

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to York County

Honorable J. Derham Cole, Circuit Court Judge

**ORIGINAL**

**RECEIVED**

**MAR -7 2017**

**S.C. SUPREME COURT**

BRANDON A. DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002036

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JOHNSON PETITION FOR WRIT OF CERTIORARI  
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Appellate Defender

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ATTORNEY FOR PETITIONER

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The circuit court lacked jurisdiction over petitioner, who was sixteen years old at the time of the alleged offense, because section 63-19-20(1) of the Juvenile Justice Code’s grant of unfettered discretion in the solicitor whether to try a juvenile in circuit court or family court without any possibility of judicial review violates the separation of powers doctrine and is unconstitutional. .... 3

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**ISSUE PRESENTED**

Whether the circuit court lacked jurisdiction over petitioner, who was sixteen years old at the time of the alleged offense, because section 63-19-20(1) of the Juvenile Justice Code's grant of unfettered discretion in the solicitor whether to try a juvenile in circuit court or family court without any possibility of judicial review violates the separation of powers doctrine and is unconstitutional?

## STATEMENT

On August 18, 2011, a York County grand jury indicted petitioner for murder, three counts of attempted murder, two counts of armed robbery, four weapons charges, and criminal conspiracy. App. 113-137. On November 3, 2011, a plea hearing was held before the Honorable Lee S. Alford. App. 34. Petitioner pled guilty pursuant to a negotiated plea to voluntary manslaughter, three counts of attempted murder, two counts of armed robbery, two weapons charges, and conspiracy. App. 37, l. 3 – 39, l. 6. App. 49, ll. 15 – 23. The negotiated sentencing range was 25 to 40 years. App. 38, ll. 2 – 6. Appellant was seventeen years old at the time of the plea. App. 39, ll. 10 – 11. Sentencing was deferred until November 30, 2011, at which time Judge Alford rendered a total sentence of forty years' imprisonment. App. 30, l. 13 – 32, l. 13. On September 4, 2013, the Court of Appeals affirmed petitioner's convictions. State v. Davis, 2013-UP-344 (S.C. Ct. App. Sept. 4, 2013).

On December 2, 2013, petitioner filed a PCR application. App. 52. On January 21, 2015, the Honorable J. Derham Cole held a hearing. App. 65. William Michael Hemlepp, Jr. represented petitioner. App. 65. J. Rutledge Johnson represented the State. App. 65. On August 24, 2016, Judge Cole denied petitioner's PCR application. App. 103. This petition follows.

## ARGUMENT

The circuit court lacked jurisdiction over petitioner, who was sixteen years old at the time of the alleged offense, because section 63-19-20(1) of the Juvenile Justice Code's grant of unfettered discretion in the solicitor whether to try a juvenile in circuit court or family court without any possibility of judicial review violates the separation of powers doctrine and is unconstitutional.

### Relevant Fact

Petitioner was sixteen (16) years old at the time the alleged crimes were committed. App. 19, ll. 14 – 16.

### Discussion

Petitioner's guilty plea is void because the statute giving it jurisdiction is unconstitutional. Subject matter jurisdiction can be raised at any time. State v. Oxner, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011). The statute purportedly giving the circuit court jurisdiction over the subject matter of this case—prosecution of a juvenile—is S.C. Code Ann. § 63-19-20. But see Shedden v. State, 265 S.C. 334, 338, 218 S.E.2d 421, 422 (1975) (“We find that respondent waived his objections to jurisdiction over his person by failing to assert the alleged jurisdictional defect.”); State v. Lamb, 374 S.C. 346, 649 S.E.2d 486 (2007) (holding that defendant could waive a jurisdictional objection by consenting to transfer from family court).

Section 63-19-20 is unconstitutional because it violates the separation of powers doctrine of the South Carolina Constitution. S.C. Const. Art. I, § 8. “In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.” Id. Section 63-19-20 violates

the state constitution by allowing the solicitor, a member of the executive branch, to usurp the function of the judicial branch.

The family court has exclusive jurisdiction over children. S.C. Code Ann. § 63-3-510(A). This exclusive jurisdiction extends to children who commit crimes. S.C. Code Ann. § 63-3-510(A)(1)(d). In the Juvenile Justice Code, “child” is defined as a person “less than seventeen years of age.” S.C. Code Ann. § 63-19-20(1). Normally, actions against children who commit crimes are brought in family court and the State may request the court to waive jurisdiction and transfer the juvenile to circuit court. S.C. Code Ann. § 63-19-1210(1), (4), (6).

But Section 63-19-20 unconstitutionally carves out an exception that deals only with sixteen year olds charged with serious crimes. S.C. Code Ann. § 63-19-20(1). It allows the State to prosecute sixteen year olds by indicting them in general sessions. Id. The statute accomplishes this by changing the definition of “child” to exclude sixteen year olds who commit serious crimes. Id.

This provision, in and of itself, would not be unconstitutional if it gave the circuit court the ability to determine whether its jurisdiction over a sixteen year old was proper. But the circuit court has no say whatsoever in this matter. Id. Section 63-19-20 vests sole discretion in the solicitor—**not the judge**—to determine the circuit court’s jurisdiction over the sixteen year old. Id. The provision states that a sixteen year old indicted in circuit court “may be remanded to the family court for disposition of the charge **at the discretion of the solicitor.**” Id. (emphasis added).

Giving the solicitor the extraordinary power to determine without any judicial oversight the jurisdiction of the court violates the separation of powers doctrine. See State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012). In Langford, this Court held that the solicitors’ exclusive

control over the circuit court's docket violated the separation of powers doctrine. Id. at 434-37, 735 S.E.2d at 478-79. The judicial branch has the inherent power to control its own business. Id. The Court held that "[v]esting a member of the executive branch with the exclusive authority to perform an inherently judicial function unquestionably is a violation of separation of powers." Id.

Just as in Langford, section 63-19-20 vests a judicial power—the power to determine its jurisdiction—exclusively in a member of the executive branch. A sixteen year old who wants to be tried in family court has no mechanism to ask the circuit court to review whether jurisdiction is proper. See Kent v. United States, 383 U.S. 541 (1966). This deprives a sixteen year old who faces a mandatory minimum sentence in circuit court for many of the listed crimes the opportunity for truly individualized sentencing. See Miller v. Alabama, 567 U.S. 460 (2012); Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). On the flip side, section 63-19-20 deprives a sixteen year old who wants a jury trial the ability to contest a solicitor's decision to transfer him to family court. In re Kevin R., 409 S.C. 297, 762 S.E.2d 387 (2014) (holding that juveniles in family court have no right to a jury trial).

Other statutes dealing with far less grave concerns than usurpation of a court's jurisdiction have been found to violate the separation of powers doctrine. See State v. Archie, 322 S.C. 135, 470 S.E.2d 380 (1996); Williams v. Bordon's, Inc., 274 S.C. 275, 262 S.E.2d 881 (1980). In Archie, the statute at issue gave a probation officer the ability to add conditions to a defendant's sentence. Archie at 136-37, 470 S.E.2d at 381-82. The Court held this claimed executive power infringed on the judicial branch's inherent power to impose sentences. Id.

In Williams, the unconstitutional provision gave continuances in litigation as a matter of right to lawyer-legislators. Williams at 278-80, 262 S.E.2d at 883-84. Because the authority to

grant or deny a continuance is inherent in the judicial branch, this statute violated the separation of powers. Id. If the statutes in Archie and Williams violate the separation of powers doctrine with respect to the sentencing power and continuance power of the judicial branch, then giving the executive branch sole power over a court's jurisdiction—which is the ability of a court to hear the case before it—is an even more substantial constitutional violation. Section 63-19-20(1) violates the separation of powers doctrine and is therefore unconstitutional. Furthermore, the failure to provide sixteen year olds with any ability to challenge jurisdiction violates due process and equal protection. See State v. Mohi, 901 P.2d 991 (Utah 1995) (dealing with a similar discretionary statute).

The unconstitutionality of section 63-19-20 means that the circuit court lacked jurisdiction over petitioner. The State was required to bring a petition against him in family court and seek a waiver of him to circuit court. S.C. Code Ann. § 63-19-1210(6). Or, being that petitioner was improperly charged in circuit court, the trial judge was required to remand him to the family court. S.C. Code Ann. § 63-19-1210(1). Either way, the end result would have been an opportunity to litigate the issue of jurisdiction and obtain a reviewable, judicial determination instead of the unreviewable action of the solicitor.

Because the circuit court lacked jurisdiction over the subject matter of this case, petitioner's guilty plea is invalid. This Court should grant certiorari to review the constitutionality of this statute with the ultimate result of vacating petitioner's guilty pleas and sentences.

**CONCLUSION**

For the foregoing reasons, this Court should grant certiorari and vacate petitioner's convictions.

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

David Alexander  
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of March, 2017.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to York County

Honorable J. Derham Cole, Circuit Court Judge

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BRANDON A. DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

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PETITION TO BE RELIEVED AS COUNSEL

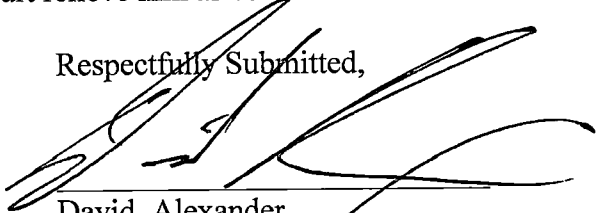
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Counsel for Brandon A. Davis states:

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 the Honorable J. Derham Cole, which was held on January 21, 2015, 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 Brandon A. Davis.

Respectfully Submitted,



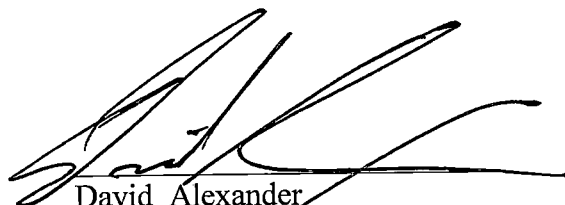
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David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 7th day of March, 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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ATTORNEY FOR PETITIONER

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STATE OF SOUTH CAROLINA

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BRANDON A. DAVIS,

PETITIONER

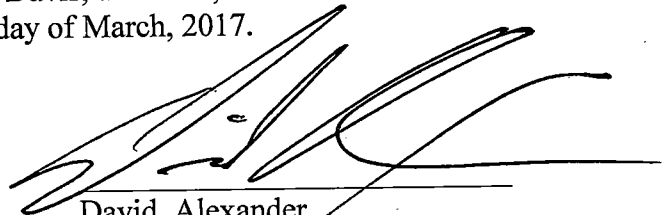
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

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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 Brandon A. Davis, #348800, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 7th day of March, 2017.



David Alexander  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 7th day of March, 2017.

Naiza Mendez (L.S)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.