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Aug 11 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable R. Scott Sprouse, Circuit Court Judge

Opinion No. 2025-UP-273
Filed July 30, 2025

JASON ERVIN BLACK,

RESPONDENT-PETITIONER

V.

STATE OF SOUTH CAROLINA,

PETITIONER-RESPONDENT

APPELLATE CASE NO. 2021-000525

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Jason Ervin Black requests that this Court grant rehearing because this Court erred in weighing the credibility of the witnesses. “In a law case tried before a jury, it is the jury that must decide what part of the witness’s testimony it wants to believe and what part it wants to disbelieve. Under such circumstances, it is not the function of this Court to weigh the evidence and determine the credibility of the witnesses.” Small v. Pioneer Mach., Inc., 329 S.C. 448, 465, 494 S.E.2d 835, 843-44 (Ct. App. 1997). This Court mistakenly weighed witness credibility when it determined Black could not prove prejudice.

The Supreme Court's Opinion in the direct appeal found harmless error only after Bush's credibility had been impeached by a prior conviction that was not challenged on appeal. Had the jury not heard any impeachment of Bush, it would have then needed to weigh the credibility of an unimpeached alibi witness and Black against the credibility of complainant and her friend. Errors in criminal sexual conduct cases that are credibility contests rarely can be harmless. State v. Stukes, 416 S.C. 493, 500, 787 S.E.2d 480, 483 (2016).

This Court's decision improperly usurps the jury's vital jury function of assessing credibility. This Court wrote, "Further, we find Black's testimony at trial was evasive and not credible in other ways. . ." and then criticized Black's description of his interactions with complainant. Opinion at 7. The Opinion's finding that Black's credibility was impaired by his prior CSC conviction shows this error. If Black's credibility was impaired by a prior conviction, then so was Bush's. The removal of that improperly admitted impairment of Bush's testimony means that a jury should weigh the competing testimony. Furthermore, in a retrial, the jury would not learn of Black's prior CSC conviction until after it decided whether he committed the crime charged. State v. Cross, 427 S.C. 465, 832 S.E.2d 281 (2019).

The trial judge succinctly stated why counsel's error was prejudicial. When ruling on the impeachment's admissibility, then-Judge Few stated that Bush's "testimony here is critical. It's a very important piece of testimony. If his testimony is true, then it means that this crime could not have even happened at all." App. 284. The trial judge added, "That, of course, makes the issues of credibility, his credibility essential." App. 284.

Because weighing credibility is a function for a jury and not the appellate court, this Court should grant rehearing, affirm the judgment of the PCR court, and allow Black to be retried.

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

David Alexander
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
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ATTORNEY FOR JASON ERVIN BLACK

This 11th day of August, 2025.

STATE OF SOUTH CAROLINA

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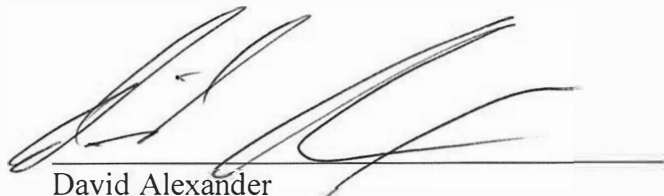
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000525

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Kaylee C. Kemp, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Jason Ervin Black, #322628, at 118 Left Fork Road, , Pickens, SC 29671, this 11th day of August, 2025.



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ATTORNEY FOR JASON ERVIN BLACK