

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County

R. Markley Dennis, Jr., Circuit Court Judge  
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**RECEIVED**

NOV 24 2015

S.C. Supreme Court

DION O. TAYLOR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001397

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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BENJAMIN JOHN TRIPP  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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(803) 734-1343

ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Whether the PCR court erred in summarily dismissing Petitioner's PCR application without conducting an evidentiary hearing on grounds that it was successive and untimely where Petitioner in his pleadings made new claims of ineffective assistance of counsel and alleged that he was not lucid in his prior PCR proceedings due to a correctional facility's failure to properly medicate him.

## STATEMENT

On January 7, 2009, the Charleston County Grand Jury indicted Petitioner Dion Orlando Taylor for criminal domestic violence, second offense or subsequent offense and armed robbery. App. 73-76. On June 3, 2009, Petitioner appeared at a plea hearing before The Honorable Roger M. Young. Trip Riesen represented Petitioner and Cody Groeber represented the State. App. 1.

The State alleged that on June 24, 2008, Petitioner struck his girlfriend in her face with his hand. On September 24, 2008, Petitioner held up a clerk at a convenience store with a utility knife. App. 13, line 16—App. 14, line 12. Petitioner pled guilty to both charges in exchange for negotiated sentences of ten years' incarceration for armed robbery and three years concurrent for domestic violence. App. 5, lines 7-15; App. 7, lines 4-11.

On December 11, 2012, Petitioner filed an application for post-conviction relief (PCR) claiming ineffective assistance of plea counsel. App. 21—App. 31. The State filed a return and motion to dismiss on March 31, 2014. The State reported that Petitioner had previously filed an application for PCR on October 6, 2009, and the prior PCR court issued a written order of dismissal on April 5, 2011 after Petitioner represented himself at an evidentiary hearing on March 1, 2011. App. 32—App. 42. On July 21, 2014, the PCR court issued a conditional order of dismissal ruling Petitioner's application should be summarily dismissed for being successive and as untimely. The order stated Petitioner's claim would be denied unless Petitioner within twenty days demonstrated why the PCR court should not. App. 43—App. 49.

Petitioner filed a response to the conditional order of dismissal App. 51—App. 69. Petitioner alleged that he was not lucid when he chose to represent himself and did subsequently represent himself at his prior PCR hearing. Specifically, Petitioner at the time had a history of mental health problems, was prescribed psychotropic drugs, and was not properly medicated around

the time of the hearing because his correctional facility had been denying him the prescribed drugs. App. 51—App. 52. Petitioner then set forth his grounds for relief, including ineffective assistance based on plea counsel's failures to adduce and argue evidence, App. 59—App. 60, to raise the defense of insanity, App. 61, and to advise him of the right to appeal, App. 53. On May 15, 2015, the PCR court issued a final order dismissing Petitioner's claim concluding it was untimely and successive. App. 70—App. 72.

### ARGUMENT

**The lower court erred in summarily dismissing Petitioner's PCR application because he alleged a facially sufficient reason for failing to previously raise his arguments.**

The lower court erred in summarily dismissing Petitioner's PCR application because he alleged a facially sufficient reason for failing to previously raise his arguments. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984). A person convicted of a crime may make a PCR claim within the later of one year after either the entry of judgment or conviction or the final remittitur or decision in an appeal. S.C. Code Ann. § 17-27-45(A). Generally, once a court receives an application, the court must hold a hearing to receive evidence and arguments. S.C. Code Ann. § 17-27-80. A successive PCR application is favored when a reason exists to permit a person under sentence to litigate again. *Land v. State*, 274 S.C. 243, 246, 262 S.E.2d 735, 736 (1980). Thus, a person may file a successive application by setting forth a sufficient reason that the ground was not asserted or was inadequately raised. S.C. Code Ann. § 17-27-90.

The court may only dismiss an application without a hearing when "on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to post-conviction

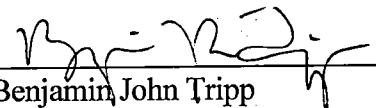
relief and no purpose would be served by any further proceedings.” S.C. Code Ann. § 17-27-70(b). Thus, “[s]ummary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief.” *Al-Shabazz v. State*, 338 S.C. 354, 364, 527 S.E.2d 742, 747 (1999).

In this case, Petitioner set forth in his response to the conditional order of dismissal a facially sufficient reason for failing to raise his PCR arguments in the previous claim, and the PCR court therefore needed to conduct a hearing to develop the underlying facts. In his first PCR claim, Petitioner represented himself at the evidentiary hearing on March 1, 2011. Petitioner alleged that he was not lucid at the time because he was not properly medicated for his mental health issues. Petitioner then set forth his grounds for relief, including ineffective assistance based on plea counsel’s failures to adduce and argue evidence, to raise the defense of insanity, and to advise him of the right to appeal. Accordingly, the PCR court erred in dismissing Petitioner’s claim without holding an evidentiary hearing.

### CONCLUSION

For the foregoing reasons, this Court should grant Petitioner Dion Orlando Taylor’s petition for writ of certiorari to allow full briefing on the issue.

Respectfully submitted,

  
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Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of November, 2015.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO CHARLESTON COUNTY  
R. MARKLEY DENNIS, JR., CIRCUIT COURT JUDGE

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DION O. TAYLOR,

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PETITION TO BE RELIEVED AS COUNSEL

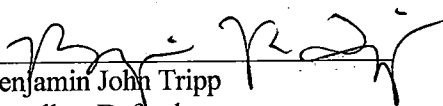
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Counsel for Dion O. Taylor states:

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 N/A. 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 Dion O. Taylor.

Respectfully submitted,

  
Benjamin John Tripp  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 24th day of November, 2015

STATE OF SOUTH CAROLINA

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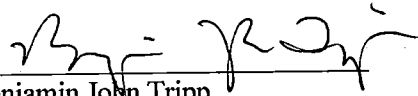
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001397  
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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 J. Rutledge Johnson, Esquire and Dion O. Taylor, #335089, at Kershaw Correctional Institution this 24th day of November, 2015.

  
\_\_\_\_\_  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 24th day  
of November, 2015.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: May 12, 2025.