

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Opinion No. 5641 (S.C. Ct. App. Filed April 17, 2019)

Robert Palmer Petitioner

vs.

State of South Carolina, Horry County and David Weaver..... Defendants

Of which State of South Carolina is the..... Respondent

REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

Gene M. Connell, Jr.
(S.C. Bar No. 1358)
Kelaher, Connell & Connor, P.C.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648
gconnell@classactlaw.net

Roger Dale Johnson
(S.C. Bar No. 71987)
Law Office of Roger Johnson
607 Main Street
Conway, SC 29526
(843) 488-9933
attorneyrogerjohnson@gmail.com

Attorneys for Petitioner

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The Petitioner would offer the following Reply to Respondent's Return to Petition for Writ of Certiorari.

I. THIS CASE IS ABOUT FUNDAMENTAL FAIRNESS.

The State's Return offers a myriad of reasons why the Petition should be denied. However, there is one overarching reason for this Court to grant this Petition and hear this case – fairness and justice for all.

Most public policy arguments and both the South Carolina and United States Constitutions emphasize justice and fairness for everyone. From **The Republic** written by the ancient Greek philosopher Plato, to **A Theory of Justice**, written by the late Harvard professor John Rawls, every major book on ethics has reiterated that fairness is a central core of morality in Western civilization. Justice means giving each person what he or she deserves or, in more traditional terms giving each person his or her due. Justice and fairness are closely related terms that are often used interchangeably by this Court.

In this case, Palmer has not received either fairness or justice. In the most simplistic terms, Palmer was incarcerated for a crime he did not commit. Palmer was found not guilty, but the State still does not recognize this basic principle since it writes in its response that “This Court found an absence of evidence to support those convictions.” (Return of State, p. 1.) Even to this day the State refuses to admit Palmer was wrongfully convicted and stands as an innocent man. Petitioner can only hope that this Court will rectify years of injustice by accepting this case and finding that a civil remedy for wrongful conviction exists under the South Carolina and United States Constitutions.

II. THIS COURT SHOULD ENFORCE THE SOUTH CAROLINA CONSTITUTION.

The State in its response argues that the South Carolina Constitution has no enabling legislation and thus Petitioner has no remedy whatsoever. What good is the Constitution if this Court does not enforce it? Is the Constitution just a piece of paper with lofty ideals? Or is the Constitution more than that -- a document by which a private individual can enforce his rights against the State? Petitioner believes it is a document which is enforceable by this Court

The State admits in its response that the Court of Appeals citation to *Spackman Ex. Rel. Spackman v. Bd. of Educ. of Box Elder Cty. Sch. Dist.*, 16 P.3d 533, 535 (Utah 2000) actually stands for the proposition offered by the Petitioner that provisions of Constitutions are self-executing. The State also concedes “the availability of money damages as a remedy is not clear from its terms nor from any other provision of the State Constitution.” (Brief of Respondent, p. 3). Petitioner respectfully disagrees and points to the “liberty” provision in both the United States and South Carolina Constitutions as authority. (South Carolina Constitution Article I, Section 3; United States Constitution V Amendment). The liberty provision in both Constitutions does not require enabling legislation because it is self-executing since liberty is a basic right of all.

III. THE TWO-ISSUE RULE IS NOT APPLICABLE.

The Respondent argues the “two-issue” rule is applicable to this case. However, Respondent fails to advise the Court that Petitioner’s claim was for a declaratory judgment, i.e., that this Court declare that the South Carolina and United States Constitutions have self-executing remedies for the Petitioner in regard to his wrongful incarceration. If the claims flow directly from either Constitution, then 42 U.S.C. § 1983 has no applicability.

Further, the State’s argument that this is a prosecutorial misconduct case is clearly not applicable here since such was not alleged in the pleading as a reason for relief. In fact, a member

of the Court of Appeals observed at oral argument that a potential claim for relief might lie against the police.

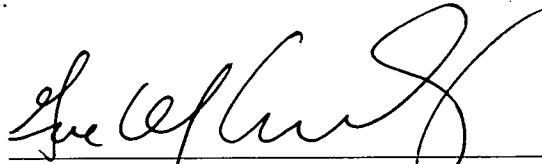
IV. NELSON V. COLORADO, 137 S.CT.1249 (2017) IS APPLICABLE.

The State never fully explains why *Nelson v. Colorado*, 137 S.Ct. 1249 (2017) is not applicable. In *Nelson*, the Supreme Court held that a person could not be adjudged guilty of no crime and nonetheless guilty enough for monetary exactions. 137 S.Ct. at 1256. Petitioner asks the corollary question: If the Government can't take a monetary fine from a person when he or she is adjudged not guilty, how can the Government take your liberty and not provide a civil remedy? Thus, *Nelson* is authority for the proposition that the United States Constitution provides a remedy for wrongful conviction.

CONCLUSION

Accordingly, Petitioner request that this Court grant Petitioner's request because this case involves important matters of public policy and significant Federal and State constitutional issues which are usually reserved only for this Court.¹

Respectfully submitted,



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Gene M. Cornell, Jr. (S.C. Bar No. 1358)
KELAHER, CONNELL & CONNOR, P.C.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net

¹ Petitioner also notes that while the State now opposes this Petition it previously filed a motion with this Court asking this Court take this case for a decision because the issues were novel and of statewide importance. See Motion to Certify Appeal to South Carolina Supreme Court filed November 28, 2017.

Roger Dale Johnson (S.C. Bar No. 71987)
Law Office of Roger Johnson
607 Main Street
Conway, SC 29526
(843) 488-9933
(843) 488-9934
attorneyrogerjohnson@gmail.com

September 20, 2019

Attorneys for Petitioner

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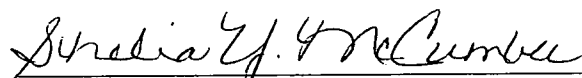
PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of the **Reply to Respondent's Return to Petition for Writ of Certiorari** on the Respondent, on the 20th day of September 2019, by depositing a copy of same in the United States Mail, postage prepaid, to:


Andrew F. Lindemann, Esquire
Lindemann, Davis & Hughes, PA
P. O. Box 6923
Columbia, SC 29260

J. Emory Smith, Jr, Deputy Solicitor General
Robert D. Cook, Solicitor General
Alan Wilson, Attorney General
Office of Attorney General
P. O. Box 11549
Columbia, SC 29211

Lisa A. Thomas, Esquire
Thompson & Henry, P.A.
P. O. Box 1740
Conway, SC 29528


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 20th day of September 2019.


Notary Public for South Carolina
My Commission Expires: 3-28-26