

STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

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Appellate Case No. 2015-002328

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**RECEIVED**  
AUG - 4 2016  
SC SUPREME COURT

Eli Torrence, ..... Petitioner,

v.

State of South Carolina, ..... Respondent.

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**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

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ATTORNEYS FOR RESPONDENT

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## QUESTION PRESENTED

1. The PCR judge erred in denying petitioner's allegation that his Magistrate's Court convictions were in obtained in violation of his constitutional rights that guaranteed a jury trial, and the representation by counsel at trial, and his presence at trial?

## STATEMENT OF THE CASE

On October 26, 2012, Petitioner was issued tickets for driving without a license (2012A2310200074), simple possession of marijuana (2012A2310200075), and reckless driving (2012A2310200077).

On August 15, 2013, these matters were handled at a bench trial in magistrate court. Petitioner proceeded pro se. The Honorable Dean E. Ford found Petitioner guilty and sentenced him to time-served for each of the three charges. (App.pp.25-27). Petitioner did not appeal.

Petitioner filed an application for post-conviction relief (PCR) on July 17, 2014 (2014-CP-23-3924). (App.pp.1-7). Respondent submitted a return and motion to dismiss, arguing the matter should be dismissed based upon Petitioner's failure to state a cognizable claim for relief. (App.pp.8-11). A hearing was held at the Greenville County Courthouse on October 21, 2015. (App.pp.12-20). Petitioner was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Attorney General's Office represented Respondent. On November 5, 2015, the Honorable Perry H. Gravely filed an order in which he granted Respondent's motion to dismiss and dismissed the matter with prejudice. (App.pp.21-24).

## STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCF.

## ARGUMENT

**The PCR judge did not err in finding Petitioner failed to meet his burden of proving he was entitled to relief.**

Petitioner argues he is entitled to relief because his magistrate court convictions “were obtained in violation of his constitutional rights that guaranteed a jury trial, and representation by counsel at trial, and his presence at trial.” (Pet. Cert., p.2; p.4). This argument is without merit.

At the PCR hearing, Petitioner stated that, while he was in the South Carolina Department of Corrections (SCDC) at the end of 2013,

[Magistrate] Judge Diane Cagle and her secretary pulled me from Kirkland Correctional Institute to the Lieber Correctional Institution where she held court for certain cases. She asked me if I wanted to apply for indigent defense or if I had my own attorney or if I wanted to go ahead and plead out to the charges on that day. I stated that I needed indigent defense because I didn’t have money for my own attorney, and she handed me a paper saying to contact the Indigent Defense office in Greenville to take my case. I left. I never pled out to any charges or anything else. They don’t have any record at all of me ever seeing a judge, there are no transcripts, there's no record of anything. It’s like I never seen anybody.

(App.pp.14-15). When asked by his PCR attorney about the paperwork that noted he was found guilty in a bench trial before Magistrate Judge Dean Ford on August 15, 2013, Petitioner stated he never saw that judge and was incarcerated in SCDC at the time. (App.pp.16-17). Petitioner

stated he was never appointed an attorney. (App.pp.16-17). Petitioner acknowledged the court records from the Fairview Summary Court stated the case was heard by “Judge Ford, Dean Eugene” and the disposition was “Guilty, bench trial, credit for time served” but stated the summary court records were incorrect. (App.pp.17-18).

In denying Petitioner’s application for post-conviction relief, the PCR judge found Petitioner “failed to state a claim cognizable under the Uniform Post-Conviction Procedure Act.” The PCR judge found Petitioner failed to prevail upon his allegations that his guilty plea was involuntary or that his Sixth Amendment rights were violated. The PCR judge found Petitioner “failed to produce any credible evidence or testimony to support his allegations” and thus failed to meet his burden of proof. (App.pp.22-24).

The PCR judge did not err in finding Petitioner failed to meet his burden of proof. Petitioner argues he was not present at the bench trial, did not waive his right to trial by jury, and did not waive his right to counsel. (Pet. Cert., pp.5-6). Petitioner has the burden of proving his allegations in a post-conviction relief action. See Butler, 286 S.C. at 442, 334 S.E.2d at 814; see also Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 146 (2014) (“The petitioner in a PCR hearing bears the burden of establishing his entitlement to relief.”) (citing Suber v. State, 371 S.C. 554, 640 S.E.2d 884 (2007)). Petitioner failed to present any evidence or testimony to corroborate his claim that a Greenville County magistrate judge had him transferred from a SCDC institution in Richland County to a SCDC institution in Dorchester County and then travelled to Dorchester County to discuss his pending magistrate court charges. Petitioner failed to present any evidence or testimony to corroborate his claim that he did not waive various rights associated with a jury trial. While Petitioner now argues on appeal that there is no evidence to

refute his uncorroborated allegations, the State does not have the burden of proof and the record before this Court is clear. Further, there is a presumption of regularity in final judgments that should prevent challenges to the validity of convictions. See State v. Payne, 332 S.C. 266, 271, 504 S.E.2d 335, 337 (Ct. App. 1998) (“[O]ur case law has a long history of embracing the presumption of regularity that attaches to final judgments.”) (citations omitted).

Regardless, even assuming arguendo that Petitioner sufficiently alleged his claims, they were properly dismissed by the judge because they were not appropriate claims to be raised in a post-conviction relief action. One asserting a constitutional violation in a post-conviction relief case must generally must such issues as those of ineffective assistance of counsel – which Petitioner did not do. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999)). Furthermore, Petitioner’s allegations that his constitutional rights to trial and counsel were violated at his bench trial are issues that should have been raised on direct appeal. This Court has long held that post-conviction relief is not a substitute for a direct appeal. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974); see also S.C. Code Ann. § 17-27-20(b) (2003) (noting PCR “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction”). This Court has expressly held “errors which can be reviewed on direct appeal may not be asserted for the first time . . . in post-conviction proceedings.” Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993). As Petitioner did not raise issues that were cognizable in a post-conviction relief action, there is probative evidence to support the dismissal of his application.

As Petitioner failed to meet his burden of proving he was entitled to, the judge did not err

in denying the post-conviction relief application. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (“The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”).

**CONCLUSION**

For the foregoing reasons, Respondent submits this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issue discussed above.

Respectfully submitted,

ALAN WILSON  
Attorney General

KAREN C. RATIGAN  
Senior Assistant Attorney General  
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By:   
ATTORNEYS FOR RESPONDENT

August 4, 2016

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**CERTIFICATE OF SERVICE**

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I, Karen C. Ratigan, certify that I have today served the within Return to Petition for Writ of Certiorari upon Petitioner by depositing a copy of the same into inter-agency mail and addressed to:

Wanda H. Carter, Esquire  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served. This 4th day of August, 2016.

  
KAREN C. RATIGAN  
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Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737  
ATTORNEY FOR RESPONDENT



ALAN WILSON  
ATTORNEY GENERAL

August 4, 2016

Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

Re: Eli Torrence v. State  
Appellate Case No. 2015-002328

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SC SUPREME COURT

Dear Mr. Shearouse:

Enclosed for filing please find an original and six copies of the **Return to Petition for Writ of Certiorari** in the above-captioned case. If there are any questions or comments, please do not hesitate to contact me at any time.

Sincerely,

Karen C. Ratigan  
Senior Assistant Attorney General  
SC Bar #68331

Enclosures

cc: Wanda H. Carter, Esquire