

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Lancaster County  
Honorable D. Craig Brown, Circuit Court Judge

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**AUG 06 2020**

**S.C. SUPREME COURT**

**RASHAD DEMOND JOHNSON,**

**Petitioner**

**Vs.**

**STATE OF SOUTH CAROLINA,**

**Respondent**

**APPELLATE CASE NO.2019-001898**

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**PETITIONER'S REPLY TO "JOHNSON" PETITION FOR WRIT OF CERTIORARI**

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**Rashad Demond Johnson  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, SC 29010**

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**ISSUE PRESENTED:**

**Whether the PCR Court erred in Finding that Petitioners guilty plea was knowingly and voluntarily entered into where Petitioners Counsel clearly testified that he advised the petitioner to plead guilty to Voluntary Manslaughter based on his erroneous belief that the petitioner did not have a Self Defense argument in light of the evidence?**

## STATEMENT OF THE CASE

On May 29, 2016, Petitioner and Deangelo Kirk, the deceased were involved in an altercation at the Palmetto Place Apartments in Lancaster, South Carolina. The apartment complex security system captured the incident on video. In the video Petitioner and Kirk are seen confronting one another Kirk then runs away from petitioner. A witness to the incident, " Mr. Craig" heard multiple gunshots and saw petitioner as he ran away from the scene. App.13

During the Plea Hearing Petitioners Attorney said:

" If we had gone to trial, we would have presented evidence and we would have done this through multiple witnesses that would have testified that the victim in this case blamed my client for helping him get out on bond. And we would have maybe three if not four people sit on the stand that would have described incidents in which the victim threatened my client because of that incident. Which he had nothing to do with but was being blamed for because that defendant got out on bond and they blamed my client for doing that." App. 24-25

"Had we gone to trial you would have had the testimony from those prior difficulties. You would have had testimony from my client that the victim in this case fired shots first. That he went out there and a confrontation ensued and the victim pulled out a gun and fired at my client. I think that is plausible account of what happened based on the gunshot residue on the victims hand. Based on the fact that the victim was clearly armed. And on the video when you see the victim running by you see the gun in his hand."

At the Plea proceeding the Plea Counsel continued:

" Here's the problem, as if your Honor knows and quite rightly pointed out earlier those facts do not amount to Self Defense in South Carolina because first of all, you have to be obviously without fault.

But you also have to have a duty to retreat in a public place". App.26-27 . Plea counsel summed it up by saying this was a voluntary manslaughter case from the beginning...Petitioner contends that in light of the law this was definitely a self defense case but because his counsel misadvised him and told him that it was a voluntary manslaughter case he plead guilty to manslaughter thus rendering his guilty plea involuntarily and unintelligently entered.

## ARGUMENT

the PCR Court erred in Finding that Petitioners guilty plea was knowingly and voluntarily entered into where Petitioners Counsel clearly testified that he advised the petitioner to plead guilty to Voluntary Manslaughter based on his erroneous belief that the petitioner did not have a Self Defense argument in light of the evidence

South Carolina Code of Laws 16-11-450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act. Section 16-11-440© the pertinent "force" section states:

**" A person who is not engaged in an unlawful activity and who is attacked in another place  
Where he has a right to be, including, but not limited to, his place of business, has no duty to  
Retreat and has the right to stand his ground and meet force with force, including deadly force  
If reasonably believes it is necessary to prevent death or great bodily injury to himself or  
Another person."**

In the case at hand the facts provided by the plea counsel demonstrates several different things. First and foremost in the facts presented to this court this altercation occurred at the Palmetto Place Apartments in Lancaster, SC. This was where Petitioner was living at during the time of this incident, thus petitioner had a right to be there. Secondly there was no evidence presented that showed Petitioner was engaged in any unlawful activity....in fact the plea counsel stated there were multiple witnesses that would have testified that he was the victim of previous threats and petitioner would have testified that the victim fired the first shot at him. Under the circumstances of this case petitioner had no duty to retreat and had the absolute right to stand his ground and meet Force with Force. Therefore Plea Counsel erroneously conveyed to the Petitioner that he had a duty to retreat. Thus his guilty plea was not intelligently entered.

In State v. Davis 282 S.C.45, 46. 317 S.E.2d 452, 453 (1984) The South Carolina Supreme Court established the guidelines that Courts must use to determine whether there exist a case of self-defense.:

### Establishing a Case of Self Defense:

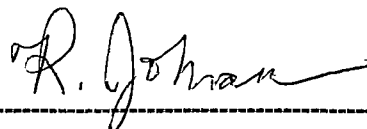
- 1) The defendant must be without fault in bringing on the difficulty.

- 2) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such immediate danger.**
- 3) If his defense is based on his belief of immediate danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief.**
- 4) If the defendant was actually in imminent danger the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.**
- 5) Finally the defendant had no probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.**

**Based upon the above criteria the Petitioners case clearly and unequivocally falls within the legal parameters of a Self Defense Case. Plea counsel stated that at trial the Petitioner would have testified that the victim in this case fired shots first. The video recording of the incident shows that the victim did have a gun in his hand and the State Law Enforcement Division conducted a Gunshot Residue test which came back positive showing that the victim did in fact fired that weapon. When a reasonable human being is faced with another human being aiming a loaded weapon at him and firing that weapon in an attempt to kill him that human has no probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act like he did in this particular instance.**

**CONCLUSION:**

**The plea counsel was under the erroneous belief that the evidence and facts of this case did not make it a Self Defense case. However we know from the previous discussion that Petitioners case clearly falls within the parameters of self defense. Pleas must be entered into knowingly, intelligently and voluntarily in order to be valid. Plea counsel conveyed his misunderstanding to his client and thus petitioner entered a plea based upon this misinformation. Had petitioner been aware that a self defense claim was available to him Petitioner would not have plead guilty but instead proceeded to trial. Petitioner is entitled to a new trial**

A handwritten signature in black ink, appearing to read "R. Johnson", is written above a horizontal dashed line.

**Rashad Johnson #314730**

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