

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to York County

**S.C. Supreme Court**

John C. Hayes, III, Circuit Court Judge  
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JAMAR LAVERT BELK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001067  
\_\_\_\_\_

JOHNSON PETITION FOR WRIT OF CERTIORARI  
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ATTORNEY FOR PETITIONER

INDEX

INDEX ..... 1

ISSUE PRESENTED ..... 2

STATEMENT ..... 3

ARGUMENT ..... 4

CONCLUSION ..... 7

PETITION TO BE RELIEVED AS COUNSEL ..... 8

ISSUE PRESENTED

Whether the trial court erred in not granting a continuance to allow petitioner's brothers to be transported to court from prison to testify at the PCR hearing?

## STATEMENT

On August 19, 2010, a York County grand jury indicted petitioner for murder, armed robbery, conspiracy, and a weapons charge. App. 75 – 81. On October 4, 2012, petitioner pled guilty before the Honorable Michael Nettles. App. 1. Willy Thompson represented the State. App. 1. Michael L. Brown represented petitioner. App. 1. The plea was for a negotiated sentence of thirty years. App. 4, ll. 5 – 10. Sentencing was deferred. App. 4, ll. 5 – 10. On November 7, 2010, the Honorable Lee S. Alford sentenced petitioner to concurrent terms of thirty years' imprisonment for murder and armed robbery and five years' imprisonment for conspiracy and the weapons charge. Supp. App. 1. Supp. App. 11, l. 15 – 12, l. 11. Petitioner did not appeal.

On September 30, 2012, petitioner filed a PCR application. App. 16. On April 15, 2014, a hearing was held on petitioner's application before the Honorable John C. Hayes, III. App. 31. J. Rutledge Johnson represented the State. App. 31. Leah B. Moody represented petitioner. App. 31. On April 16, 2014, Judge Hayes denied petitioner's application. App. 69. This petition follows.

## ARGUMENT

The trial court erred in not granting a continuance to allow petitioner's brothers to be transported to court from prison to testify at the PCR hearing.

According to the facts alleged by the solicitor during the guilty plea, four men robbed a payday lending business on October 8, 2008 in Fort Mill. App. 6, l. 14 – 7, l. 20. Three of the men, including petitioner, were brothers. App. 7, ll. 3 – 20. According to the State, petitioner shot the business owner. App. 7, ll. 3 – 20. The solicitor told the plea judge that petitioner's brothers "entered pleas agreeing to testify if necessary regarding the crime implicating their brother Jamar and saying that he was and confirmed that he was the shooter in this particular offense, and that's what brings us before the Court today." App. 8, l. 25 – 9, l. 5.

At the beginning of the PCR hearing, petitioner asked for a continuance. App. 34, l. 25 – 35, l. 15. Petitioner's brothers did not know when they signed their guilty pleas that they had agreed to testify against petitioner and claim he was "the trigger person." App. 35, ll. 2 – 15. Petitioner explained to the court that his brothers "did not understand that they would have to testify against him." App. 36, ll. 3 – 6. It was the fear of his brother's testimony that caused him to plead guilty. App. 34, l. 25 – 36, l. 6. The PCR court denied the motion for a continuance. App. 36, ll. 22 – 25. The PCR judge stated, "We will hear his concerns today." App. 36, ll. 22 – 25.

During the hearing, petitioner testified that his attorney told him he would get life in prison if he refused to plead guilty. App. 40, ll. 10 – 13. Petitioner unequivocally testified that he wanted to go to trial. App. 47, ll. 5 – 7. He testified that he wanted a continuance of the PCR hearing. App. 48, ll. 8 – 9. He proffered that his brothers were not "fully aware of what they

was signing.” App. 48, ll. 18 – 21. His brothers did not know the plea agreements required them to testify against him. App. 48, l. 18 – 49, l. 6.

Trial counsel confirmed petitioner’s testimony. Petitioner turned down a plea offer for attempted murder. App. 57, l. 7 – 58, l. 20. The reason petitioner turned down the plea was “because he didn’t believe his brother was gonna roll on him.” App. 58, ll. 12 – 18. Once he learned his brothers intended to testify against them, petitioner “Changed his tune a hundred and eighty degrees [and] agreed to accept the thirty years.” App. 58, ll. 19 – 22.

The PCR court erred in ruling on the merits of one of petitioner’s claims without allowing him to fully present evidence on the claim. App. 72. The PCR court used the denial of the continuance to deny petitioner’s claim. App. 72. Among the reasons the PCR court denied petitioner’s claim was because “there is no evidence in the record to support” the assertion that his brothers were unaware that their plea agreements required them to testify against him. App. 72. The PCR court’s refusal to grant a continuance was the cause of the record’s lack of evidence.

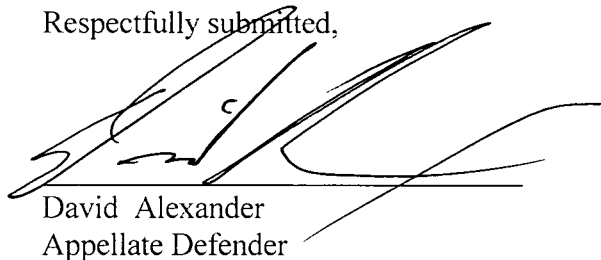
In McKnight v. State, 378 S.C. 33, 43-44, 661 S.E.2d 354, 359 (2008), the defendant received a new trial in part because he was prejudiced by counsel’s failure to seek a continuance to secure a favorable expert’s testimony. In State v. McMillian, 349 S.C. 17, 561 S.E.2d 602 (2002), the Court reversed based on the trial court’s denial of a continuance to obtain transcripts of a previous trial. While it is true, as stated in McMillian, that reversals for failure to grant a continuance are rare, it is also true that the refusal to grant a continuance usually does not result in a complete lack of the ability to present proof. Petitioner’s brothers were incarcerated and transporting them for the hearing was beyond his control. Under these circumstances, the Court should allow petitioner the opportunity to fully present his case. This Court should remand the case

for an evidentiary hearing at which petitioner's brothers could testify regarding the circumstances of their plea agreements and whether they would have testified against petitioner.

CONCLUSION

For the foregoing reasons, this Court should remand this case to the PCR court for an evidentiary hearing as described above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line. The signature is stylized and somewhat cursive.

David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 4<sup>th</sup> day of November, 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO YORK COUNTY  
JOHN C. HAYES, III, CIRCUIT COURT JUDGE

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JAMAR LAVERT BELK,

PETITIONER,

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RESPONDENT

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PETITION TO BE RELIEVED AS COUNSEL

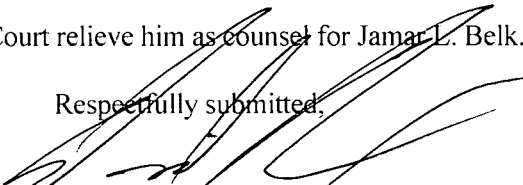
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Counsel for Jamar L. Belk states:

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 April 15, 2014. 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 Jamar L. Belk.

Respectfully submitted,



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David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 4th day of November, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to York County

John C. Hayes, III, Circuit Court Judge

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JAMAR LAVERT BELK,

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CERTIFICATE OF SERVICE

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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 J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Jamar L. Belk, #353088, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 4th day of November, 2014.

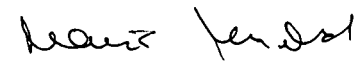


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David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day  
of November, 2014.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.