

STATE OF SOUTH CAROLINA  
In the Supreme Court

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**S.C. SUPREME COURT**

CERTIORARI TO NEWBERRY COUNTY  
Court of Common Pleas  
The Honorable B. Alex Hyman, Circuit Court Judge

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Appellate Case No. 2024-000923

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Matthew L. Jackson,

Petitioner,

v.

State of South Carolina,

Respondent.

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**RETURN TO PETITION FOR A WRIT OF CERTIORARI**

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    The PCR court correctly found Petitioner had not met his burden of proving he was prejudiced by Counsel’s failure to call James Peterson and James Gregory as witnesses to support Petitioner’s self-defense claim, where Peterson concededly was not present during the fight between Petitioner and Victim, and where Gregory’s account did not address the most serious difficulties with the defense’s theory of the case and was contradicted by multiple witnesses at the scene..... 5

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## **PETITIONER'S STATEMENT OF THE ISSUES PRESENTED**

1. Whether the PCR court properly granted petitioner a belated appeal pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974), where undisputed evidence showed petitioner did not knowingly, voluntarily, and intelligently waived his right to a direct appeal?
2. Whether the PCR court erred finding trial counsel was not ineffective for failure to call key eyewitnesses at trial where petitioner raised self-defense but no witnesses testified on his behalf regarding self-defense?

## **RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES PRESENTED**

The PCR court correctly found Petitioner had not met his burden of proving Counsel was ineffective for failing to call James Peterson and James Gregory as witnesses to support Petitioner's self-defense claim, where Peterson concededly was not present during the fight between Petitioner and Victim, and where Gregory's account did not address the most serious difficulties with the defense's theory of the case and was contradicted by multiple witnesses at the scene.

## STATEMENT OF THE CASE

On June 6, 2018, Tony Jackson (“Victim”) was at Sunset Boat Dock with his friends and family. (App.pp.85–89). Petitioner arrived at the dock and approached Victim’s family. (App.p.93). Petitioner hugged Victim’s seven-year-old daughter, and Victim (who did not personally know Petitioner) asked him, “What are you doing hugging my daughter?” (App.pp.93–97). Victim’s girlfriend, Ashleigh Cockrell, introduced Petitioner to Victim and explained that Petitioner was her ex’s roommate and that her daughter knew him as “Matt Matt.” (App.p.96–97). Petitioner and Victim shook hands, and Petitioner left the dock. (App.p.96). Later that day, as Victim and his family prepared to leave, Petitioner returned with his mother Sheila Jackson and three friends, later identified as Cameron Goff, Casey Gregory and B.J. Lipscomb. (App.pp.104–06, 110–11, 387–88). Sheila Jackson attacked Ashleigh’s sister, Ayleah Cook. (App.pp.107–08). While the women were fighting, Petitioner attacked Victim. (App.p.112). During this altercation, Petitioner cut Victim multiple times with a knife. (App.pp.112–13; p.237). Victim was taken to the hospital by his friend, John Platts, to treat his wounds. (App.p.113). Victim had to be transported to Richland County due to the severity of his injuries. (App.p.48). Victim suffered muscular issues and developed a hernia as a result of his injuries. (App.p.443). Petitioner and Sheila Jackson fled the scene before law enforcement arrived. (App.p.113; p.221). Petitioner was later arrested in Sumter, South Carolina. (App.p.347).

In September 2018, the Newberry County Grand Jury indicted Petitioner for Attempted Murder (2018-GS-36-00482). Petitioner was represented by Assistant Public Defender Charles V. Verner, Esquire (“Counsel”). Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel prosecuted the case.

On March 26, 2019, Petitioner proceeded to a jury trial before the Honorable Donald B.

Hocker, where he was convicted of the lesser included offense of Assault and Battery of a High and Aggravated Nature. Judge Hocker sentenced Petitioner to fifteen years and three months imprisonment. Petitioner did not appeal his conviction or sentence.

On February 19, 2020, Petitioner filed an application for post-conviction relief (“PCR”) challenging his conviction for the following reasons:

1. Ineffective Assistance of Counsel
  - a. “Public Defender was not supposed to be able to represent me due to the fact I had a previous ineffective counsel PCR against him.”
  - b. “My witnesses were never subpoenaed.”
    - i. “Newberry Sheriffs refused to transport two of my witnesses to court.”
  - c. “My attorney said that he would file appeal and didn’t.”
2. Prosecutorial Misconduct
  - a. “Prosecution showed judge pictures of crime I wasn’t convicted for during sentencing.”
3. “Jury was compromised by witness.”
4. Judicial Misconduct
  - a. “Presiding Judge had grudge against me, he stated that I should have gotten more time for a previous offense.”
  - b. “Judge failed to charge all lesser included offenses.”

Petitioner subsequently filed an amended application on November 15, 2023, raising the following claims:

- 1) Ineffective Assistance of Counsel of Deputy Public Defender Charles V. Verner
  - (a) Failure to call James Gregory as a witness in the trial.
  - (b) Failure to file a direct appeal from the conviction and sentence.

An evidentiary hearing convened on November 27, 2023, at the Newberry County Courthouse before the Honorable B. Alex Hyman, circuit court judge. Petitioner was present at the hearing and represented by Ashley A. McMahan, Esquire. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent. At the outset of the evidentiary hearing, Petitioner raised an additional allegation of ineffective assistance of counsel for failure to call James Peterson as a witness during the trial. On May 21, 2024, Judge Hyman issued an order

finding that Petitioner was entitled to belated review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974). Judge Hyman denied and dismissed Petitioner's remaining PCR claims.

Petitioner subsequently filed a notice of appeal and petition for a writ of certiorari in this Court. This Return follows.<sup>1</sup>

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<sup>1</sup> As required by Rule 243(i), SCACR, Petitioner included in his Petition for a Writ of Certiorari the issue of whether the PCR court correctly found Petitioner was entitled to belated review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974). Respondent does not contest the grant of belated review. Respondent's position regarding the direct appeal issue now raised by Petitioner is set forth in the Brief of Respondent Pursuant to *White v. State*, filed alongside this Return.

## STANDARD OF REVIEW

The post-conviction relief court's findings of fact receive great deference during appellate review and will be upheld if "any evidence of probative value" exists in the record to support the lower court's findings. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). Questions of law are reviewed *de novo*, and appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. *Id.*; *Smalls v. State*, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839 (2018).

## ARGUMENT

**The PCR court correctly found Petitioner had not met his burden of proving he was prejudiced by Counsel’s failure to call James Peterson and James Gregory as witnesses to support Petitioner’s self-defense claim, where Peterson concededly was not present during the fight between Petitioner and Victim, and where Gregory’s account did not address the most serious difficulties with the defense’s theory of the case and was contradicted by multiple witnesses at the scene.**

Petitioner alleges Counsel was ineffective for failing to call James Gregory and James Peterson to testify on his behalf at trial. The PCR court found Petitioner had not met his burden of proving he was prejudiced by Counsel’s failure to call Gregory and Peterson. The PCR court’s finding is supported by substantial evidence and should not be disturbed.

In a PCR action, the applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A

reasonable probability is “a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington v. Richter*, 562 U.S. 86, 111–12 (2011) (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

At the evidentiary hearing, Petitioner testified he had a dispute with Victim at the boat ramp, left the area, and returned after some time with his mother. He testified that, when he arrived, his mother was attacked by multiple people. When Petitioner got out of the car to help her, he was attacked by three people, and he cut Victim with the knife in self-defense during the fight. Petitioner claimed Peterson was with him during the first confrontation at the boat ramp, and Gregory was present at the second confrontation that turned violent. Petitioner testified he told Counsel about Peterson and Gregory as potential witnesses, but Counsel did not call them at trial.

Both Peterson and Gregory testified at the evidentiary hearing. Peterson testified he was only with Petitioner the first time he went to the boat ramp. He testified there were approximately thirty or forty people present, about half of whom were having words with Petitioner. Peterson heard a lot of yelling back and forth, so he got back in the car and left.

Gregory testified he was present for the second confrontation between Petitioner and Victim. He claimed that, when he arrived at the boat ramp, Petitioner’s mother was already getting beaten up by multiple girls. Gregory claimed Victim and others began fighting Petitioner as soon

as Petitioner got out of the car. However, Gregory later testified he could not see who was attacking Petitioner or how many people were fighting him because Gregory, who was on probation and afraid of getting into trouble, remained in the car hiding his face.

Counsel testified the defense theory was that Petitioner did not start the fight but only became involved to defend his mother who was being attacked and that he did not pull out the knife until Victim started beating him up.<sup>2</sup> There were difficulties with this theory: the fight happened at the same location as Petitioner's earlier confrontation with Victim, suggesting that Petitioner had returned with intent to resume the altercation; Petitioner gave several inconsistent statements to police about his reason for returning to the boat ramp (App.pp.408–10); there was substantial evidence that Petitioner's mother started the fight by assaulting Ayleah Cook, which complicated Petitioner's claim that he was justified in defending his mother (App.pp.154–55; pp.189–90; p.216; p.222; pp.321–22; pp.429–30); Petitioner admitted during his police interview that he had armed himself with the knife before returning to the boat ramp (App.pp.371–72); and there was testimony from multiple witnesses that Petitioner did not try to break up the fight between his mother and Cook, but went straight toward Victim with the knife behind his back and struck the first blow. (App.pp.216–19; p.223; p.231; pp.258–59; pp.289–92; p.315; pp.431–32).

The PCR court found Counsel was not ineffective for failing to call Peterson and Gregory. As to Peterson, the court noted that “by his own admission, [he] was only present for the initial verbal altercation between Petitioner and Victim and was not present at the later physical fight.” Therefore, the PCR court found his testimony could not have affected the outcome of the trial.

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<sup>2</sup> Although Petitioner did not testify at trial, a videotaped interview of Petitioner was introduced at trial in which Petitioner gave his account of the day's events. (App.pp.364–65). The solicitor conceded that the account presented by Petitioner in that interview justified a charge on self-defense. (App.p.577).

Petitioner himself acknowledges that Peterson was not a witness to the physical conflict between Petitioner and Victim. The most Petitioner can say regarding Peterson's testimony is that it provided "context" about the acrimonious nature of Petitioner's earlier visit to the boat ramp. However, that evidence could easily have *hurt* Petitioner's self-defense case, because—as the PCR court found—one of the difficulties with the defense theory was the fact that Petitioner voluntarily returned to the scene of his previous confrontation with Victim. Although Peterson's testimony suggested that the initial encounter between Petitioner and Victim was more hostile than the State's witnesses claimed, that alone does not justify Petitioner's decision to leave the scene, arm himself with a knife, and then come back. All it does is lend credence to the State's theory that Petitioner felt "disrespected" by Victim and came back to get revenge. Therefore, the PCR court correctly found that Petitioner failed to prove the outcome of his trial would likely have been different if Peterson had testified.

As to Gregory, the PCR court found "Gregory's testimony was of limited probative value because he admitted he could not see the fight in detail as he stayed in the car hiding his face." The court noted this testimony was contradicted by the testimony of multiple witnesses at the scene, who testified that Gregory was standing outside the car "mean-mugging" and acting as if he had a gun. (App.p.132; p.157; p.191; pp.219–20; pp.225–27; pp.242–43; p.431). Due to these discrepancies, the PCR court further found it was "not likely that a jury would have found Gregory credible." Moreover, the PCR court noted that Gregory did not explain who started the fight between Petitioner's mother and the girls, why Petitioner returned to the boat ramp, or when Petitioner took out the knife. The PCR court found "Gregory's testimony, therefore, would not have addressed the most serious difficulties with the defense's theory of the case." These findings are all well-supported by the evidence. Even if the jury had believed Gregory's testimony—which

the PCR court found was “not likely”—that Petitioner was “jumped” when he got out of the car, the fact that Petitioner had decided to arm himself and return to the scene of an earlier confrontation, combined with the fact that Petitioner’s mother started the fight by attacking the girls at the boat ramp as soon as she arrived, still strongly supported the State’s position that Petitioner was not without fault in bringing on the difficulty. For all these reasons, the PCR court did not err in finding Gregory’s testimony likely would not have changed the result of Petitioner’s trial.

The PCR court found Petitioner had not met his burden of proving he was prejudiced by Counsel’s failure to call Peterson and Gregory.<sup>3</sup> Therefore, the court found Petitioner failed to prove Counsel’s performance was ineffective as to this issue. The PCR court’s factual findings on this point are clearly supported by substantial evidence in the record and are entitled to deference. Therefore, Respondent asks this Court to deny the Petition for a Writ of Certiorari.

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<sup>3</sup> In addition, the PCR court noted that, during Petitioner’s trial, Counsel argued that the State could have called Gregory as a witness or introduced his recorded statement, implying that the State was not telling the jury the whole story. (App.pp.387–89; p.562, lines 10–15). Counsel could not have made this argument if Gregory had testified. It may well be that Gregory’s absence at trial was more beneficial to the defense, as grounds for criticizing the State’s presentation of the case, than his implausible and thoroughly contradicted testimony would have been.

**CONCLUSION**

For the foregoing reasons, this Court should deny the Petition for a Writ of Certiorari and should leave undisturbed the correct decision of the PCR court. Should this Court decide to grant the petition, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

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