

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to York County
Lee S. Alford, Circuit Court Judge

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S.C. Supreme Court

JAMES CORBETT

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2012-213158

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether petitioner is entitled to a new trial based on the after-discovered evidence of a letter written by his co-defendant in which she admits she was the shooter?

STATEMENT

On March 13, 2003, petitioner was indicted in York County for murder and kidnapping. App. 130 – 33. On April 8, 2003, petitioner pled guilty before the Honorable John C. Hayes, III. App. 1. Petitioner was represented by Daniel D. D’Agostino. App. 1. Kevin Brackett represented the State. App. 1. Judge Hayes sentenced petitioner to concurrent terms of forty years’ imprisonment for murder and thirty years’ imprisonment for kidnapping. App. 38, ll. 1 – 6.

On March 24, 2009, petitioner filed the instant PCR application. App. 40 – 46. On August 17, 2012, a hearing was held before the Honorable Lee S. Alford. App. 76. Nathan James Sheldon represented petitioner. App. 76. J. Rutledge Johnson represented the State. App. 76. Judge Alford granted summary judgment for the State at the hearing. App. 115, ll. 16 – 17. On September 17, 2012, Judge Alford entered a written order of dismissal denying petitioner’s PCR application. App. 122 – 129. This petition follows.

ARGUMENT

Petitioner is entitled to a new trial based on the after-discovered evidence of a letter written by his co-defendant in which she admits she was the shooter.

In 2009, petitioner received a letter from his co-defendant, Jessica Jones (“Jones”). App. 105, ll. 14 – 18; App. 117 – 121. Before the defendants in this trial pled guilty, Jones maintained that petitioner was the shooter. App. 108, l. 24 – 109, l. 3. At petitioner’s guilty plea, the State admitted that it did not know who pulled the trigger. App. 34, ll. 8 – 12. In the letter from Jones, she implied that she was the shooter, not petitioner. App. 109, ll. 4 – 8.

Pursuant to Rule 29(b) of the South Carolina Rules of Criminal Procedure, “[a] motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence . . . [and] may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion. . . .” Additionally, to prevail on a new trial motion, petitioner must show the after-discovered evidence: “(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to trial; (4) is material; and (5) is not merely cumulative or impeaching.” State v. Spann, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99 (1999) (citation omitted).

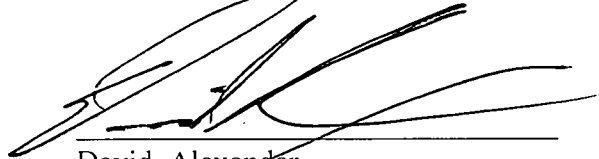
The PCR court denied petitioner's application because it found that he should have discovered the letter in 2003, which was when Jones testified she wrote the letter. App. 127. Petitioner clearly testified that inmates were not allowed to write letters to each other and that he did not get this letter until 2009, which makes his petition timely. App. 107, l. 11 – 110, l. 1. The PCR court's affirmative credibility finding as to Jones' testimony is therefore without any factual support.

As the letter was not received by Corbett until 2009, his application was timely. The PCR court erred in its determination that the letter was immaterial. App. 128. The letter from Jones clearly bears on the ultimate issue in the case of petitioner's guilt or innocence. If, as petitioner asserts, Jones was the shooter, then there is a reasonable probability that a new trial would result in a verdict or sentence different from that petitioner received. See Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989). Therefore, the Court should reverse the judgment of the PCR judge.

CONCLUSION

For the foregoing reasons, this Court should grant the petition, with the ultimate relief of a new trial for petitioner.

Respectfully submitted,

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

David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of April, 2013.

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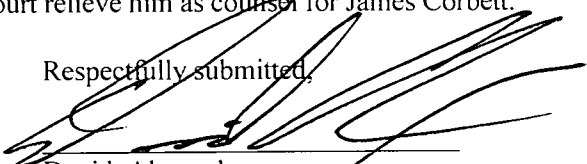
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Corbett 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 records and transcript of petitioner's post-conviction relief hearing which was held on August 17, 2012. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for James Corbett.

Respectfully submitted,



David Alexander
Appellate Defender
ATTORNEY FOR PETITIONER

This 29th day of April, 2013

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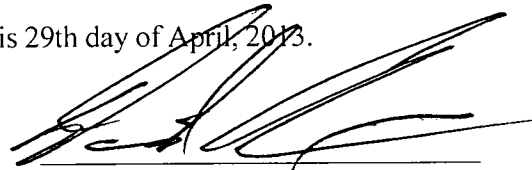
STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2012-213158

CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and James Corbett, #280660 at Perry Correctional Institution 430 Oaklawn Road Pelzer, SC 29669, this 29th day of April, 2013.



David Alexander
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day
of April, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.