No. 24-6653

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

John Douglas Alexander — PETITIONER
(Your Name)

vs.

Jonathan Nance, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John D. Alexander, #194748
(Your Name)

Tyger River Correctional Institution,
(Address)
200 Prison Road, Unit 9
Enoree, South Carolina 29335
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the lower Court err in finding that the Petitioner was not entitled to the 14th Amendment Due Process newly crafted South Carolina Supreme Court procedure governing direct review? See Mack v. State, 433 S.C. 267, 858 S.E. 2d 160 (2021)

2. Did the lower Court err in finding that the Petitioner's conviction and sentence was not obtained unconstitutionally in violation of United States v. Chatman, 952 F.3d 1211 (10th Cir. 2000), where the trial court gave the Jury 28 inferences of implied malice?

3. Did the lower Court err in finding contrary to State v. Williams, 427 S.C. 148, 829 S.E. 2d 702 (2019), that Petitioner can attempt to kill another with implied malice where no such criminal offense exist as an attempt to achieve an unintended result?

4. Did the lower Court err in finding that Petitioner was not entitled to a due process Mack v. State, belated review to challenge the trial court's unconstitutional inference of malice "from the use of a deadly weapon" Malice Charge"?

5. Did the lower Court err in finding that Petitioner was not entitled to a due process Mack v. State, belated direct review to challenge the trial court unconstitutional burden of proof on self-defense independent of trial counsel's deficient performance?

6. Did the lower Court err in finding that Petitioner's due process right to fully and fairly present, argue and defend his initial PCR allegations and supporting material facts and evidence were not unconstitutionally violated where on two separate occassions

the PCR Court stopped the hearing to admonish the Petitioner: "it is not conducive to the court's time."

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

United States v. Chatman, No 19-5038, U.S. Court of Appeals for the Tenth Circuit. Judgment entered March 16, 2020.

McCarroll v. State, No. 2021-cp-23-2559
Appellate Case No. 2017-001177

TABLE OF CONTENTS

INDEX TO APPENDICES

APPENDIX A

APPENDIX K Order Denying Motion To Consider Second Application under 28 U.S.C. Section 2254

APPENDIX L Order of State Supreme Court Dismissing Appeal

APPENDIX M State PCR Final Order Of Dismissal

APPENDIX N State PCR Conditional Order of Dismissal; Order Granting Motion To File Return Out of Time and Denying Motion For Summary Disposition

TABLE OF AUTHORITIES.... CONTINUED

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix I to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 29, 2024.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 3, 2024, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was 27 March 2023. A copy of that decision appears at Appendix M.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment

STATEMENT OF THE CASE

The Petitioner was indicted during the November 2006 term of court for Assault and Battery with Intent To Kill and subsequently, allegedly "directly indicted" for Possession of a Deadly Weapon during a Violent Crime. The Petitioner's initial challenge to his conviction and sentence was denied by the United States Supreme Court on August 6, 2018. Due to new laws and/or prior laws being renderred unconstitutional, the petitioner pursued a second Post Conviction Relief Procedure on September 14, 2018.

The Honorable R. Keith Kelly, Seventh Judicial Circuit issued a Final Order of Dismissal dated March 27, 2023. Afterwards, on March 31, 2023 a timely Notice of Appeal was filed. Later, on April 2, 2023, Mr. Jeff Faulkner Wilkes filed the required Rule 243(c) Explanation and Motion To Stay Time Pending Rule 243(c) Review. However, on May 24, 2023, the South Carolina Supreme Court Dismissed the Appeal and Denied the Motion For Stay.

Following, on June 23, 2023, the Petitioner submitted its Request for Permission to File Second 28 U.S.C.A. Sec. 2254 Writ of Habeas Corpus. Also, on June 28, 2023, the Petitioner Filed a Motion To Stay before the United States District Court. Nevertheless, July 12, 2023, Honorable Agee, Niemeyer and Traxler denied the Petition for an Order to consider a Second Application For Relief under 28 U.S.C. Section 2254. Still, on July 28, 2023, Petitioner's submitted a 28 U.S.C.A. Section 2254 Writ of Habeas Corpus before the United States District Court. During August 17, 2023, Judge Kevin F. Mc Donald issued a Report of Magistrate Judge recommending the Petition be dismissed. The petitioner filed a timely Objection to Report of Magistrate Judge on September 5, 2023. But, September

8, 2023, Honorable Henry M. Herlong, Jr. Dismissed the Petition.

Final, on October 2, 2023, Petitioner Filed its Appeal to the United States Court of Appeals, For the Fourth Circuit. Then, on July 29, 2024, the Court of Appeals, For the Fourth Circuit Dismissed the Appeal as well as issued its Mandate. The Petitioner Filed a timely Petition For a Rehearing and Rehearing en banc. However, on August 20, 2024, Honorable Nwamaka Anowi, Clerk Dismissed the Petition as untimely.

The Petitioner demonstrated that the Petition For Rehearing and Rehearing en banc was filed timely. As a result, on Sept 12, 2024, the Court of Appeals recalled its Mandate dated August 20, 2024. And, Granted the Petition For Rehearing. Nonetheless, on December 3, 2024, Honorable Gregory, Harris, and Quattlebaum Denied the Petition For Rehearing. And the Mandate issued on December 11, 2024.

REASONS FOR GRANTING THE PETITION

The Petitioner asserts that for all the below compelling reasons this Highest Honorable Court can and should exercise its discretionary Judicial authority to grant certiorari.
First, independent of an ineffective assistance of counsel claim, Question/s Presented above numbers 2, 4 and 5 has never been addressed. Neither was there any available remedy available to allow the Petitioner to challenge the trial court's unconstitutionality to (1) deny and deprive Petitioner's four separate Requests for a charge on the law of self-defense, (2) issuing twenty-eight (28) "implied malice" inferences to the trial Jury or, (3) instruct the trial Jury that it may infer malice simply from the use of a deadly weapon.

Significant, while the instant case was in the pipeline the South Carolina Supreme Court set a new precedent that would allow the Petitioner a belated direct review to address Questions Presented numbers 2, 4 and 5 above where "counsel's deficient performance procedurally barred him of a direct review" of those Questions. See Mack v. State, 433 S.C. 267, 858 S.E.2d 160 (2021).

Concisely, the Court relied upon the Fourteenth Amendment Due Process Clause of the United States to craft a new remedy akin to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). But, unlike the Austin review, the Court held the Petitioner "would not be required to establish prejudice under the standard outlined in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052." Instead, the Court ruled, "Prejudice is presumed when counsel's deficient performance barred Petitioner of a direct review," See Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000).

Important, while the instant case was pending within the Post-Conviction Relief Court, a separate PCR Court granted "Terry McCarroll" relief under the Mack procedure pursuant to Petitioner's identical ground/s. See McCarroll v. State, No. 2021-cp-23-2559. As a result, McCarroll, is currently pending on belated direct review. See Appellate Case No. 2017-001177 South Carolina Appellate Court.

As a matter of law, a clean and authoritative Mack, change of constitutional law can and should be an extraordinary circumstance for certiorari. Particularly, because the lower Court decided Petitioner's case in conflict with the South Carolina Supreme Court new precedent set out in Mack. Likewise, the lower Court neither announced any authority or standard to deny Petitioner the belated direct review pursuant to Mack.

Second, during his Jury Trial, the Judge gave Petitioner's Jury twenty-eight (28) "implied malice" inferences in its Malice Charge. Pursuant to United States v. Chatman, 952 F.3d 1211 (10th Cir 2020) "... the Court will not uphold a conviction that was obtained by nothing more than piling inference upon inference." More, pursuant to State v. Peterson, 287 S.C. 244, 335 S.E. 2d 800, 802 (1985) ("A malice charge which use the term "implied malice" nine (9) times is erroneous and prejudicial.") In this case the trial Court unconstitutionally coached the trial Jury into engaging into a degree of speculation and conjecture that renderred its finding of malice a guess or mere possibility.

In the main, "implied malice is inconsistent with a specific-intent crime" pursuant to State v. Williams, 427 S.C. 148, 829 S.E. 2d 702 (2019). Plus, under Keys v. State, 104 Nev. 736, 766, P.2d 270 (1988) ("one cannot intend to kill another with 'implied malice' because there is no such criminal offense

as an intent to achieve an unintended result.") Further, pursuant to Ramos, 95 Nev. at 253, 592 P.2d 951 (quoting Viser, 62 Ill. 2d 568, 343 N.E. 2d 903, 910 (1975), "one cannot intend to be negligent or attempt to have the general malignant recklessness contemplated by the legal concept "implied malice.")

Third, while the Petitioner's case was pending on direct review the South Carolina Supreme decided: "Where evidence is presented that would reduce, mitigate, excuse or Justify an assault and battery with intent to kill cause by the use of a deadly weapon, Jury's shall not be charged that malice may be inferred from the use of a deadly weapon." "The new ruling would apply to 'all cases pending on direct review.'" See Belcher v. State, 385 S.C. 597, 612-13, 685 S.E. 2d 802, 810 (2009). The Belcher ruling attaches to State v. Burdette, 427 S.C. 490, 832 S.E. 2d 575 (2019), which states: "It is impossible to legally charge the Jury on evidentiary inferences because such a charge places 'undue' emphasis on that piece of evidiitiary evidence," to wit, the use of a deadly weapon.

Had the lower Court's applied the law or principles of Belcher during the Petitioner's direct review then, this Petition would not be necessary. On the other hand, had the lower Court granted the Petitioner the belated direct review pursuant to Mack, supra to address the Belcher ruling, again, this Petition would not be here.

Fourth, during the Petitioner's Jury Trial evidence of self-defense was presented. Following were four (4) separate Requests for a charge on the law of self-defense. Pursuant to Griffin v. Martin, 785 F.2d 1172 (4th Cir. 1986) South Carolina has sought to impose the burden of pursuasion on self-defense." E.g., State v. Judge, 208 S.C. 497, 507, 38 S.E. 2d 715, 720 (1946); State v. Bolten,

266 S.C. 444, 449, 273 S.E. 863, 865-66 (1986)

But, that is unconstitutionally impermissible. See State v. Burkhart, 565 S.E. 2d 298 (2002) ("If there is any evidence of self-defense the charge must be given.") Clearly, prior to, and after the Petitioner's Jury Trial the law warranted a charge on the law where the Petitioner presented evidence of self-defense, and requested such. See State v. Williams, 427 S.C. 246, 830 S.E. 2d 904 (2019)

Herein, for the Petitioner (and people similarly situated), the South Carolina Supreme Court crafted a belated direct review procedural remedy under Mack v. State, 858 S.E. 2d 160 (2021) to address an unconstitutional denial or deprivation of a Self-Defense Charge after counsel's deficient performance barred the issue on direct review.

Last, the Petitioner's Post-Conviction Relief Transcript demonstrates that twice on separate occassion the hearing Judge stopped the hearing to admonish Petitioner that, "it was conducive to the court's time" for him to fully or fairly present his allegations for PCR or, his material facts and evidence of trial counsel's deficient performance prior to and during the Jury Trial.

As a result, the Petitioner was denied and deprived of the minimal standard of Due Process to a full and fair "Bite of the apple." See Rule 220 (b)(1), SCACR; S.C. Code Ann. Section 17-27-20 (A)(1) & (4) (2014); Irvin v. Dowd, 366 U.S. 717, 722 (1961); McCoy v. State, 401 S.C. 363, 371, 737 S.E. 2d 623, 627 (2013); also see Racquemore v. State, 2018 WL 1953133

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Douglas Alexander

Date: 31 January 2025