

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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Appellate Case No. 2023-001504

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Laquincy M. Williams,

Petitioner,

v.

State of South Carolina,

Respondent.

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

- I. Did the PCR Court err in finding Trial Counsel provided effective assistance by failing to object when the State elicited inadmissible character evidence of Petitioner's prior arrest from an unrelated charge in another county that served no legitimate purpose?
- II. Did the PCR Court err in finding Trial Counsel provided effective assistance by failing to conduct a reasonable investigation when Counsel did not obtain the log-in sheet from the daycare to corroborate the alibi witnesses' testimony?
- III. Did the PCR Court err in finding Trial Counsel provided effective assistance by failing to properly present the co-defendant's potential plea deal during trial when counsel did not move for the appropriate disclosure of a plea deal and did not adequately confront the co-defendant about the terms of a plea deal?

## STATEMENT OF THE CASE

### *Joint Multi-Count Indictment*

On July 25, 2013, the Williamsburg County Grand Jury *jointly* indicted Petitioner, LaQuincy Williams, and his co-defendants, Toshonda Mickens and James Henry, for murder, burglary in the first degree, armed robbery, and criminal conspiracy. (App. Vol. III App. 1211 – 1213). In the *same* indictment, the Grand Jury also indicted Petitioner and Co-Defendant Henry for possession of a firearm during the commission of a violent crime. (Vol. III App. 1213).

### *Trial*

On September 9–13, 2013, Petitioner and his Co-Defendant Mickens proceeded to a joint trial before the Honorable W. Jeffrey Young and a jury. (Vol. I App. 1 – 500; Vol. II App. 501 – 1000; Vol. III App. 1001 – 1219). Cezar McKnight represented Petitioner, Timothy Griffith represented the Co-Defendant Mickens, and Assistant Solicitors Kimberly Barr and Tyler Brown prosecuted the case on behalf of the State. The State’s case primarily depended upon the testimony of Co-Defendant Henry. (Vol. II App. 784 – 882).

The jury returned guilty verdicts on all charges against Petitioner and Co-Defendant Mickens. (Vol. III App. 1171 – 1174). The Trial Court sentenced Petitioner to life imprisonment for the murder and burglary convictions, thirty years imprisonment for the armed robbery conviction, and five years’ imprisonment for the criminal conspiracy and possession of a weapon convictions. (Vol. III App. 1198 – 1199; App. 1214 – 1218). The Trial Court ordered concurrent sentences. Petitioner filed a Notice of Appeal. (Vol. III App. 1220 – 1222).

### *Direct Appeal*

On October 13, 2015, Assistant Appellate Defender Susan Hackett filed an *Anders* Brief of Appellant. (Vol. III App. 1229 – 1248). Petitioner submitted a *pro se* brief on November 23, 2015.

(Vol. III App. 1249 – 1253).

On March 30, 2016, the South Carolina Court of Appeals affirmed Petitioner’s convictions and sentences. *State v. Williams*, Op. No. 2016-UP-143 (S.C. Ct. App. filed March 30, 2016) (Vol. III App. 1254 – 1255). The Court of Appeals issued the Remittitur on April 20, 2016. (Vol. III App. 1256).

***PCR Applications and Return***

On January 17, 2017, Petitioner filed an application requesting Post-Conviction Relief (PCR), alleging ineffective assistance of counsel and lack of subject matter jurisdiction. (Vol. III App. 1257 – 1273). The State filed a Return to the PCR application on June 13, 2017. (Vol. III App. 1274 – 1280). Petitioner subsequently filed an amended PCR application on August 25, 2021. (Vol. III App. 1281 – 1282).

***PCR Evidentiary Hearing***

On October 31, 2022, Petitioner appeared before the Honorable Edward W. Miller for an evidentiary hearing on the allegations of ineffective assistance of counsel and lack of subject matter jurisdiction. (App. 1283 – 1355). Jonathan Waller represented Petitioner, and Assistant Attorney General Russ Barlow appeared on behalf of the State. Petitioner and Trial Counsel testified at the evidentiary hearing.

**Petitioner’s Testimony**

Relevant to this appeal, Petitioner testified at the hearing that he had four co-defendants, noting James Phillip Williams (“P.J. Williams”) was not charged, and that Co-Defendant Henry accepted a plea deal to avoid the mandatory minimum sentence. (Vol. III App. 1323). Petitioner also testified that he first learned about Co-Defendant Henry receiving a plea deal after the trial. (Vol. III App. 1327, line 24– 1328). Petitioner further testified that the Prosecutors had informed

his lawyer that Co-Defendant Henry had not received any plea deals, and that Co-Defendant Henry subsequently received a significant reduction in charge (avoiding the mandatory minimum sentence). (Vol. III App. 1328, lines 3-18).

Additionally, Petitioner testified that he informed Trial Counsel of his alibi and about the existence of a log-in sheet at the daycare containing his signature with the date and time. Specifically, Petitioner provided the following testimony:

Well, I tried to give [Trial Counsel] my alibi which was my mother and my sister because at the time in 2013, my baby sister was going to school for her Master's degree and I was her current babysitter at the time so *it was a log-in sheet* that I had to take my nephew and my niece to the day care which was we were trying to get it at the time, but my trial counsel never did a proper investigation so it was no proven fact. *But I had to log-in every day when I take my nephew and niece to day care so we was trying tog et the log-in to prove the time where they were saying that I was in Williamsburg County couldn't add up 'cause I was in Darlington County at the time where they saying this alleged crime took place, happened.*

...

[Trial Counsel] never did a proper investigation to get the proof[.]

(Vol. III App. 1324, line 20 – 1325, line 23) (emphasis added).

Petitioner further explained the importance of the log-in sheet at the daycare, and Trial Counsel's failure to conduct a reasonable investigation:

[Petitioner] didn't do the proper investigation because there's a log-in sheet that I have to log in and sign my name and sign my niece and nephew to every morning and that was my – proof of my alibi 'cause the timeframe they was trying to say I was this particular place. It would show them that I couldn't have been because I was at this particular place and it's like *it's dated and it's a timeframe*. So had he would have did the proper investigation and *when they got that log-in book from the day care center, they would have prove to the court that I couldn't have been in the place that they was allegedly saying I was at the time.*

(Vol. III App. 1338, line 14 – 1339, line 1) (emphasis added). PCR Counsel asked Petitioner if he

attempted to obtain the log-in sheet after he bonded out of jail, “Not – no, ‘cause I didn’t know . . . I wasn’t preparing my own defense. I didn’t know. *I was depending solely on my lawyer to do the proper investigation.*” (Vol. III App. 1339) (emphasis added).

On cross-examination, Petitioner emphasized:

But the way I could prove to where I was at was (sic) in this log-in book at the day care center which as I explained to [Trial Counsel], . . . If you call, contact this day care center, they have a log-in sheet, you will see my signature, you will see the time, date, and stamp where my signature is on the place at the time and place; but he never contact those people to get the log-in book to show where I was at this specific time.

(Vol. III App. 1340, line 18 – 1341, line 2).

#### **Trial Counsel’s Testimony**

Relevant to this appeal, Trial Counsel testified at the hearing regarding his knowledge of Co-Defendant Henry’s plea deal:

*I knew he had a deal; I didn’t know what the deal was.* Normally what happens is, especially in the third in Williamsburg County, if someone is going to plead or someone is going to cooperate, they plead first and then they hold off on sentencing based upon how they do at the – during the trial during their testimony. So there wasn’t so much to quid pro quo if you do this we’ll give you X, Y, Z. There’s not that. Especially not with Solicitor Barr, she wouldn’t do that.

(Vol. III App. 1300) (emphasis added).

When asked about investigator Pamela Wrenn’s testimony noting Petitioner’s prior arrest in a different county, Trial Counsel provided the following response: “I mean, it’s technically hearsay, but it’s gonna (sic) come in anyway because it’s a business record so I didn’t see the point in belaboring the point.” (Vol. III App. 1305). PCR Counsel also inquired whether there was strategic decision for not objecting to this prior bad act character evidence:

There was. And if you – and I’ll just tell you that in preparation for this trial, I made a list of objectives of things that I wanted to do and

things that I would focus on that I believed to be our strongest suits. Like one, getting the autopsy report, the autopsy report suppressed, getting the audio—getting the audio taped statement from the deceased grandfather John McNeal, getting the audio statement from Frank McGowan. Get it – when I say “get it,” I mean get it into evidence. Get in the time of death being other than when Latisha Bell says it is. So there were certain things that I was keyed in on and things that I thought at the time would be more advantageous to [Petitioner] and those were the things that I would . . . *did I sort of have tunnel vision? Maybe.*

(Vol. III App. 1306, lines 2-20) (emphasis added). However, Trial Counsel admitted that he was not aware of the State’s intent on referencing Petitioner’s prior arrest during the trial. (Vol. III App. 1306, line 24 – 1307, line 4).

On cross-examination, Trial Counsel noted that he “provided a notice of alibi.” (Vol. III App. 1312, lines 13-14). Trial Counsel also claimed that he did not see any reason to object when investigator Pamela Wrenn provided the prior bad act character testimony. (Vol. III App. 1315, lines 9-25).

#### **Under Advisement**

At the close of evidence and arguments from counsel, the PCR Court took the matter under advisement and requested that the parties submit briefs: “So what I’m going to ask y’all to do is just do a little brief . . . *the two issues that concern me are the failure to object to the character evidence and the failure to investigate the alibi.*” (Vol. III App. 1354, lines 7-11) (emphasis added).

#### ***Order of Dismissal***

On September 8, 2023, the PCR Court filed an Order of Dismissal, finding Petitioner “failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief.” (App. 1361 – 1388). The PCR Court found Trial Counsel’s testimony at the evidentiary hearing credible and persuasive and found Petitioner’s testimony at the

hearing not credible. (Vol. III App. 1368).

Relevant to this appeal, the PCR Court found that the following allegations are without merit: “Trial Counsel was constitutionally ineffective for failing to investigate [Applicant’s] alibi claims” (Vol. III App. 1372 – 1376), “for failing to object to improper evidence of prior bad acts during the testimony of Pamela Wren” (Vol. III App. 1381 – 1384), and not properly presenting the co-defendant’s plea deals during the trial and “for failing to properly inform him of the co-defendant’s plea deal.” (Vol. III App. 1384 – 1385).

#### **Failure to Investigate Alibi Defense**

The PCR Court found that Trial Counsel did investigate Petitioner’s alibi because Counsel “noticed the State of his intent to use [Petitioner’s] mother, sister, and TaShonda Mickens as alibi witnesses who would testify that [Petitioner] was at his mother’s house at the time the crimes were committed.” (Vol. III App. 1375). The PCR Court also found that “their testimony at trial was, at best, skeptical because their stories conflicted with one another regarding whom the [Petitioner] took to daycare and the time [Petitioner] left for the daycare.” (Vol. III App. 1375). The PCR Court further found that “the jury was able to weigh the credibility of the alibi witnesses’ testimony” and that “if the log existed, it would have been cumulative at best.” (Vol. III App. 1375).

The PCR found that “Trial Counsel cannot be found deficient for failure to proffer duplicative evidence when testimony is the best evidence to establish the defense.” (Vol. III App. 1375). The PCR Court also found that Petitioner “has failed to show that he was prejudiced as required by the second prong in [the] *Strickland* analysis.” (Vol. III App. 1375). The PCR Court further found “[w]hether a sign-in sheet from Ms. Olla Mae Brown’s in-home daycare would have changed the outcome of [Petitioner’s] trial is pure conjecture, and [Petitioner] has yet to provide the Court with a copy of this alleged sign-in sheet.” (Vol. III App. 1375).

### **Failure to Object to Prior Bad Act Evidence**

The PCR Court found, “while Trial Counsel’s failure to object to Investigator Wrenn’s oblique reference to [Petitioner’s] ‘prior booking’ *may* have been deficient, [Petitioner] has failed to meet his burden proving prejudice.” (Vol. III App. 1382). The PCR Court also found that “*the evidence, in this case, was one of witness credibility*” and that “[t]he jury had the opportunity to hear the testimony and weigh the witness’ credibility.” (Vol. III App. 1383) (emphasis added). The PCR Court also found that “the oblique reference to [Petitioner’s] prior booking was not prejudicial because the State did not attempt to introduce the prior booking as character evidence.” (Vol. III App. 1383).

### **Co-Defendant Plea Deal**

The PCR Court found “Trial Counsel **credibly** testified as to how Solicitor Barr handles plea deals when a co-defendant is going to testify against another co-defendant.” (Vol. III App. 1385) (emphasis in original). The PCR Court also found “Trial Counsel **credibly** testified that the co-defendant had entered his plea, but he did not know the details of the plea negotiations.” (Vol. III App. 1385) (emphasis in original). The PCR Court further found that “Trial Counsel **credibly** testified that he was noticed with the plea deal, and he was able to bring that out through cross-examination of the co-defendant.” (Vol. III App. 1385) (emphasis in original). The PCR Court held that Petitioner “has failed to overcome his burden of proving Trial Counsel was deficient and has failed to prove any resulting prejudice.” (Vol. III App. 1385).

On September 25, 2023, Petitioner filed a Notice of Appeal. (Vol. III App. 1389).

### ***Relief Sought***

Petitioner seeks a writ of certiorari for this Court to review the denial of post-conviction relief application.

## STANDARD OF REVIEW

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI. To establish ineffective assistance of counsel, an Petitioner must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims). “First, an [Petitioner] must show that counsel's performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). “The second prong of the *Strickland* test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.* at 118, 386 S.E.2d at 625 (internal citations omitted). Therefore, an Petitioner must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result” when seeking relief based on ineffective assistance of counsel. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

In a PCR action, “[t]he burden of proof is on the Petitioner to prove his allegations by a preponderance of the evidence.” *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Strategic “[d]ecisions made [by counsel] in ignorance of relevant, available information cannot be characterized as strategic.” *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014). “Ordinarily, the existence of ‘overwhelming evidence’ does not automatically preclude a finding of prejudice.” *Smalls v. State*, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). Notably, this Court has held that “for the evidence to be ‘overwhelming’ such

that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of ‘a reasonable probability . . . the factfinder would have had a reasonable doubt’ cannot possibly be met.” *Id.* 422 S.C. at 191, 810 S.E.2d at 845.

## ARGUMENT

### I. THE PCR COURT ERRED IN FINDING TRIAL COUNSEL PROVIDED EFFECTIVE ASSISTANCE BY FAILING TO OBJECT WHEN THE STATE ELICITED INADMISSIBLE CHARACTER EVIDENCE OF PETITIONER'S PRIOR ARREST FROM AN UNRELATED CHARGE IN ANOTHER COUNTY THAT SERVED NO LEGITIMATE PURPOSE.

Typically, evidence of a person's character is not admissible to prove the person acted "in conformity therewith on a particular occasion." Rule 404(a), SCRE. Evidence of a person's "other crimes, wrongs, or acts" are generally inadmissible to prove a person's general character "in order to show action in conformity therewith." Rule 404(b), SCRE (commonly referred to as prior bad act or *Lyle* evidence). The proponent of prior bad act evidence must demonstrate it has a legitimate purpose, "i.e., the evidence does something more than prove a person has propensity to commit crimes". *Johnson v. State*, 433 S.C. 550, 555, 860 S.E.2d 696, 699 (Ct. App. 2021). Under Rule 404(b), SCRE, there are only five legitimate purposes for the admission of prior bad act evidence: to prove "motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent."

This Court addressed the proper approach to determining the admissibility of prior bad act evidence in *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020). In a criminal case, the State must convince the trial court that the prior bad act evidence is logically relevant to a material fact at issue in the case: "If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime." *Lyle*, 125 S.C. at 417, 118 S.E. at 807.

If, after applying the logical relevancy test with "rigid scrutiny," the trial court concludes the prior bad act evidence serves some purpose other than to show the defendant's proclivity for criminal conduct (and that purpose is one of the five listed in Rule 404(b)), then the evidence is

admissible unless its “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE; *see Perry*, 430 S.C. at 44, 842 S.E.2d at 665.

Notably, if the prior bad act did not result in a criminal conviction, the State also bears the burden of proving the prior bad act by clear and convincing evidence. *Johnson*, 433 S.C. at 556, 860 S.E.2d at 699. The danger of unfair prejudice is enhanced when the prior bad act is “strikingly similar” to the one for which the appellant is being tried. *State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984).

Prior bad act evidence “is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge.” *Michelson v. United States*, 335 U.S. 469, 475–76 (1948) (footnote omitted). The Court of Appeals reiterated the purpose of barring prior bad act evidence to prove character in *Johnson*, deeming it useless to the factfinder:

The law’s disdain of character evidence draws from notions of basic fairness tied together by the “golden thread”—the presumption of innocence—so one is rightly judged by whether the government has proven what it has charged, regardless of who it has charged. That is, after all, the spirit of the rule of law.

*Johnson*, 433 S.C. at 556, 860 S.E.2d at 700.

### ***Deficient Performance***

In this case, Trial Counsel’s performance was deficient, as it fell below an objective standard of reasonableness “under prevailing professional norms.” *See Strickland*, 466 U.S. at 687-88. Specifically, Trial Counsel failed to object when the State elicited inadmissible

character evidence of Petitioner's prior arrest from an unrelated charge in another county that served no legitimate purpose. (Vol. II App. 900, lines 16-23). *See generally Johnson v. State*, 433 S.C. 550, 555, 860 S.E.2d 696, 699 (Ct. App. 2021); Rules 403 and 404(b), SCRE.

At trial, Trial Counsel failed to object during the following exchange on direct examination between the Prosecutor and investigator Pamel Wrenn of the Williamsburg County Sheriff's Office:

Q: Did you record on the arrest warrant a height for [Petitioner]

A: Yes, ma'am.

Q: And where did you get the information about the height?

A: That from was (sic) a prior booking if I am not mistaken, with Florence County Sheriff's Department.

(Vol. II App. 900, lines 16-23). This character evidence served no legitimate purpose and was unfairly prejudicial to Petitioner. *See Geter v. State*, 305 S.C. 365, 367, 409 S.E.2d 344, 345 (1991) (internal citation omitted) (finding "evidence introduced for the sole purpose of implying a defendant has a prior criminal record is improper."); *Johnson*, 433 S.C. at 555, 860 S.E.2d at 699 (noting the proponent of prior bad act evidence must demonstrate it has a legitimate purpose, "i.e., the evidence does something more than prove a person has propensity to commit crimes").

However, even if that evidence served a legitimate purpose, it still would have been inadmissible because the State failed to meet its burden of clear and convincing evidence (not a result of a conviction), and any probative value was substantially outweighed by its prejudicial effect. *See Id.*; Rule 403, SCRE.

Trial Counsel admitted at the PCR hearing that he was not aware of the State's intent to reference Petitioner's prior arrest during the trial. (Vol. III App. 1306, line 24 – 1307, line 4). Trial Counsel maintained that he believed this character evidence was admissible but failed to address

the law on character evidence. (Vol. III App. 1305). Trial Counsel also claimed that he did not see any reason to object when investigator Pamela Wrenn provided the prior bad act character testimony. (Vol. III App. 1315, lines 9-25).

Trial Counsel also provided an objectively unreasonable strategy for not objecting to this evidence:

And if you – and I’ll just tell you that in preparation for this trial, I made a list of objectives of things that I wanted to do and things that I would focus on that I believed to be our strongest suits. Like one, getting the autopsy report, the autopsy report suppressed, getting the audio—getting the audio taped statement from the deceased grandfather John McNeal, getting the audio statement from Frank McGowan. Get it – when I say “get it,” I mean get it into evidence. Get in the time of death being other than when Latisha Bell says it is. So there were certain things that I was keyed in on and things that I thought at the time would be more advantageous to [Petitioner] and those were the things that I would . . . *did I sort of have tunnel vision? Maybe.*

(Vol. III App. 1306, lines 2-20) (emphasis added). *See Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (holding “counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness”); *Stacy v. Solem*, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that “labeling counsel's actions as “trial strategy” does not automatically immunize an attorney's performance from sixth amendment challenges.”).

Notably, the PCR Court conceded in the Order of Dismissal that “Trial Counsel’s failure to object to Investigator Wrenn’s oblique reference to [Petitioner’s] ‘prior booking’ *may* have been deficient”. (Vol. III App. 1382).

### ***Prejudice***

Trial Counsel’s deficient performance prejudiced Petitioner because it “so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having

produced a just result.” *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 692). Specifically, Trial Counsel’s deficient performance adversely affected Petitioner’s right to a fair trial because this case hinged on the credibility of the State’s key witness, Co-Defendant Henry, and the State presented inadmissible character evidence to illustrate Petitioner’s propensity to commit crimes, thereby indirectly bolstering the Co-Defendant’s credibility that the Petitioner committed these alleged criminal offenses. Notably, in the Order of Dismissal, the PCR Court found that “*the evidence, in this case, was one of witness credibility.*” (Vol. III App. 1383) (emphasis added).

The PCR Court erroneously found that “the State did not attempt to introduce the prior booking as character evidence.” (Vol. III App. 1383). The State elicited this character evidence based on the Prosecutor’s specific question to this witness, who is a police investigator testifying towards the end of the State’s case-in-chief (after Co-Defendant Henry). (Vol. II App. 900, lines 16-23). At the close of evidence and arguments from counsel, the PCR Court noted his concern with this allegation: “*the two issues that concern me are the failure to object to the character evidence and the failure to investigate the alibi.*” (Vol. III App. 1354, lines 7-11) (emphasis added).

Therefore, the PCR Court erred in finding Trial Counsel provided effective assistance by failing to object when the State elicited inadmissible character evidence of Petitioner’s prior arrest from an unrelated charge in another county that served no legitimate purpose. *See Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted) (finding “there is a reasonable probability that, but for [trial] counsel’s unprofessional errors, the result of the proceeding would have been different.”).

**II. THE PCR COURT ERRED IN FINDING TRIAL COUNSEL PROVIDED EFFECTIVE ASSISTANCE BY FAILING TO CONDUCT A REASONABLE INVESTIGATION WHEN COUNSEL DID NOT OBTAIN THE LOG-IN SHEET FROM THE DAYCARE TO CORROBORATE THE ALIBI WITNESSES' TESTIMONY.**

In *Martin v. State*, 427 S.C. 450, 832 S.E.2d 277 (2019), this Court found Trial Counsel provided ineffective assistance of counsel by failing to elicit specific alibi testimony from the defendant's mother, even when he failed to present that alibi testimony at the PCR hearing. Specifically, the *Martin* Court held, "[o]rdinarily the absence of a purported alibi witness is fatal, but in this case counsel admitted they were aware of the specific timeline furnished by the mother, yet failed to introduce it." *Id.* at 453, 832 S.E.2d at 278-79.

The United States Supreme Court has held "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691; *See Wiggins v. Smith*, 539 U.S. 510, 527 (2003). "In assessing the reasonableness of an attorney's investigation, . . . a court must not only consider the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." *Wiggins*, 539 U.S. at 527. Notably, this Court has held, "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008).

Furthermore, "while the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Lounds v. State*, 380 S.C. 454, 460, 670 S.C. 646, 649 (2008) (quoting *Ard*, 372 S.C. at 331-32, 642 S.E.2d at 597). The

duty to conduct a reasonable investigation extends to consulting and possibly presenting expert witnesses. *See McKnight*, 378 S.C. at 46, 661 S.E.2d at 360-61; *Lounds*, 380 S.C. at 462, 670 S.E.2d at 650 (finding it “was not objectively reasonable given the defense theory of the case” for trial counsel not to call witnesses who would have “added significantly to the credibility of petitioner’s case”); *see also Hicks v. State*, 314 S.C. 280, 443 S.E.2d 907 (1994) (finding ineffective assistance of counsel when there is a reasonable probability the result would have been different had trial counsel introduced relevant and favorable evidence at trial).

### ***Deficient Performance***

In this case, Trial Counsel’s performance was deficient, as it fell below an objective standard of reasonableness “under prevailing professional norms.” *See Strickland*, 466 U.S. at 687-88. Specifically, Trial Counsel failed to obtain the log-in sheet from the daycare to corroborate the alibi witnesses’ testimony despite this being a critical piece of evidence to prove the alibi defense. (Vol. III App. 1324, line 20 – 1325, line 23; App. 1338 – 1341). *See Martin*, 427 S.C. 450, 832 S.E.2d 277; *See generally Lounds*, 380 S.C. at 462, 670 S.E.2d at 650 (finding it “was not objectively reasonable given the defense theory of the case” for trial counsel not to call witnesses who would have “added significantly to the credibility of petitioner’s case”).

At the PCR hearing, Petitioner specifically testified that he informed Trial Counsel about the log-in sheet and its importance to proving his alibi defense:

Well, I tried to give [Trial Counsel] my alibi which was my mother and my sister because at the time in 2013, my baby sister was going to school for her Master’s degree and I was her current babysitter at the time so *it was a log-in sheet* that I had to take my nephew and my niece to the day care which was we were trying to get it at the time, but my trial counsel never did a proper investigation so it was no proven fact. *But I had to log-in every day when I take my nephew and niece to day care so we was trying tog et the log-in to prove the time where they were saying that I was in Williamsburg County couldn’t add up ‘cause I was in Darlington County at the time where*

they saying this alleged crime took place, happened.

(Vol. III App. 1324, line 20 – 1325, line 23) (emphasis added).

[Petitioner] didn't do the proper investigation because there's a log-in sheet that I have to log in and sign my name and sign my niece and nephew to every morning and that was my – proof of my alibi 'cause the timeframe they was trying to say I was this particular place. It would show them that I couldn't have been because I was at this particular place and it's like *it's dated and it's a timeframe*. So had he would have did the proper investigation and *when they got that log-in book from the day care center, they would have prove to the court that I couldn't have been in the place that they was allegedly saying I was at the time*.

(Vol. III App. 1338, line 14 – 1339, line 1) (emphasis added).

But the way I could prove to where I was at was (sic) in this log-in book at the day care center which as I explained to [Trial Counsel], . . . If you call, contact this day care center, they have a log-in sheet, you will see my signature, you will see the time, date, and stamp where my signature is on the place at the time and place; but he never contact those people to get the log-in book to show where I was at this specific time.

(Vol. III App. 1340, line 18 – 1341, line 2). Unfortunately, PCR Counsel did not question Trial Counsel about the log-in sheet at the hearing.

In the Order of Dismissal, the PCR erroneously found that “Trial Counsel cannot be found deficient for failure to proffer duplicative evidence when testimony is the best evidence to establish the defense” because the log-in sheet would not have been duplicative or cumulative but would have *corroborated* his alibi defense and permissibly bolstered the alibi witnesses’ testimony. (Vol. III App. 1375).

### ***Prejudice***

Trial Counsel’s deficient performance prejudiced Petitioner because it “so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S.

at 692). Specifically, Trial Counsel's deficient performance adversely affected Petitioner's right to a fair trial because his failure to conduct a reasonable investigation prevented Petitioner from presenting a full and complete defense. *See Martin*, 427 S.C. 450, 832 S.E.2d 277

The PCR Court erroneously found that Petitioner "has failed to show that he was prejudiced as required by the second prong in [the] *Strickland* analysis" because the log-in sheet was critical to establishing the alibi defense. (Vol. III App. 1375). This is particularly highlighted based on the PCR's Court's finding that the "[alibi witnesses'] testimony at trial was, at best, skeptical because their stories conflicted with one another regarding whom the [Petitioner] took to daycare and the time [Petitioner] left for the daycare." (Vol. III App. 1375).

Therefore, the PCR Court erred in finding Trial Counsel provided effective assistance by failing to conduct a reasonable investigation when Counsel did not obtain the log-in sheet from the daycare to corroborate the alibi witnesses' testimony. *See Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted) (finding "there is a reasonable probability that, but for [trial] counsel's unprofessional errors, the result of the proceeding would have been different.")).

**III. THE PCR COURT ERRED IN FINDING TRIAL COUNSEL PROVIDED EFFECTIVE ASSISTANCE BY FAILING TO PROPERLY PRESENT THE CO-DEFENDANT'S POTENTIAL PLEA DEAL DURING TRIAL WHEN COUNSEL DID NOT MOVE FOR THE APPROPRIATE DISCLOSURE OF A PLEA DEAL AND DID NOT ADEQUATELY CONFRONT THE CO-DEFENDANT ABOUT THE TERMS OF A PLEA DEAL.**

In *State v. Brown*, 441 S.C. 464, 894 S.E.2d 525 (2023), this Court held that the State had the duty to disclose evidence of the negotiations and deal, and the State's failure to disclose the negotiations and the accepted offer with witness deprived a defendant of a fair trial because it denied his ability to impeach the witness. The *Brown* Court also found that there was a reasonable likelihood the jury would have decided differently had the defendant impeached witness based on the agreement. *Id.*

In *Giglio v. United States*, 405 U.S. 150 (1972), the United States Supreme Court included witness testimony under holding set forth in *Brady v. Maryland*: "When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within [Brady's] general rule." *Id.* at 154 (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)).

In *Giglio*, the defense discovered that the prosecution did not disclose a promise made to a key witness in exchange for testimony. 405 U.S. at 150–51. There, the testifying witness was a co-conspirator and the only witness linking the defendant to the crime. *Id.* at 151. An affidavit filed by the prosecution as part of its opposition to a motion for a new trial confirmed a promise that, if he testified before a grand jury and at trial, he would not be prosecuted. *Id.* at 152. The Court reasoned, "[T]he Government's case depended almost entirely on [the witness's] testimony; without it there could have been no indictment and no evidence to carry the case to the jury." *Id.* at 154. Ultimately, the Court reversed *Giglio's* conviction on these grounds. *Id.* at 155.

The United States Supreme Court subsequently held: “Impeachment evidence ... as well as exculpatory evidence, falls within the *Brady* rule.” *United States v. Bagley*, 473 U.S. 667, 676 (1985). There, the Court reversed the judgment of the United States Court of Appeals for the Ninth Circuit and remanded the case for a determination regarding materiality. *Id.* at 684. The prosecution promised its witnesses the “possibility of reward” if the information they gave helped convict the defendant. *Id.* at 683. The Court found this gave the witnesses a personal stake in the defendant’s conviction and further increased the incentive to testify falsely. *Id.* Importantly, the witnesses were not given firm promises or deals; rather, a mere possibility of favorable treatment was sufficient. *See Bagley*, 473 U.S. at 678, 105 S.Ct. 3375 (“The constitutional error, if any, in this case was the Government’s failure to assist the defense by disclosing information that might have been helpful in conducting cross-examination.”).

In *State v. Hinson*, we affirmed the appellant’s conviction but remanded the case so that appellant could renew a motion for a new trial before the circuit court. 293 S.C. 406, 361 S.E.2d 120 (1987). Despite the defense’s timely *Brady* motion before and during trial, the State did not disclose a promise of immunity made to a witness. *Id.* at 407, 361 S.E.2d at 120. During direct and cross-examination, the witness testified that the State did not promise her anything in exchange for her testimony. In closing argument, the solicitor argued that the witness was testifying voluntarily despite her charges and that there was no agreement for leniency. *Id.* Moments after the jury announced its verdict, the solicitor informed the judge that the witness would not be prosecuted. This Court concluded, “[w]hile the record strongly suggests an undisclosed promise, it does not clearly show that a promise existed.” *Id.* at 408, 361 S.E.2d at 121. Importantly, a decision not to prosecute provided a sufficient basis to justify a remand to determine when the witness knew of the State’s decision to treat her favorably.

In *State v. Cain*, this Court ruled on what does not constitute a bargain, agreement, or deal under *Brady*: “The record here contains only a passing reference to a pre-trial statement by the solicitor that he would assist, if possible, in keeping [the witness] from being incarcerated in the same institution as appellant.” 297 S.C. 497, 503, 377 S.E.2d 556, 559 (1988). At trial, the State’s witness testified that he had not been offered anything in return for his testimony. *Id.* at 502, 377 S.E.2d at 558. This Court distinguished the case from *Hinson* because there was no evidence that an undisclosed bargain or plea existed. *Id.* at 503, 377 S.E.2d at 559.

The Sixth Amendment guarantees a criminal defendant the right ‘to be confronted with the witnesses against him.’” *State v. Dinkins*, 339 S.C. 597, 601, 529 S.E.2d 557, 559 (Ct. App. 2000) (quoting U.S. Const. amend. VI); S.C. Const. art. I, § and 14. The right of confrontation is essential to a fair trial because it promotes reliability and insures that convictions will not result from testimony of individuals who cannot be challenged at trial. *Id.*

### ***Deficient Performance***

In this case, Trial Counsel’s performance was deficient, as it fell below an objective standard of reasonableness “under prevailing professional norms.” *See Strickland*, 466 U.S. at 687-88. Specifically, Trial Counsel failed to properly present the co-defendant’s potential plea deal during trial because Counsel did not move for the appropriate disclosure of a plea deal and did not adequately confront the cooperating co-defendant about the terms of a plea deal. *See Brown*, 441 S.C. 464, 894 S.E.2d 525.

At trial, the following exchange occurred between Trial Counsel and Co-Defendant Henry on cross-examination:

Q: Did they tell you or promise you that for your cooperation in this case, they wouldn’t take your case federal?

A: No, sir.

...

Q: Did they make you any promises with regard to that, to your cooperation in this matter?

A: No, sir.

(Vol. II App. 847, lines 2-19).

Q: Thank you. Now is it still your testimony that you were not promised that this case would stay in state court and not go to federal court?

A: I was never promised that.

(Vol. II App. 852, lines 9-12).

Q: So is it still your testimony that you didn't get promised anything?

A: I didn't get promised anything.

(Vol. II App. 853, lines 7-9).

Q: Isn't true that you haven't pled guilty yet?

A: Yes, sir.

Q: So you're hoping that if you do what they tell you to do, you will get a light sentence?

A: No, sir.

Q: No? You're not hoping – sp if you come in here and the judge gives you life, you're happy with that.

A: I told them the truth.

(Vol. II App. 858, line 21 – 859, line 5).

Petitioner testified at PCR hearing that the Prosecutors had informed his lawyer that Co-Defendant Henry had not received any plea deals, and that Co-Defendant Henry subsequently received a significant reduction in charge (avoiding the mandatory minimum sentence). (Vol. III App. 1328, lines 3-18). Trial Counsel testified at the hearing regarding his knowledge of Co-

Defendant Henry's plea deal:

*I knew he had a deal; I didn't know what the deal was. Normally what happens is, especially in the third in Williamsburg County, if someone is going to plead or someone is going to cooperate, they plead first and then they hold off on sentencing based upon how they do at the – during the trial during their testimony. So there wasn't so much to quid pro quo if you do this we'll give you X, Y, Z. There's not that. Especially not with Solicitor Barr, she wouldn't do that.*

(Vol. III App. 1300) (emphasis added).

Based on the testimony presented at trial, the PCR Court erroneously found “Trial Counsel **credibly** testified that the co-defendant had entered his plea, but he did not know the details of the plea negotiations.” (Vol. III App. 1385) (emphasis in original). As this Court has held, a formal agreement is not always necessary to warrant disclosure to the defendant.

### ***Prejudice***

Trial Counsel's deficient performance prejudiced Petitioner because it “so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 692). Specifically, Trial Counsel's deficient performance adversely affected Petitioner's right to a fair trial because Counsel failed to move for the appropriate disclosure of a deal and adequately challenge the credibility and bias of the State's key witness. The State's case primarily depended upon the testimony of Co-Defendant Henry. (Vol. II App. 784 – 882); *See Giglio*, 405 U.S. at 154 (quoting *Napue*, 360 U.S. at 271); *Bagley*, 473 U.S. at 682 (holding a “reasonable probability” is “a probability sufficient to undermine confidence in the outcome.”).

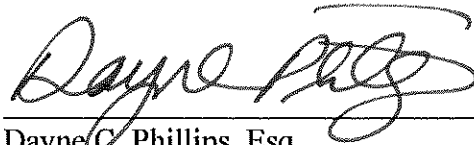
Therefore, the PCR Court erred in finding Trial Counsel provided effective assistance by failing to properly present the co-defendant's potential plea deal during trial because Counsel did not move for the appropriate disclosure of a plea deal and did not adequately confront the

cooperating co-defendant about the terms of a plea deal. *See Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted) (finding “there is a reasonable probability that, but for [trial] counsel’s unprofessional errors, the result of the proceeding would have been different.”).

### CONCLUSION

Based on the foregoing reasons, Petitioner LaQuincy Williams respectfully requests this Court to grant his Petition for Writ of Certiorari.

Respectfully submitted,



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