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Oct 26 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Jocelyn J. Newman, Circuit Court Judge

JAY L. COOK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000663

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court err in finding that petitioner's guilty plea was knowing and voluntary when defense counsel failed to articulate any strategy to challenge an unconstitutional search?

STATEMENT

On March 11, 2024, petitioner pled guilty in Charleston County to third-degree sexual exploitation of a minor before the Honorable Deadra L. Jefferson. App. 1. Stephen J. Ryan represented the State. App. 1. Benjamin A. Mack represented petitioner. App. 1. The plea was negotiated for five years' imprisonment and dismissal of other pending charges. App. 3. Judge Jefferson accepted the plea. App. 13. The court sentenced petitioner to five years in prison pursuant to the negotiation. App. 14. Petitioner did not appeal. App. 81.

On March 4, 2025, petitioner filed a PCR application. App. 16. On January 22, 2026, the Honorable Jocelyn Newman held a hearing. App. 53. Denise Grainger Swope represented petitioner. App. 53. Kylee Kanealey represented the State. App. 53. On February 11, 2026, Judge Newman denied relief. App. 80. This petition follows.

ARGUMENT

The PCR court erred in finding that petitioner's guilty plea was knowing and voluntary when defense counsel failed to articulate any strategy to challenge an unconstitutional search.

Petitioner testified at the PCR hearing about the unconstitutional search that led to his arrest. App. 59-61. Petitioner shared his house with a roommate. App. 59. The police did not show petitioner the warrant. App. 59. The police did not show petitioner's roommate the warrant. App. 59. Petitioner was pulled out of his home in handcuffs, given warnings against self-incrimination by the police, and questioned. App. 59-60. When petitioner told plea counsel about the search and the interrogation, plea counsel started "stuttering." App. 59.

Plea counsel characterized petitioner's statement given in handcuffs after being dragged from his house as an admission to possessing child pornography. App. 70. When asked about the warrant's lack of specificity, that it did not designate a particular area of the house to be searched, plea counsel said that did not matter because petitioner had made a confession. App. 75. Plea counsel did admit that petitioner wanted to go to trial and he spent a "large part" of his representation "trying to discourage it." App. 71.

The PCR court denied relief. App. 82-83. The court credited plea counsel's testimony that he saw no deficiencies in the warrant. App. 82-83. The court also found petitioner failed to prove prejudice because he did not present the defective warrant at the hearing. App. 82-83.

South Carolina law requires law enforcement to furnish a person with a copy of the warrant when it is served. S.C. Code Ann. § 17-13-150. The statute reads in mandatory terms: "When any person is served with a search warrant, such person **shall** be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued." Id.

South Carolina's search warrant statute is more strict than the Fourth Amendment. State v. Brown, 447 S.C. 617, 636-37, 929 S.E.2d 415, 425 (Ct. App. 2026). In State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009), the Court held that a warrant unsigned by a magistrate was invalid. The Covert Court cited the strictness of South Carolina's warrant statute. Id.

Tennessee also has a stricter statutory and rules-based scheme than the Fourth Amendment. See State v. Daniel, 552 S.W.3d 832 (Tenn. 2018). In Daniel, the trial court suppressed evidence from a blood draw because the officer failed to give the defendant a copy of the warrant pursuant to a state rule of criminal procedure. The Tennessee Supreme Court agreed that the rules required suppression, but found the officer's good faith overcame the need to apply the exclusionary rule. Here, because plea counsel made no effort to challenge the warrant, we do not know whether the State could have made a sufficient argument to apply the good faith exception.

In State v. Cauthen, the Court of Appeals addressed the specificity requirement of a South Carolina search warrant. 447 S.C. 45, 923 S.E.2d 655 (Ct. App. 2025). The warrant in Cauthen failed to specify that the police could search the curtilage. The Court found that the warrant was sufficient, but applied a stringent analysis to the alleged deficiency.

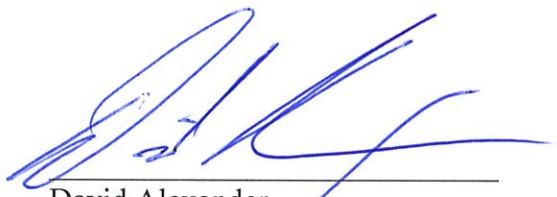
Plea counsel failed to make any investigation concerning the warrant and dismissed petitioner's concerns on an errant legal basis. If the search was invalidated, petitioner could have challenged the interrogation as fruit of the poisonous tree that also required suppression. See Wong Sun v. United States, 371 U.S. 471 (1963). As plea counsel candidly admitted, his focus was only getting petitioner to plead guilty and not on making a robust challenge to the State's case or the procedures it used to build it.

Petitioner clearly wanted a trial. Even when the PCR court told him he could face over one hundred years in prison if he won his PCR, petitioner steadfastly insisted on going forward. App. 57-58. The PCR court erred in finding petitioner's plea was knowing and voluntary under these circumstances. Plea counsel had a duty to fully investigate the facts and law regarding the search warrant's validity.

Failure to do so constituted ineffective assistance under the Sixth Amendment. Without knowing the viability of his legal defenses to the search warrant, plea counsel's emphasis on getting petitioner to plead guilty amounted to de facto coercion. Guilty pleas that are the product of coercion are invalid. See Boykin v. Alabama, 395 U.S. 238 (1969) ("Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality."); Hill v. Lockhart, 474 U.S. 52, 59 (1985) (holding that an applicant proves prejudice by showing that counsel's constitutionally deficient performance affected the outcome of the plea). This Court should grant certiorari, reverse petitioner's conviction, and remand for a new trial.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari, reverse petitioner's conviction, and remand for a new trial.



David Alexander
Deputy Chief Attorney for Capital Appeals

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This 26th day of October, 2026.

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Counsel for Jay Cook states:

1. He is Deputy Chief Attorney for Capital Appeals 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 Jocelyn J. Newman, which was held on Jan. 23, 2026, 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 Jay Cook.

Respectfully Submitted,

David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR PETITIONER

This 26th day of October, 2026.

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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 26th day of October, 2026.