning. App. 1. Dale Savage represented the State and Mary Ford represented petitioner. App. 1. The State dropped the weapons charge. App. 11, ll. 19 – 20. Judge Manning accepted the burglary plea and sentenced petitioner to fifteen years' imprisonment. App. 16, l. 9 – 17, l. 2. Petitioner did not file an appeal. App. 20.

On April 9, 2012, petitioner filed a PCR application. App. 19. On July 23, 2013, a hearing was held before the Honorable Deadra L. Jefferson. App. 32. Matthew Dillon represented petitioner and Ashleigh Wilson represented the State. App. 32. On August 27, 2013, Judge Jefferson denied petitioner's application. App. 43. This petition follows.

ARGUMENT

Petitioner's plea of guilty to first-degree burglary is invalid after the State dismissed a related weapons charge.

According to the facts presented by the solicitor at the guilty plea, this incident occurred on December 1, 2010, in North Charleston. App. 14, l. 23 – 15, l. 14. A neighbor spotted petitioner inside a residence not his own. App. 14, l. 23 – 15, l. 14. The police arrived and found petitioner inside the residence. App. 14, l. 23 – 15, l. 14. Petitioner supposedly admitted to police that he broke into the residence. App. 14, l. 23 – 15, l. 14. The police found a knife and pistol in a bedroom which petitioner admitted were his. App. 14, l. 23 – 15, l. 14. Petitioner answered affirmatively when Judge Manning asked him if these facts were correct. App. 15, l. 21 – 16, l. 2.

In order to convict a defendant of first-degree burglary, the State must prove entry into a dwelling without consent and one of the following elements: (1) the defendant was armed with a deadly weapon; (2) the defendant caused physical injury to a person not a participant in the crime; (3) the defendant used or threatened the use of a dangerous instrument; (4) the defendant displayed or appeared to display a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; (5) the defendant had at least two prior burglary convictions; or (6) the burglary occurred in the nighttime. S.C. Code Ann. § 16-11-311(A). Proof of second-degree burglary with respect to a dwelling requires only proof of entry without consent. S.C. Code Ann. 16-11-312(A).

The facts presented at the guilty plea do not sustain a conviction for first-degree burglary. The State presented no evidence that the burglary occurred in the nighttime. Nor did the State present any evidence that the defendant caused physical injury to anyone. Finally, the State did not present certified copies of prior burglary convictions.

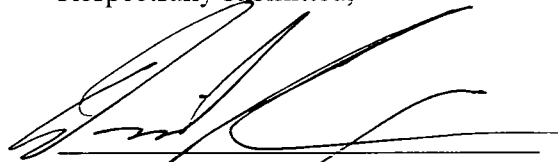
The only facts that could be used to enhance petitioner's charges from second-degree burglary to first-degree burglary is the evidence of weapons. However, this evidence could not be legally used against petitioner. The State dropped the weapons charge. By dropping the weapons charge, the State admitted that it could not prove petitioner possessed a weapon during the crime. The State was therefore collaterally estopped from using these facts to enhance petitioner's charges to first-degree burglary. See Bennett v. South Carolina Dep't Corrections, 305 S.C. 310, 313, 408 S.E.2d 230, 231-32 (1991); compare State v. Bacote, 331 S.C. 328, 330-31, 503 S.E.2d 161, 162-63 (1998).

Proof of a firearm was necessary to support the first-degree burglary charge. Id. The State had a full and fair opportunity to litigate the weapons charge, but declined to do so. Id. Therefore, the State was collaterally estopped from using the fact of a weapon to prove first-degree burglary. This renders petitioner's conviction invalid. This Court should remand to the circuit court with the instruction of allowing petitioner to plead guilty to second-degree burglary and be resentenced.

CONCLUSION

For the foregoing reasons, this Court should grant the petition with the ultimate relief of remanding to the circuit court with the instruction of allowing petitioner to plead guilty to second-degree burglary and be resentenced accordingly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of January, 2014.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
DEADRA L. JEFFERSON, CIRCUIT COURT JUDGE

LATRON BRYANT,

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V.

STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2013-001850

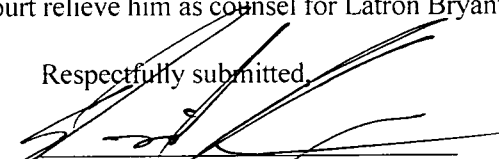
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Latron Bryant states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on July 23, 2013. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Latron Bryant.

Respectfully submitted,



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 16th day of January, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Deadra L. Jefferson, Circuit Court Judge

LATRON BRYANT,

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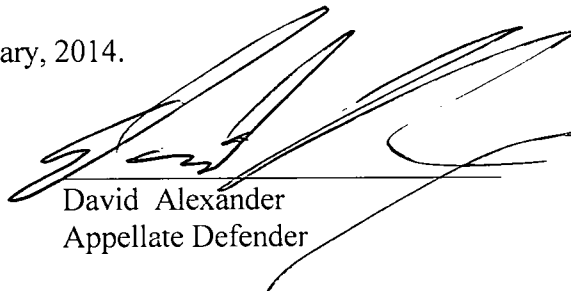
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001850

CERTIFICATE OF SERVICE

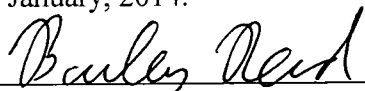
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Ashleigh R Wilson, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Latron Bryant, #336700, at Lee Correctional Institution this 16th day of January, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 16th day
of January, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.