

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

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**RECEIVED**

**Aug 21 2020**

**S.C. SUPREME COURT**

LORENZO A. JACKSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001346

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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South Carolina Commission on Indigent Defense  
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ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Did the PCR court err in finding defense counsel was not ineffective where he failed to sufficiently investigate petitioner's alibi and instead encouraged petitioner to plead guilty after two days of trial where there was no physical evidence tying petitioner to the violent incident?

## STATEMENT

### **Procedural History**

On March 22, 2016, a Greenville County grand jury indicted petitioner for attempted murder, armed robbery, possession of a firearm by a person convicted of a crime of violence, and possession of a weapon during the commission of a violent crime. App. 501-06. On August 22, 2016, petitioner's case was called to trial before the Honorable D. Garrison Hill and a jury. App. 1.

After two days of trial, on August 24, 2016, petitioner pled guilty to attempted murder, armed robbery, first degree burglary, and possession of a firearm by a person convicted of a crime of violence. App. 303-18. Scott Robinson represented petitioner, and Katryna Salisbury, assistant solicitor, represented the state. App. 1. Judge Hill sentenced petitioner to concurrent terms of eighteen years' imprisonment for attempted murder, eighteen years' imprisonment for armed robbery, eighteen years' imprisonment for first-degree burglary, and five years' imprisonment for possession of a firearm during the commission of a violent crime. App. 318.

### **Relevant Facts**

On September 3, 2014, multiple individuals, some armed with guns, went into a home for a planned robbery. Residents of the home and neighbor, Bobby McClean, were injured during the violent home invasion. App. 310, ll. 1-17. Soon after the incident several individuals involved with the incident were arrested including: Zykeia Harper, Damon Young-Gaines, Quancey Harper, Malik Adams-Young, Jakobe German, and Mike Smalls. Zykeia Harper gave a statement to police implicating petitioner. App. 164, l. 9-165, l. 11; 168, ll. 22-25; 233, ll. 16-19. The individuals arrested pled guilty and were awaiting sentencing before petitioner's trial

with the exception of petitioner and Joseph Maldonado. App. 58, ll. 20-21; 99, ll. 3-6; 110, ll. 4-5; 437, ll. 3-8.

Petitioner and Maldonado were tried jointly. At trial, officer Matthew Owens testified that the evidence recovered from the scene was not analyzed for fingerprints or DNA. App. 245-49. At the end of the second day of trial, August 23, 2016, Maldonado pled guilty to conspiracy and strong-armed robbery. App. 296, ll. 15-20. As part of Maldonado's guilty plea agreement, the state dismissed charges of first-degree burglary, attempted murder, two counts of first-degree assault and battery, and possession of a weapon during the commission of a violent crime. App. 301, ll. 1-7. Maldonado was later sentenced under the Youthful Offender Act,. App. 438, ll. 1-3; 444, ll. 10-12; 447, ll. 8-9; 457, ll. 14-16.

Petitioner pled guilty the following day, August 24, 2016. In exchange for petitioner's guilty plea the state agreed to dismiss a number of charges related to a separate incident.<sup>1</sup> App. 309, ll. 6-25; 311, ll. 6-19. Judge Hill gave petitioner an aggregate sentence of eighteen years' imprisonment. App. 318, ll. 5-13.

Thereafter, petitioner filed an application for PCR on December 28, 2016. App. 320-26. On April 16, 2019, an evidentiary hearing was held before the Honorable Alex Kinlaw, Jr. App. 334. Richard Warder represented petitioner, and Taylor Smith, assistant attorney general, represented the state. App. 334.

At the time of the incident, petitioner lived with his grandmother, Ollie Jones, at a home near the location of the incident. Petitioner testified he had been with Bobby McClean earlier in the day at a cookout. After the cookout he returned home and stayed there all evening. App. 341, l. 18-342, l. 20. Petitioner had two family members, his grandmother, Ollie Jones, and

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<sup>1</sup> Petitioner waived indictment on first-degree burglary from a separate incident. App. 303, ll. 10-11.

brother, Demetrius Singleton, who could have been alibi witnesses at trial. Petitioner insisted McClean would have testified at trial that he was not involved in the incident. App. 342, l. 16-344, l. 25. Petitioner testified that defense counsel came to him, on the morning of the third day of trial, and told him if he was convicted, he was facing a sentence of life without the possibility of parole and that he should plead guilty. Petitioner was scared, did not have time to consider his choices, and pled guilty solely on the advice of defense counsel. App. 346, l. 17-348, l. 22.

McClean testified at petitioner's PCR hearing that they were together most of the day and he walked petitioner home around six that evening. App. 390, l. 10-391, l. 12. McClean testified petitioner was not involved in the incident. App. 391, ll. 19-25. Petitioner's grandmother, Ollie Jones, testified that petitioner came home from McClean's and did not leave that night. App. 407, ll. 12-14. Petitioner's brother, Demetrius Singleton, also testified that petitioner was at their grandmother's when the incident occurred. App. 415, ll. 1.25.

Defense counsel Robinson testified that petitioner initially told him he was in New York when the incident occurred. Robinson investigated and discovered this was not true. Petitioner was wearing an electronic GPS monitor when the incident occurred and Robinson thought the ankle monitor records could be helpful in proving petitioner's alibi. Robinson subpoenaed petitioner's electronic GPS monitor records, which reflected unapproved leave for a few hours while the incident was occurring. Because of the GPS monitor data, defense counsel did not believe testimony of petitioner's family would be beneficial to him at trial. App. 427, l. 12-429, l. 25; 433, l. 17-434, l. 3. Robinson denied encouraging petitioner to plead guilty and testified petitioner made the decision himself when Maldonado decided to enter a plea and was potentially going to testify against him. App. 447, ll. 1-21

On July 19, 2019, Judge Kinlaw signed an order denying PCR. App. 480-98. The judge found defense counsel conducted reasonable investigation as to any potential alibi witnesses for petitioner. App. 493. The court found the testimonies of petitioner's grandmother and brother regarding petitioner's alibi were without merit and lacked credibility in light of the testimony of counsel. App. 495. Lastly, the court found defense counsel did not coerce petitioner into pleading guilty. App. 496.

This petition for writ of certiorari follows.

## ARGUMENT

The PCR court erred finding defense counsel was not ineffective by failing to sufficiently investigate petitioner's alibi and instead encouraging petitioner to plead guilty where there was no physical evidence tying petitioner to the violent incident.

Our State's Constitution and legislature have ensured persons accused of a crime will enjoy these rights. The Constitution of the State of South Carolina provides:

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both.

S.C. Const. art. 1, § 14; see also S.C. Const. art. 1, § 3 (due process rights) (emphasis added).

The South Carolina Code confirms these guarantees by allowing criminal defendants to compel witnesses to appear in their favor and to produce witnesses and evidence at trial. *See* S.C. Code Ann. § 17–23–60 (1976); S.C. Code Ann. § 19–7–60 (1976). These safeguards ensure the accused will benefit from a fair and impartial trial.

“Few rights are more fundamental than that of an accused to present witnesses in his own defense.” *Chambers v. Mississippi*, 410 U.S. 284, 302, (1973); *see also California v. Trombetta*, 467 U.S. 479, 485 (1984) (finding the Due Process Clause of the Fourteenth Amendment affords criminal defendants a meaningful opportunity to present a complete defense); *State v. Hutton*, 358 S.C. 622, 631 (Ct.App.2004) (recognizing fundamental fairness requires criminal defendants be granted a meaningful opportunity to present a complete defense); *State v. Harris*, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct.App.1993) (“Due process requires that a criminal defendant be given a reasonable opportunity to present a complete defense.”). “The right of an accused in a

criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations.” *Chambers*, 410 U.S. at 294.

Defense counsel was deficient where he failed to adequately follow-up with petitioner’s three alibi witnesses and call them in petitioner’s defense at trial. Petitioner’s grandmother and brother testified at PCR that petitioner was at home with them when the incident occurred at a house nearby. Additionally, McClean, a victim in the incident, testified at PCR he had been with petitioner during the day and walked petitioner back to his grandmother’s. McClean also testified petitioner was not involved in the incident. These three witnesses, in addition to the state’s total lack of physical evidence, would have provided petitioner a viable defense at trial.

Instead, on the morning of the third day of trial, defense counsel encouraged petitioner to plead guilty, and petitioner was sentenced to eighteen years’ imprisonment. Petitioner was only given a few minutes to consider whether he should continue with trial and possibly face a sentence of life without the possibility of parole or plead guilty. App. 350, ll. 1-18; 379, ll. 6-12. Petitioner, by his own admission, was scared to proceed with trial after his conversation with defense counsel. Petitioner was denied his due process right to present a defense in his own case. *Chambers v. Mississippi*, 410 U.S. 284, 302, (1973).

**CONCLUSION**

By reason of the foregoing argument, a writ of certiorari should be issued to allow full briefing on the issue.

s/ Sarah E. Shipe  
Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of August, 2020.

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Counsel for Lorenzo A. Jackson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. She has reviewed the record of petitioner's post-conviction relief hearing before Judge Alex Kinlaw, which was held on April 16, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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 her as counsel for Lorenzo A. Jackson.

Respectfully Submitted,

s/ Sarah E. Shipe  
Sarah E. Shipe  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 21st day of August, 2020.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of her 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.”

s/ Sarah E. Shipe  
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