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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA**

**IN THE SUPREME COURT**

Appellate Case No. 2026-001986

Appeal from McCormick County Court of Common Pleas

Circuit Court Case No. 2024-CP-35-00085

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Josh R. Grizzard, Petitioner,

v.

McCormick County Magistrate, Respondent.

# PETITION FOR WRIT OF CERTIORARI

## RULE 243, SCACR

## QUESTIONS PRESENTED

1. Whether the circuit court erred in ruling that a person who represented himself in the underlying criminal proceeding is categorically ineligible to pursue post-conviction relief, notwithstanding S.C. Code Ann. § 17-27-20(A)(1).

2. Whether the circuit court applied an erroneous procedural framework by equating dismissal of later direct appellate proceedings for a service-related defect with an adjudication on the merits, without separately applying the statutory restrictions governing PCR.

3. Whether dismissal without meaningful consideration of the asserted First and Fourteenth Amendment claims was proper when the circuit court affirmance characterized the underlying conduct as yelling profanities, a factual characterization Petitioner disputed by reference to the trial recording and arrest video.

## STATEMENT OF THE CASE

Petitioner was convicted of disorderly conduct after an incident at McCormick Town Hall. He proceeded without counsel at his magistrate trial and argued that the arrest punished constitutionally protected speech. Circuit Court Judge Walton J. McLeod IV affirmed the conviction, describing the conduct as yelling profanities and distinguishing Cohen v. California, 403 U.S. 15 (1971), on the basis of disorderly or boisterous conduct. (McLeod Order, pp. 1–3.) Later direct appellate proceedings were dismissed following a service-related procedural deficiency. Petitioner described that history at the August 24, 2026 hearing. (Hearing Transcript ["Tr."] p. 3, lines 20–25; p. 4, lines 1–9.) Petitioner sought to pursue post-conviction relief. Judge Frank R. Addy, Jr. heard the matter on August 24, 2026 and entered a Form 4 judgment dismissing the action, checking "Other Rule 56." (Addy Order, pp. 1–2.) The Addy order states that PCR challenges attorney representation and that Petitioner could not bring PCR "against oneself" after proceeding pro se. It also states that the grounds were raised in the underlying trial and appeal. (Addy Order, pp. 1–2.) At the hearing, Petitioner disputed any evidence that he yelled, asserted that the arresting officer identified vulgar language as the reason for arrest, and stated that he had both the arrest video and the magistrate bench-trial audio recording with him in court. (Tr. p. 4, lines 22–25; p. 5, lines 1–17.) Judge Addy stated that the claim should have been pursued on direct appeal, and, after referring to his own review of the video, characterized the conduct as disorderly. (Tr. p. 5, lines 18–25; p. 6, lines 1–13.) When Petitioner invoked Cole v. Arkansas, 333 U.S. 196 (1948), the court again directed him to direct appeal. (Tr. p. 6, lines 14–20.)

**ARGUMENT**

I. Self-representation does not categorically foreclose PCR.

Section 17-27-20(A)(1), S.C. Code Ann., authorizes a person convicted of a crime to seek relief on the ground that the conviction or sentence violated the United States Constitution or the

Constitution or laws of South Carolina. The statute is not confined to ineffective-assistance-of-counsel claims. A litigant who represented himself cannot fault his own performance as constitutionally ineffective counsel, but that does not eliminate every other statutory ground. Judge Addy's written order treats self-representation itself as a categorical obstacle. (Addy Order, pp. 1–2.) Petitioner asks this Court to determine whether the dismissal rested on that incorrect threshold premise and, if so, to remand for application of the actual statutory standards.

II. The court should apply the actual procedural bars, not treat procedural dismissal as merits affirmance.

Petitioner acknowledged that his earlier direct appellate proceedings were dismissed after a failure to complete required service timely. (Tr. p. 3, lines 20–25; p. 4, lines 1–9.) Such a dismissal does not itself establish that an appellate court decided the federal constitutional merits. Petitioner recognizes that § 17-27-20(B) and § 17-27-90 impose separate limitations on issues previously litigated, waived, or available on direct appeal. The point is narrower: the court must identify and apply the governing restriction, rather than deem a procedural dismissal an appellate merits adjudication. Judge Addy described the conviction as having been affirmed on appeal and stated that the issues were settled. (Tr. p. 6, lines 1–13; Addy Order, pp. 1–2.) Review is warranted to clarify the grounds of dismissal.

III. The First and Fourteenth Amendment allegations should be assessed on the actual record and within the correct PCR framework.

The circuit appellate order relied on a description of Petitioner "yelling profanities" when distinguishing Cohen. (McLeod Order, pp. 1–3.) Petitioner's contention is not that yelling is a statutory element of every disorderly-conduct charge. Rather, he disputes that the factual conduct used in that order to distinguish punishable behavior from protected expression was established in the magistrate record. At the PCR hearing, Petitioner stated that he had brought both the arrest

video and the magistrate bench-trial audio recording to court. He asserted that the arresting officer said on the

video, and confirmed during the bench trial, that the arrest was for vulgar language, and that neither recording established yelling. (Tr. p. 5, lines 1–17.) Judge Addy expressly acknowledged having reviewed the arrest video, but disagreed with Petitioner's characterization and stated that the video showed disorderly conduct. (Tr. p. 6, lines 1–13.) The certified hearing transcript does not expressly establish that Judge Addy reviewed the separate bench-trial audio recording, nor does it establish that either recording was admitted as an exhibit; the transcript identifies no exhibits introduced at that hearing. (Tr. p. 2; pp. 5–6.) These remain disputed allegations, not factual findings by this Court. Cohen v. California, 403 U.S. 15 (1971), protects speech from punishment merely because it is offensive; it does not immunize independently unlawful conduct. Cole v. Arkansas, 333 U.S. 196 (1948), addresses due process and notice of the basis on which a conviction is sustained. Petitioner requests review of whether the PCR dismissal rested on an erroneous categorical rule and whether his constitutional contentions were evaluated under the applicable preservation and collateral-review limits. Petitioner describes the incident as occurring in the Town Hall lobby with only town employees present; he does not assert that the lobby's constitutional forum classification has been established by the existing record.

**RELIEF REQUESTED**

Petitioner respectfully requests that this Court grant certiorari, review the August 24, 2026 dismissal, vacate or reverse the order to the extent it rests on an incorrect categorical limitation on self-represented PCR applicants or an erroneous procedural rationale, and remand for consideration under the applicable statutory and constitutional standards. Petitioner requests any further relief the Court deems just.

Respectfully submitted,

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