

STATE OF SOUTH CAROLINA  
In the Supreme Court

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CERTIORARI TO CHARLESTON COUNTY  
Court of Common Pleas  
Jean H. Toal, Circuit Court Judge

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Appellate Case No. 2016-002537

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**RECEIVED**

NOV 27 2017

S.C. SUPREME COURT

SAMUEL BROWN, JR.,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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ALAN WILSON  
Attorney General

MEGAN HARRIGAN JAMESON  
S.C. Bar No. 100108  
Senior Assistant Deputy Attorney General

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3305

ATTORNEYS FOR RESPONDENT

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## **RESPONDENT'S ISSUES PRESENTED**

Did the post-conviction relief court properly granted Respondent's motion for summary dismissal where Petitioner failed to allege any prejudicial collateral consequences of his conviction?

## STATEMENT OF THE CASE

### Summary of Procedural History

During its September 2013 term, the Berkeley County Grand Jury indicted Petitioner for Possession with Intent to Distribute Marijuana (2013-GS-08-1334). Chad Shelton, Esquire, represented Petitioner. On May 20, 2014, Petitioner appeared in the Berkeley County Court of General Sessions before the Honorable Kristi L. Harrington and pled guilty as indicted. Pursuant to negotiations between Petitioner and the State, Judge Harrington sentenced Petitioner to three years imprisonment to be served concurrently to an unrelated ten year sentence for trafficking in cocaine (10-28 grams) (2012-GS-10-6790). Petitioner did not appeal his plea or sentence.

On November 20, 2014, Petitioner filed an application for post-conviction relief, alleging he was being held in custody unlawfully for the following reasons:

1. “Ineffective Assistance of Counsel”
  - a. “Failure to persue [sic] a trial”
  - b. “Failure to show competent advice on a plea”
  - c. “Failure to investigate”
  - d. “Failure to suppress evidence”
  - e. “Failure to advise defendant”
2. “Rule 5/Brady Motion”
  - a. Failure to object and preserve Rule 5/Brady violation”
3. “Due Process of Law”
  - a. “Prejudice to show illegal search and seizure”

Respondent made its return to the application on August 31, 2015.

On September 16, 2016, a hearing on Petitioner’s application was held at the Berkeley County Courthouse before Honorable Jean H. Toal, acting circuit court judge and Former Chief Justice of the South Carolina Supreme Court. Rodney Davis, Esquire represented Petitioner. Christopher Harrison, a third-year law student at the Charleston School of Law, practicing

pursuant to Rule 401, SCACR, and supervised by J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the start of the hearing, Respondent moved for summary judgment pursuant to Rule 56 (b) & (c) SCRCR, arguing dismissal was appropriate because Petitioner had already served the entirety of his sentence<sup>1</sup> for the conviction upon which he filed his application, and therefore, the action was moot. In response, Petitioner argued the application should not be dismissed because collateral consequences of his conviction, such as "potential government moneys, whether it be subsidized housing or other issues like that . . . would persist, does persist over him today." (App. 30). Additionally, he argued this conviction could be used to enhance future drug convictions, although he acknowledged that would only be applicable "if his case were the only case and he were on the street now." (App. 29-20). Respondent replied that Petitioner was currently incarcerated on unrelated trafficking cocaine charges arising out of Charleston County and therefore, Petitioner's arguments related to enhancement of future drug convictions were without merit.<sup>2</sup> After hearing arguments, the court granted Respondent's motion and dismissed the application by oral pronouncement and form order stating "motion for summary judgment granted. Applicant has completed his sentence." This form order was filed on September 19, 2016.

By written order of dismissal signed November 10, 2016, and filed November 25, 2016, the court dismissed the application, finding:

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<sup>1</sup> This sentence was satisfied in full not later than June 26, 2016.

<sup>2</sup> A review of Petitioner's SCDC records reveal he served previous sentences for two prior drug convictions: for marijuana distribution and trafficking in cocaine (10-28 grams), as well as convictions for driving while under suspension, a moving traffic violation, and two counts of strong arm robbery. (App. 45).

In this case, Applicant claims he is suffering the collateral consequences of his conviction despite having already served the full term. First, this claim was not specifically alleged in the Applicant's PCR application. Second, this Court grants the State's motion for Summary judgment because the Applicant failed to demonstrate any prejudicial effects resulting from the collateral consequences of his conviction. Applicant did not make these allegations in his original application for post-conviction relief filed on November 20, 2014, and did not file any subsequent amendments to his original application. The evidence before this Court clearly shows there is no genuine issue as to any material fact and the State, as the moving party is entitled to judgment as a matter of law.

(App. 37).

On December 8, 2016, Petitioner filed a notice of appeal. Petitioner filed his petition for a writ of certiorari on July 13, 2017.

## STANDARD OF REVIEW

The post-conviction relief court's findings of fact and conclusions of law receive great deference during appellate review. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). The proper standard of review of a post-conviction relief decision is whether "any evidence of probative value" exists to sustain the lower court's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). However, appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

"When reviewing an order granting summary judgment, an appellate court employs the same standard applied by the trial court under Rule 56, SCRPC." Roe v. Bibby, 410 S.C. 287, 292, 763 S.E.2d 645, 648 (Ct. App. 2014) (quotations omitted). "Rule 56 provides the trial court shall grant summary judgment if there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Id. (quotations omitted).

"Summary 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." Pelzer v. State, 378 S.C. 516, 519, 662 S.E.2d 618, 619 (Ct. App. 2008) (citing S.C. Code Ann. § 17-27-70(b)-(c) (2003); Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). "When considering the State's motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant." Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000)). When considering on appeal a motion for summary dismissal of an application for PCR,

the Court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant. Pelzer, 378 S.C. at 520, 662 S.E.2d at 619.

## ARGUMENT

**The post-conviction relief court properly granted Respondent's motion for summary dismissal where Petitioner failed to allege any prejudicial collateral consequences of his conviction.**

Petitioner asserts the post-conviction relief court erred in dismissing his application without an evidentiary hearing. Specifically, Petitioner argues the court erroneously ruled that an applicant who is not in custody at the time of his evidentiary hearing can no longer pursue his post-conviction relief action and that Petitioner was required to allege the result of his conviction still persists either in his original application or an amended application prior to his evidentiary hearing. Petitioner asserts the post-conviction relief committed reversible error in summarily dismissing his application without an evidentiary hearing and asks this Court to remand the matter to the Berkeley County Court of Common Pleas for an evidentiary hearing on his application for post-conviction relief. However, Petitioner's arguments are without merit, as the post-conviction relief court properly dismissed Petitioner's application because "it is apparent on the face of the application that there is no need for a hearing to develop any facts and the applicant is not entitled to relief." Pelzer, 378 S.C. at 519, 662 S.E.2d at 619.

At the start of the evidentiary hearing, Respondent moved for summary judgment pursuant to Rule 56 (b) & (c) SCRPC, arguing dismissal was appropriate because Petitioner had already served the entirety of his sentence for the conviction upon which he filed his application, and therefore, the action was moot. In response, Petitioner argued the application should not be dismissed because collateral consequences of his drug conviction still persisted and this conviction could be used to enhance future drug convictions. Respondent replied that Petitioner was currently incarcerated on unrelated trafficking cocaine charges arising out of Charleston

County and therefore, Petitioner's arguments related to enhancement of future drug convictions were without merit. Moreover, Petitioner also has two prior drug convictions: for marijuana distribution and trafficking in cocaine (10-28 grams). (App. 45).

In its Order of Dismissal, the post-conviction relief court found Petitioner "failed to demonstrate any prejudicial effects resulting from the collateral consequences of his conviction" and "there is no genuine issue as to any material fact" entitling Petitioner to relief. (App. 37). These findings are supported by the record. Petitioner has not, either at the hearing below or now on appeal, established that the results of his prior conviction subject to this application still persist. Petitioner's assertions that he was currently suffering from collateral consequences of this conviction, particularly because it was a drug conviction, are wholly without merit because he has **three** other unrelated drug convictions. Because there was no genuine issue of material fact, the post-conviction relief court properly denied and dismissed Petitioner's application without an evidentiary hearing. See Jackson v. State, 331 S.C. 486, 489 S.E.2d 915 (1997) (concluding a person has standing to apply for PCR if he is in custody or if the results of his conviction still persist after release from custody); Jones v. State, 322 S.C. 101, 470 S.E.2d 110 (1996) (same).

In support of his argument that the lower court erred in dismissing his application without a hearing, Petitioner relies on Jones v. State, 322 S.C. 101, 470 S.E.2d 110 (1996). In Jones, the Jones filed an application while he was still incarcerated for possession with intent to distribute heroin, but was subsequently released prior to an evidentiary hearing. Id. Once Jones was released, the State moved to dismiss his application for a lack of standing because he had been released from custody and was no longer being held on the charges subject to his application. Id.

Jones, who was on parole from a Georgia conviction for robbery and murder, argued his possession with intent to distribute heroin conviction might adversely affect him by causing his parole to be revoked. Id. The post-conviction relief court dismissed Jones's application without prejudice, finding he would have standing if and when Georgia revoked his parole. Id. On appeal, this Court reversed the lower court, finding Petitioner had standing because he filed the application while he was still incarcerated. Id. The Jones Court noted the Georgia Board of Parole had been waiting for the outcome of the case before acting on Jones's parole revocation. Id.

Here, Petitioner argues because he filed his application while he was still incarcerated, he had standing to proceed with his application and the court erred in dismissing his application without an evidentiary hearing. However, Petitioner's reliance on Jones is without merit, because unlike Jones, Petitioner cannot establish any prejudice still persisting from his conviction. Because Petitioner failed to make this requisite showing, the post-conviction relief court properly concluded there was no genuine issue of material fact entitling Petitioner to relief and dismissed his application.

**CONCLUSION**

For the foregoing reasons, this Court should deny this Petition for a Writ of Certiorari. Should this Court grant the petition, Respondent seeks permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON  
Attorney General

MEGAN HARRIGAN JAMESON  
S.C. Bar No. 100108  
Senior Assistant Deputy Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

November 27, 2017

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SAMUEL BROWN, JR.,

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**PROOF OF SERVICE**

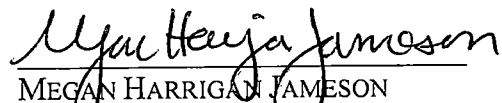
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I, Megan Harrigan Jameson, certify that I have served the within **Return to Petition for Writ of Certiorari** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Laura Baer, Esquire  
South Carolina Commission on Indigent Defense—Office of Appellate Defense,  
PO Box 11433  
Columbia, SC 29211-1433

I further certify that all parties required by Rule to be served have been served.

This 27<sup>th</sup> day of November, 2017.

  
MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 79114  
Office of Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737



ALAN WILSON  
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737  
PCR FACSIMILE: 803.734.4113

November 6, 2017

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S.C. SUPREME COURT

*Via Hand Delivery*

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

**RE: Samuel Brown v. State of South Carolina**  
**Circuit Court Case No: 2014-CP-08-2566**  
**Appellate Case No.: 2016-002537**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to the Petition for Writ of Certiorari in the above matter for filing in your office. By copy of this letter I am serving opposing counsel with this return today.

Sincerely,

Megan Harrigan Jameson  
Senior Assistant Deputy Attorney General

MHJ/jaj  
Enclosures

cc: Laura R. Baer, Esquire (w/enclosure)