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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2024-001061

RONALD L. LEGG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for reinstatement was made and finally ruled on by the Supreme Court of South Carolina on January 16, 2025.

ISSUES PRESENTED

I.

Did the lower court err in denying Petitioner relief where the record below established that he met his burden of proof concerning his claim that Trial Counsel provided him ineffective assistance of counsel, in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, where Trial Counsel failed to effectively represent Petitioner due to personal matters which affected Trial Counsel's ability to advocate.

II.

Did the lower court err in refusing to find ineffective assistance of counsel, in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, where Trial Counsel failed to object to multiple occasions of bolstering the testimony of the minor child, and himself bolstered the testimony of the minor victim by eliciting otherwise inadmissible testimony?

III.

Did the lower court err in denying Petitioner relief where the record below established that he met his burden of proof concerning his claim that Trial Counsel provided him ineffective assistance of counsel where Trial Counsel failed to properly investigate the case – specifically failing to investigate the minor child's background, and failing to request *Giglio* material on Detective Frebowitz?

IV.

Did the lower court err in refusing to find that the cumulative effect of the deficient performance of Trial Counsel established prejudice requiring a new trial?

STATEMENT OF THE CASE

The Petitioner was previously confined in the South Carolina Department of Corrections pursuant to orders of commitment by the Horry County Clerk of Court. He is now a resident of Akron, Ohio. He was indicted at the October 2011 term of the Horry County Grand Jury for a lewd act on a minor (2011-GS-26-03553). William I. Diggs represented Petitioner, and Martin D. Spratlin of the Fifteenth Circuit Solicitor's Office prosecuted the case. On March 10-12, 2013, Petitioner proceeded to trial before the Honorable Edward B. Cottingham and a jury. He was subsequently convicted as indicted. Petitioner was sentenced to a twelve-year term of imprisonment by Judge Cottingham.

Petitioner pursued a direct appeal from his conviction and sentence. He was represented by Robert Michael Dudek of the Appellate Division of the South Carolina Commission of Indigent Defense. Appellate Counsel raised issues regarding the constitutionality of the forensic interview statute and the prejudicial nature of the bolstering testimony of Dr. Carol Rahter.

Oral argument was heard before the Supreme Court on February 9, 2016. Petitioner was represented by counsel Dudek, and the State was represented by Jennifer Ellis Roberts of the South Carolina Attorney General's Office. The Supreme Court affirmed Petitioner's conviction by opinion decided April 20, 2016. *State v. Legg*, 416 S.C. 9, 785 S.E.2d 369 (2016). The Remittitur was issued on May 6, 2016.

Petitioner filed his first application for Post-Conviction Relief on December 17, 2014 (2014-CP-26-08376). The application was dismissed without prejudice by Order of the Honorable Steven H. John dated April 20, 2015, and filed May 6, 2015, due to the then-pending appeal.

Petitioner filed a second application for Post-Conviction Relief on October 13, 2016. (2016-CP-26-06592). The *pro se* application raised numerous issues in a 220-page, handwritten application, prompting a motion from the Respondent for a more definite statement. Petitioner filed a 203-plus page amendment on January 14, 2019, which alleged he was held unlawfully for sixty-four different grounds for relief.

Respondent made its return on or about October 11, 2017. The Court held an evidentiary hearing on the matter on March 28, 2019, at the Horry County Government & Justice Center in Conway, South Carolina. Petitioner was present at the hearing and proceeded *pro se*. Johnny Ellis James Jr. of the South Carolina Attorney General's Office represented Respondent.

In the Court's Order of Dismissal filed on July 31, 2019, the Court commented on the style of writing in which Petitioner drafted his Application. Specifically, the Court stated the "volume, structure, and interconnected nature of the allegations as presented by [Applicant] do not permit a traditional recitation of the grounds here. Nor do the allegations permit a traditional subsection-per-allegation form of written

order, as might typically ensure complete compliance with statutory mandate and precedent.” In lieu, the Court broadly categorized each of Petitioner’s claims into the following four categories and addresses same in its Order:

1. Ineffective Assistance of Pre-Trial Counsel R. Scott Joye;
2. Ineffective Assistance of Trial Counsel William I. Diggs;
3. “Overreaching” or Cumulative Error; and,
4. Prosecutorial Misconduct of Prosecutor Martin D. Spratlin.

Between Petitioner’s Application, his Amended Application, and the issues raised in the evidentiary hearing, the Court also notes that over the course of Petitioner’s Application, and Amended Application, Petitioner takes issue with almost every distinguishable element of the trial and Mr. Diggs’ representation of him.

At the evidentiary hearing, the Court heard testimony from R. Scott Joye, Esq., William I. Diggs, and Martin D. Spratlin, Esq. Petitioner proceeded *pro se* at the hearing, but did provide testimony to the Court. Additionally, the Court had before it Petitioner’s records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Petitioner’s direct appeal records, and the pleadings in this matter.

The Court's Order of Dismissal was filed on July 31, 2019. A Motion to Alter/Amend Pursuant to Rule 59(e), SCRCPP was filed by Petitioner on August 12, 2019, to remove the language directing Petitioner to be remanded to the Department of Corrections, as he had been released at the time. The Court granted Petitioner's Motion and amended the Order to Dismiss in an Order to Amend filed August 19, 2019.

Petitioner filed a second Motion to Alter/Amend Pursuant to Rule 59(e), SCRCPP on August 27, 2019, asking the Court to amend its ruling and rule on every issue raised in the Petitioner's Post-Conviction Relief Application. The State filed a Return to Applicant's Motion on April 15, 2024. The Court denied Petitioner's Motion in an Order filed May 1, 2024. On May 7, 2024, Petitioner filed a Motion for Extension of Time to File to provide him an opportunity to respond to the State's Return. On June 25, 2024, Petitioner filed an Appeal with the South Carolina Supreme Court to allow him to reply to the State's Return. On November 8, 2024, the Supreme Court dismissed the case for failure to provide the petition for writ of certiorari and appendix. On November 18, 2024, Petitioner filed a petition for reinstatement based on the fact that he believed the South Carolina Commission of Indigent Defense was handling the petition for writ of certiorari. On January 16, 2025, the Supreme Court granted the petition for reinstatement.

SUMMARY OF EVIDENCE ADDUCED AT TRIAL

Between June 2010 and June 2011, the minor child lived with her mother, Dinita Whipple, her two siblings, a family friend named Shannon Lawrimore and her stepfather in a doublewide trailer next to Petitioner and his roommate Bob, who was mentally challenged. (App. 512-6, 16-23).

The minor child and her brother would go over to Petitioner's house to read books, do projects with him, and play with his cats. Ms. Whipple testified that when the children would go to Petitioner's house, she was "pretty much home" and that they were not allowed to go inside his home. Eventually, Petitioner took minor child and her brother to school, to Walmart, to the mall, to the river to go swimming. (App. 519-23, 20-13).

Ms. Whipple testified that she saw Petitioner wrestle with minor child and that she Petitioner looking at her "in places he shouldn't be looking at her." (App. 523, 17-21).

The minor child testified that she did not always follow her mother's rule about not going in the house, and various people including her brother, Shannon, and her friend would also be in the house at different times. (App. 550, 3-6).

She testified the first time Petitioner made her uncomfortable was approximately a month or two after he moved in and that he would touch her vagina

over her clothes in his truck with Bob in the truck with them. She testified he would not move his hand until she physically moved it for him.

Minor child testified that on the day she told her mom, Petitioner touched her under her clothes by sticking his hands down in her pants, in her butt crack and spread her legs. She told him to stop and he replied, "I'm just stretching you." (App. 552-5, 1-21).

Minor child testified to other instances where Petitioner made her feel uncomfortable including a time at the river when he swam underwater, pulled off her bathing suit bottoms, swam the opposite way and held them up and said "ha, ha, ha." (App. 556, 22-23). Shannon was also present when this incident occurred and told Petitioner to give the bottoms back to minor child.

Minor child recounts an incident where her and her brother slept in a tent with Petitioner in his backyard. Minor child testified Petitioner slept next to her and put his arm around her and grabbed her on her vagina over her clothes and pulled her towards him while her brother was also in the tent. (App. 559, 11-25).

An additional incident minor child testified to was one time at Petitioner's house he touched her vagina while he was cooking. (App. 562, 4-20).

Minor child testified that Petitioner would grab her breasts when they were in the truck and also expose himself before he would take a shower at his house. She stated that Bob, and her friend were also present when he exposed himself.

Additionally, minor child testified that he would call his penis “the congressman” and that he showed her movies with men and women having sex. (App. 564-9, 3-9).

Detective Neil Frebowitz also testified. Through his testimony, the statement Petitioner gave to the police after his arrest was played for the jury. Additionally, Mr. Diggs elicited testimony from Detective Frebowitz on cross that Petitioner had digitally penetrated the minor child’s vagina. (App. 677-83, 4-15).

Petitioner was found guilty of lewd act on a child after the jury deliberated for a little over an hour.

STANDARD OF REVIEW

The burden of proof is on the Petitioner in a Post-Conviction relief proceeding to prove the allegations asserted in his application for relief and at his Post-Conviction Relief hearing. *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000); Rule 71.1(e), *SCRCP*.

The moving party must demonstrate that Trial Counsel failed to provide reasonable professional assistance of counsel under the prevailing standards for criminal defense attorneys, and that due to these errors and/or omissions of Trial Counsel, he was deprived of a fair trial. *Strickland v. Washington*, 466 U.S. 668 (1984). The Applicant must show that, but for Trial Counsel's errors, there is a reasonable probability that the outcome of the trial would have been different. *Id.*, *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). The South Carolina Supreme Court has defined a "reasonable probability" as one which is sufficient to undermine confidence in the outcome of the trial. *Ard v. Catoe*, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007).

If Trial Counsel can articulate a valid reason for his trial strategies, then the conduct should not be deemed ineffective. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). However, Trial Counsel cannot explain away errors which prejudiced his client's ability to receive a fair trial simply by labeling them "trial strategy". Trial Counsel

must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, which is measured against an objective standard of reasonableness.

Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002).

ARGUMENTS

Question I:

Did the lower court err in denying Petitioner relief where the record below established that he met his burden of proof concerning his claim that Trial Counsel provided him ineffective assistance of counsel, in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, where Trial Counsel failed to effectively represent Petitioner due to personal matters which affected Trial Counsel's ability to advocate.

During the pendency of Petitioner's case, Trial Counsel was in the process of being disbarred. He was initially disbarred from the North Carolina State Bar on June 9, 2016, and subsequently disbarred from the South Carolina State Bar on September 28, 2016.

Beginning in 2012, and continuing until his disbarment, Trial Counsel was disbursing funds from his trust account through improper means and without identification as to the client whose funds were being disbursed, misappropriating the funds for his own personal use and benefit.

In addition to his disbarment and financial troubles, Trial Counsel was also the sole provider for his bedridden wife and was homeless at times and living out of his car. "There was a time when we were actually homeless during that period of time. Try handling that with a spouse who is bedridden..." (App. 357, 1-3).

At the evidentiary hearing, Trial Counsel reflected on his situation at the time of Petitioner's trial and stated "[w]hat I should have done, now realizing looking back I was in over my head. It was too much going on. I couldn't handle everything

responsibly.” (App. 352-3, 25-2). Counsel went on to say “— I look back on it now, I should have closed my office, but I had hundreds of cases ongoing and it’s difficult to just extract yourself out of that operation under those circumstances. It was very, it was difficult. I didn’t handle it properly and here’s the result.” (App. 353, 7-11).

Trial Counsel also testified “it was like a train that was out of control from my perspective in terms of my practice.” (App. 355, 11-12). He further testified that “it was a life and death situation from my perspective...” (App. 358, 15) and that “...things were beyond my ability to manage them.” (App. 358, 6-7).

It is difficult to conceive how Trial Counsel could focus on anything else other than his personal situation, which was quickly spinning out of control. By his own testimony, Trial Counsel stated that he was unable to manage everything responsibly because of everything he had going on. It is clear, albeit unfortunate, that Petitioner’s case did not get the attention it required, which led to Trial Counsel making numerous mistakes causing his representation of Petitioner to be ineffective.

Question II:

Did the lower court err in refusing to find ineffective assistance of counsel, in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, where Trial Counsel failed to object to multiple occasions of bolstering the testimony of the minor child, and himself bolstered the testimony of the minor victim by eliciting otherwise inadmissible testimony?

Throughout the trial, Trial Counsel failed to object to multiple instances of various witnesses bolstering the minor child’s testimony by referring to her as a

“victim.” He further failed to object to testimony from multiple witnesses as to what the minor child told them Petitioner did to her allowing the witnesses to testify to matters outside the time and place of the incident, including details as to the conduct alleged as well as testimony that Petitioner was the one she named as the perpetrator.

During opening statements, Assistant Solicitor Spratlin spoke to the jury about The Children’s Recovery Center where Ms. Natalia Achury Demaio, one of the State’s witnesses, worked. Mr. Spratlin referred to the Center as being there “to help victims of sexual assault.” (App. 502-3, 25-1). He went on to say that “[o]ne of the things they do is they interview the victims of sexual assault. They interview them as close in time to the sex- -- to the abuse as they possibly can.” (App. 503, 2-4).

In the presence of the jury, during the State’s examination of the minor child, Judge Cottingham refers to the witness as a victim; “Please have that last victim – not victim, but witness resume –.” (App. 577, 8-9). Although the Judge caught himself referring to the minor child as a victim, the damage was done, and no objection was made, nor curative instruction given.

During the testimony of Dinita Whipple, the mother of the minor child, Trial Counsel failed to object to the following testimony:

...and I said, minor what’s wrong? Is there something else wrong? And she said yes. I said well, tell me, and she said that Don had spread her legs and she told him to stop, and he had put his hands – his fingers down her butt crack...”

(App. 527, 2-6)

During Officer Gregroy Lent's testimony, he referred to the minor child as the victim without any objection from Trial Counsel. "I had been called down to respond to the victim's mother's residence. This was in reference to a complaint that she had made about some inappropriate touching that had gone on between the victim and the Defendant, so I went out there to write the initial report. I spoke with the victim's mother, the victim, and then I went next door or next door to where the Defendant lived and spoke with him." (App. 653, 1-8).

Further Officer Lent testified to hearsay from Ms. Whipple, the minor child's mother, as to what the minor child had told her regarding the allegations. Not only is this double hearsay, but by failing to object, Trial Counsel is allowing the Officer to bolster the minor child's testimony by corroborating her statement and testifying to more than time and place in regards to what minor child said occurred.

Trial Counsel also failed to object to Detective Neil Frebowitz referring to the minor child as the victim. Detective Frebowitz stated "...I went to the home and spoke to the victim and her mother." To which the solicitor repeated, "[s]o you went over to the home and spoke with the victim and her mother?" (App. 664-5, 25-3).

Trial Counsel elicited testimony from several witnesses which bolstered the testimony of the minor child, and went into areas on his cross that the State would not have been permitted to elicit without the defense first opening the door to same.

During the cross of Detective Frebowitz, Trial Counsel asks the Detective if he made “the allegation that my client had digitally penetrated the vagina of this child” in an affidavit which was not in evidence and had not been previously brought up by the State. (App. 682, 7-9). The detective goes on to testify that the “victim” had told him that information and although she did not specifically say those words during the video interview, she “said he touched her vagina. The depth of penetration is something that a ten-year-old I would not expect at the time to understand.” (App. 682-3, 25-2).

Mr. Spratlin would not have been allowed to go into this area of testimony, but for Trial Counsel opening the door. Taking the opportunity to do so, in response to this line of questioning, Mr. Spratlin goes deeper into the issue of penetration with Detective Frebowitz on redirect. Detective Frebowitz testified “[w]hen I interviewed the victim initially, she stated that the Defendant had touched her between her legs, that it happened under her clothes, and she made a motion, and I remember clearly, she made sort of a grabbing motion. That was consistent with my experience of a digital penetration to the vaginal area.” (App. 693, 9-14).

Not only did Trial Counsel fail to object to this line of question for bolstering the testimony of the minor child, but Detective Frebowitz also testified to matters outside time and place, which in child sexual assault cases is not allowed.

In criminal sexual conduct cases, it is a common hearsay exception that when the victim testifies, evidence from other witnesses that the victim complained of the assault is admissible, limited to the time and place of the assault and excluding any details or particulars, including who did it. *State v. Schumpert*, 312 S.C. 502, 506, 435 S.E. 2d 859, 862 (1993). The issue of digital penetration had not been raised by the minor child during her testimony, nor was it raised by the State. It was only brought to the attention of the jury by Trial Counsel.

Towards the end of the cross-examination of Detective Frebowitz, Trial Counsel asks the Detective about the protocol after a forensic interview is performed. The following exchange occurred between Trial Counsel and Detective Frebowitz:

Trial Counsel: And it goes to Court if you've got some evidence of this element?

Detective: Exactly, and I can point to a case I had where just the opposite happened.

Trial Counsel: Okay.

Detective: The child did not disclose and we did not effect an arrest.

(App. 691, 7-13).

This exchange between Trial Counsel and the Detective leaves a jury to believe that because an arrest was made, the minor child's allegations are true, otherwise an arrest would not have been made.

Further, during closing arguments, Trial Counsel told the jury that "the child is going to be – she's going to have everything available to her that the system can

offer...” (App. 735, 10-11). This statement made by Trial Counsel tends to bolster the testimony of the minor child by insinuating that she is going to need counseling, and other services to get through what Petitioner has done to her.

“To deem an error harmless, the court must determine beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *State v. McKerley*, 391 S.C. 461, 467, 725 S.E.2d 139, 143 (Ct. App. 2012), quoting *State v. Fonseca*, 383 S.C. 640, 650, 681 S.E.2d 1, 6 (Ct. App. 2009). This case turned solely on the credibility of the minor and the Petitioner.

The assessment of witness credibility is within the exclusive province of the jury. Witnesses are not allowed to testify as to whether another witness is telling the truth, nor can a witness improperly bolster the credibility of another witness. *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012).

South Carolina opines that it is improper for an expert, or any other witness, to comment on the veracity of a child’s accusations of sexual abuse. *State v. Jennings*, 394 S.C. 473, 480, 716 S.E. 2d 91, 94 (2011), see *State v. Dawkins*, 297 S.C. 386, 393-94, 377 S.E. 2d 298, 302 (1989).

In *Jennings*, the Supreme Court found that the State improperly introduced written reports which allowed the forensic interviewer to improperly vouch for the minor’s credibility. The Court found that the error was not harmless because the only

evidence provided by the State was that of the children and other hearsay evidence of their accounts. 394 S.C. 473, 479-80.

In *State v. Anderson*, the State called a witness and qualified her as an expert in “child abuse assessment and forensic interviewing.” The Supreme Court found that this qualification was error, and that the testimony impermissibly bolstered the minor’s credibility which prejudiced the Appellant because the case turned solely on the credibility of the minor and the Appellant. 413 S.C. 212, 776 S.E. 2d 76 (2015).

Trial Counsel not only allowed witnesses to bolster the testimony of the minor child, but brought out testimony that would not have been allowed to be presented by the State. Similarly to these cases, the State’s evidence against the Petitioner consisted solely of the minor’s testimony. There was no physical evidence to corroborate her allegations. The failure to object to bolstering testimony, and the decision to elicit testimony regarding penetration that would not have otherwise been admissible, cannot be considered harmless error in that not only was the minor child’s testimony bolstered, but details were added that would not have otherwise been heard by the jury.

Question III:

Did the lower court err in denying Petitioner relief where the record below established that he met his burden of proof concerning his claim that Trial Counsel provided him ineffective assistance of counsel where Trial Counsel failed to properly investigate the case – specifically failing to investigate the minor child’s background, and failing to request *Giglio* material on Detective Frebowitz?

In reviewing the quality of representation, the Court takes note that the “finely ground lens of 20/20 hindsight does not affect our vision.” *Martin v. Maggio*, 711 F.2d 1273, 1279 (5th Cir. 1983), quoting *Williams v. Maggio*, 695 F.2d 119, 123 (5th Cir. 1983). To be effective, counsel is required to conduct a “reasonable amount of pretrial investigation.” *Id.*, at 1280.

A criminal defense attorney has a duty to perform a reasonable investigation. *Thompson v. Wainwright*, 787 F.2d 1447, 1450 (11th Cir. 1986). The case law establishes that when evaluating reasonableness of counsel’s conduct, a court should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case presented to him. While “the scope of a required investigation depends on a number of issues that may be unique to the case and their complexity, the strength of the government’s case and the overall strategy of trial counsel, at a minimum, counsel has a duty to interview potential witnesses and to make an *independent* investigation of the facts and circumstances of the case.” *Troedel v. Wainwright*, 667 F. Supp. 1456, 1461 (S.D. Fla. 1986), *aff’d*, 828 F.2d 670 (11th Cir. 1987), citing *Nealy v. Cabana*, 764 F.2d 1173, 1177 (5th Cir. 1985) and *Martin v. Maggio*, at 1280.

During opening statements at the trial, Trial Counsel referred to the minor child’s mother as a “single mother” (App. 507, 25) because he was unaware that she was married, and minor child had a stepfather who resided in the house with them.

Although this fact may seem somewhat insignificant, it shows how little investigation Trial Counsel did in that he was unaware that another adult male was involved in minor child's life and lived in the home with her.

Trial Counsel also failed to inquire into the background of the minor child by requesting school records or investigating her in any way by looking at her social media accounts, talking to counselors, or conducting other investigations of that nature. During the evidentiary hearing, Trial Counsel testified "...I didn't go into the background, the child's background at school or anything like that because in my opinion we were looking at the child's credibility, what she was going to say on the stand." (App. 443, 11-14). This statement would be precisely the reason to investigate the minor child's background, in order to find impeachment evidence to use against her on the stand.

In regard to Detective Frebowitz, Trial Counsel failed to request any *Giglio* information on him. *Giglio v. United States*, 405 U.S 150, 92 S. Ct. 763 (1972). This request would have been important because shortly after the trial, Detective Frebowitz was fired from the Sheriff's Office, and had *Giglio* information been requested, Detective Frebowitz's termination letter would have been turned over to the defense.

Although Trial Counsel testified that Detective Frebowitz did not offer any direct evidence, that statement is not valid. As detailed under Question II, Detective

Frebowitz testified that the minor child had told him that Petitioner digitally penetrated her, which not only corroborated the minor child's story, but also elicited details that the jury had not previously heard from any other witness.

Thus, any information that could bring Detective Frebowitz's credibility into question, would have certainly been beneficial to Petitioner's defense.

The *Troedel* factors support a finding of ineffective assistance of counsel here. Mr. Diggs had a duty to make an independent investigation of the facts and circumstances and failed to do so. The information that could have been gathered from these investigations could have changed the outcome of the trial.

Question IV:

Did the lower court err in refusing to find that the cumulative effect of the deficient performance of Trial Counsel established prejudice requiring a new trial?

The PCR Court relied on *Green v. State* in addressing the "Cumulative Error" category of Petitioner's Application. 351 S.C. 184, 569 S.E.2d 318 (2002). The *Green* Court commented that "[w]hether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina." *Id.*, 351 S.C at 197, 569 S.E.2d at 325. The Court further opined, "the threshold to asking the cumulative prejudicial question is to first find multiple errors." *Id.*

Because the Court found no instances of error on the part of Trial Counsel, it declined to find a “multiplicity of prejudice to consider in cumulative form.” (App. 265).

However, the *Green* Court is correct in saying that this area of law is unsettled. In *State v. Freeman*, 310 S.C. 110, 459 S.E.2d 867 (Ct. App. 1995), the Court found that multiple errors, which were not prejudicial on their own, could be prejudicial to deny an individual a right to a fair trial when viewed together.

"The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." *State v. Beekman*, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013), quoting *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). "An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." *Id.*

In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact trial counsel’s error had on the outcome of the trial. *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018), see *Strickland v. Washington*, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069 (1984) (stating “a

verdict...only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support”).

In addition, the PCR court should consider the strength of the State’s case in light of all the evidence presented to the jury. *Id.*, see generally *Jones v. State*, 332 S.C. 329, 504 S.E.2d 822, 824 (1998).

The *Smalls* Court opined that the strength of the State’s case is “one significant factor the court must consider – along with the specific impact of counsel’s error and other relevant considerations – in determining whether the applicant has met his burden of proving prejudice.” *Smalls*, at 190.

Here, the State’s case was not strong. The case was solely based upon the credibility of the minor child. There was no forensic evidence, and no witnesses to the alleged sexual assault. The State’s case relied on the credibility of the minor child and her testimony.

Trial Counsel’s errors included numerous occasions of failing to object to witnesses bolstering the testimony of the minor child, eliciting testimony regarding additional sexual misconduct reported by the minor child that the State could not elicit without the defense opening the door, failing to investigate the background of the minor child and the lead detective, and allowing witnesses to testify to details of the alleged acts including conduct and naming the Petitioner as the perpetrator.

These errors taken together certainly changed the outcome of the trial, as the State elicited testimony from multiple witnesses without objection which bolstered the testimony of the minor child. Further, Trial Counsel elicited testimony that the Petitioner digitally penetrated the minor child, which was not elicited by any other witness, not even the minor child herself.

CONCLUSION

Based on the foregoing, Petitioner asserts that he has met his burden of proof with regard to his claims that his right to effective assistance of counsel as protected by the Sixth and Fourteenth Amendments to the United States Constitution was violated with regard to each of the allegations addressed herein. Petitioner asks that the writ be granted, that his judgment for lewd act on a minor child be vacated and that his charge be remanded to the Horry County Court of General Sessions for a new trial. Alternatively, he prays that the writ be granted in order to be afforded the opportunity to fully brief the issues addressed herein.

Respectfully submitted,

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ATTORNEY FOR PETITIONER

This ____ day of May, 2025.

THE STATE OF SOUTH CAROLINA

RECEIVED

IN THE SUPREME COURT

May 30 2025

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of General Sessions

Bentley Price, Circuit Court Judge

Case No. 2024-001061

Ronnie L. Legg,
Petitioner,

v.

State of South Carolina,
Respondent.

PROOF OF SERVICE

I certify that I have served the Writ of Certiorari and Appendix on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on _____, addressed to Respondent’s attorney of record, D. Russell Barlow, II, Post Office Box 11549, Columbia, South Carolina, 29211.

s/Stephanie Jones
Stephanie Jones, PP, SCCP
Paralegal to Alissa Wilson

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