

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE SUPREME COURT

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Certiorari to York County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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TERRELL A. ADDISON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001444

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Whether trial counsel provided constitutionally ineffective assistance by pursuing a defense of duress and coercion when such defense is legally insufficient for the charge of murder?

## STATEMENT

On February 15, 2007, petitioner was indicted in York County for murder, kidnapping, armed robbery, criminal conspiracy, and a weapons charge. App. 1448-57. On February 23, 2009, petitioner and his co-defendant Ben Robert Stewart were tried before the Honorable Lee S. Alford and a jury. App. 1. Kevin Brackett and Willy Thompson represented the State. App. 1. Jack Swerling represented petitioner. App. 1. The jury convicted petitioner. App. 1205, l. 10 – 1206, l. 13. Judge Alford sentenced petitioner to concurrent terms of imprisonment of thirty years, ten years, five years, and five years for murder, kidnapping, conspiracy, and the weapons charge, respectively. App. 1241, l. 25 – 1243, l. 4. Judge Alford sentenced petitioner to a consecutive term of ten years' imprisonment for armed robbery. App. 1241, l. 25 – 1243, l. 4. On December 12, 2012, the Court of Appeals affirmed petitioner's convictions. State v. Addison, Op. No. 2012-UP-655 (S.C. Ct. App. Dec. 12, 2012).

On December 9, 2013, petitioner filed a PCR Application. App. 1247. On November 4, 2015, a hearing was held before the Honorable Brooks P. Goldsmith. App. 1261. Tricia Blanchette represented petitioner. App. 1261. Justin Hunter represented the State. App. 1261. On May 24, 2016, Judge Goldsmith denied petitioner's application. App. 1426. On June 27, 2016, Judge Goldsmith denied petitioner's Rule 59(e) motion. App. 1447. This petition follows.

## ARGUMENT

Trial counsel provided constitutionally ineffective assistance by pursuing a defense of duress and coercion when such defense is legally insufficient for the charge of murder.

Petitioner was not the shooter in this convenience store robbery. App. 198, l. 5 – 199, l. 5. The shooter was Dontavious Mack (“Dontavious”). App. 198, l. 5 – 199, l. 5. Dontavious testified for the State in petitioner’s trial and admitted shooting the convenience store clerk victim during this armed robbery. App. 198, l. 5 – 199, l. 5. He claimed petitioner entered the store with him as part of a robbery plan with a group of people. App. 193, l. 7 – 197, l. 13.

Petitioner testified in his own defense. App. 852 ll. 7 – 15. Petitioner was twenty years old at the time of trial. App. 852, ll. 16 – 17. He had been treated for ADHD. App. 852, l. 20 – 853, l. 5. Petitioner testified that he knew of Dontavious and his brother, Davorius Mack (“Davorius”) and they had a violent reputation. App. 856, l. 16 – 857, l. 5. Petitioner was in Hartsville and needed a ride back to Rock Hill. App. 860, l. 22 – 861, l. 25. Petitioner heard the Mack brothers talking about going to Charlotte so he offered them some gas money if they would give him a ride to Rock Hill. App. 861, l. 3 – 862, l. 9.

On the way to Rock Hill, petitioner heard the Mack brothers discussing plans to commit a robbery. App. 864, ll. 7 – 19. Petitioner told the Mack brothers to take him home. App. 864, ll. 20 – 21. Petitioner saw the Mack brothers try to rob a car rim store and became afraid. App. 866, l. 7 – 867, l. 25.

When they got to Rock Hill, the Mack brothers took petitioner to his brother’s apartment. App. 869, l. 5 – 870, l. 4. Petitioner did not have money to pay the Mack brothers for the ride and hope his brother would have the money to do so. App. 869, l. 5 – 870, l. 21. When petitioner told them he did not have any money, they threatened petitioner's life, they threatened

petitioner's family's life and told him that he would have to rob someone to get them their money. App. 871, l. 4 – 873, l. 3. Petitioner testified then that the Mack brothers chose a gas station to rob and forced him to participate in the robbery. App. 873, l. 4 – 884, l. 18.

During his closing argument, trial counsel told the jury that petitioner

... was not a willing participant in this armed robbery. And obviously not being a willing participant in the armed robbery and not having the intent to commit the armed robbery, being under duress to go in there and commit the armed robbery with Dontavious Mack, then he should be found not guilty; and that the law does allow under certain circumstances when you have those events come together, the person should be found not guilty.

App. 1040, ll. 1 – 8. Conversely, the solicitor's closing argument proved the devastating effect of petitioner's testimony and pursuing a defense of duress. App. 1105, l. 11 – 19. The solicitor told the jury that petitioner's testimony made his job much easier because

... really Mr. Addison's defense has resolved all of the other things that we might have to prove. Was Mr. Addison even there? **We don't have to prove that. He's admitted he's there.** Was he wearing a mask? **We don't have to prove that. He has admitted he was.** The only issue that y'all really have to resolve is was Mr. Addison acting voluntarily or was he under duress.

App. 1105, ll. 11 – 19 (emphasis added). The solicitor argued accomplice liability to the jury.

App. 1143, ll. 8 – 17. After the verdict and before sentencing, the trial judge mocked petitioner's defense of duress and coercion. App. 1241, ll. 12 – 24.

At the PCR hearing, petitioner alleged trial counsel was ineffective for using a defense that is not legally cognizable for murder. App 1267, l. 23 – 1268, l. 4. When asked about his strategy, trial counsel claimed he had "to come up with a novel theory" to defend the case. App. 1354, ll. 5 – 23. Trial counsel admitted he was familiar with the precedent State v. Rocheville,

310 S.C. 20, 26, 425 S.E.2d 32, 35-36 (1993) which holds that duress is not a defense to murder.<sup>1</sup> App. 1360, l. 18 – 1361, l. 10.

Trial counsel was ineffective in pursuing a legal strategy that he knew was not legally viable. The PCR court erred in crediting trial counsel with making a strategic decision to pursue his “novel theory.” App. 1436-37. The PCR court incorrectly assumes that because the trial judge charged duress and mere presence that trial counsel’s strategy was reasonable.

Petitioner’s trial was held in 2009. Over fifteen years earlier, this Court unequivocally stated in Rocheville that duress is not a defense to murder. Id. “The rationale of the defense of duress is that if the only means of avoiding greater harm is for the defendant to engage in illegal conduct resulting in a lesser harm, he should not be held criminally liable for the illegal conduct.” Id. “The commission of the crime which results in a lesser harm is therefore justified. However, when the crime is the murder of an innocent person, the choice of two evils rationale is unavailing. The resulting harm, the murder of an innocent person, is at least as great as the threatened harm, the death of the defendant.” Id. The Rocheville Court noted that some states recognized duress as a defense to an intentional killing which could reduce the crime to manslaughter, but rejected their rationale. Id. In 1998, this Court again affirmed its holding in Rocheville in State v. Kelsey, 331 S.C. 50, 64 n.2, 502 S.E.2d 63, 70 n.2 (1998).

Pursuing this “novel” defense that had been squarely rejected in this state was deficient performance that violated petitioner’s Sixth Amendment right to counsel. Strickland v. Washington, 466 U.S. 668 (1984). Trial counsel’s mistake of law resulted in petitioner testifying in a case where the shooter had already pled guilty and received a life sentence. App. 180, l. 21 – 181, l. 8. The solicitor said in closing that petitioner’s testimony relieved him of the burden of

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<sup>1</sup> The court reporter renders “Rocheville” as “Rasha Bell” in the transcript.

proving that petitioner was involved in the crime. Furthermore, trial counsel should have known that a defense of duress, even if legally available, would not have worked given petitioner's testimony that he went along with the Mack brothers' plan after leaving the relative safety of his brother's apartment. This constitutes significant prejudice and this Court should grant certiorari and reverse.

**CONCLUSION**

For the foregoing reasons, this Court should grant certiorari, reverse petitioner's convictions, and grant him a new trial.

A handwritten signature in black ink, appearing to read 'D. Alexander', written over a horizontal line.

David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of February, 2017.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to York County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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TERRELL A. ADDISON,

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STATE OF SOUTH CAROLINA,

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PETITION TO BE RELIEVED AS COUNSEL

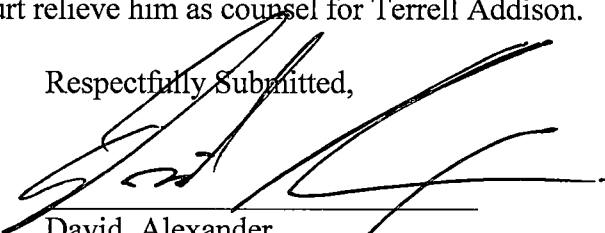
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Counsel for Terrell Addison states:

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 record of petitioner's trial before Honorable Brooks P. Goldsmith, which was held on November 4, 2015 (Evidentiary Hearing), 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 Terrell Addison.

Respectfully Submitted,



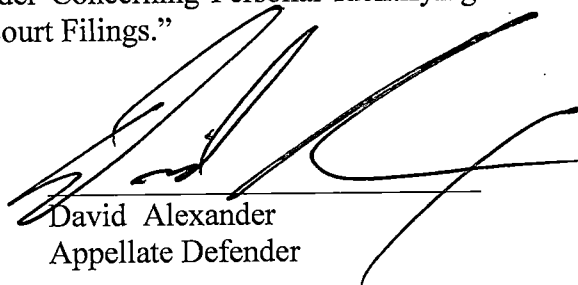
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David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 27th day of February, 2017.

**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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TERRELL A. ADDISON,

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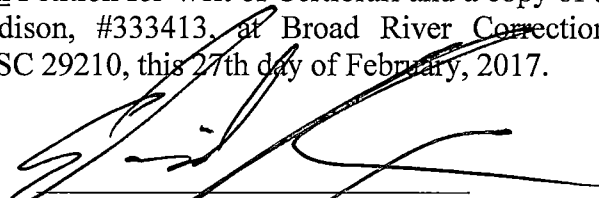
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

—————  
CERTIFICATE OF SERVICE  
—————

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Justin J. Hunter, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Terrell Addison, #333413, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 27th day of February, 2017.

  
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David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 27th day of February, 2017.

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