RECEIVED
Sep 11 2025
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Grace Gilchrist Knie, Circuit Court Judge

MALIK JABREE SINGLETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000502

JOHNSON PETITION FOR WRIT OF CERTIORARI

GARY H. JOHNSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether the PCR court erred in finding trial counsel was effective when he failed to contest the admission of petitioner's criminal history under Rule 609(a)(1), SCRE, or Rule 403, SCRE, before advising petitioner not to testify thus preventing a knowing and intelligent waiver of his constitutional right to testify in his own defense?

STATEMENT

Petitioner was indicted by the Sumter County grand jury for the offenses of attempted murder and possession of a weapon during the commission of a violent crime. App. 400. Petitioner was tried before the Honorable George M. McFaddin, Jr. and a jury from January 14, 2019, through January 17, 2019. App. 1. During trial, petitioner was represented by Jason Bridges and John Meadors appeared on behalf of the state. App. 1.

The jury found petitioner guilty of the lesser-included offense of assault and battery of a high and aggravated nature ("ABHAN") and of possession of a weapon during the commission of a violent crime. App. 327, l. 18 – 328, l. 5. Petitioner was sentenced on the ABHAN conviction to twenty years imprisonment suspended upon the service of fifteen years and to a consecutive five-year term of imprisonment for the weapons charge. App. 332, ll. 2 – 23.

Petitioner filed a direct appeal asserting error in the admission of his statements to law enforcement that were not voluntary. The Court of Appeals denied relief in an unpublished opinion. *See* State v. Singleton, No. 2019-000124 (S.C. Ct. App. Dec. 8, 2021). Following denial of rehearing by the Court of Appeals, the South Carolina Supreme Court denied a petition for certiorari by written order dated September 8, 2022.

Following remittitur, petitioner filed for post-conviction relief. App. 336. An evidentiary hearing was held before the Honorable Gracie Gilchrist Knie on July 24, 2024. App. 359. Timothy Griffith appeared on behalf of petitioner and Cruise Mitchell represented the state. App. 360. Judge Knie denied relief by written order of dismissal dated September 17, 2024. App. 387

- 399. Counsel for petitioner obtained notice of the filing of the order of dismissal through a public record search on March 6, 2025, and filed a notice of appeal on that same date.[1]

This petition for certiorari follows.

ARGUMENT

The PCR court erred in finding trial counsel was effective when he failed to contest the admission of petitioner's criminal history under Rule 609(a)(1), SCRE, or Rule 403, SCRE, before advising petitioner not to testify thus preventing a knowing and intelligent waiver of his constitutional right to testify in his own defense.

Criminal defendants are entitled to the effective assistance of counsel pursuant to the Sixth and Fourteenth Amendments to the United States Constitution. "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). "An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense." Wiggins v. Smith, 539 U.S. 510, 521(2003). "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id.

[1] There is no notation that the order of dismissal was ever served on the parties in the public index for Sumter County. See https://publicindex.sccourts.org/Sumter/PublicIndex/CaseDetails.aspx?County=43&CourtAgency=43002&Casenum=2022CP4300310&CaseType=V&HKey=1128255108687347765512047487999487152797211410384741078678821121035688539010384100113667374109120 81

at 687-688. "[T]he performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." Strickland, 466 U.S. at 688. Concerning prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

A. How the issue impacted trial.

During the sentencing phase of trial, the solicitor noted petitioner's prior criminal record for the trial court to consider:

> Judge, as far as a prior record, possession of marijuana in March of 2016 and breaking and entering, I believe, a vehicle in 2016 -- June of 2016. Got five years suspended, five years probation. So I guess he was on -- unless I'm corrected -- probation when this occurred. Entry of the lands of another, two [sic] of 2016. Breach of peace, August of 2016. Looks like his parole was violated. He has another pending charge of neglect, which we'll deal with later.

App. 330, ll. 5 – 12.

Petitioner never took the stand during trial. Importantly, the trial court, during questioning regarding petitioner's rights to testify, failed to conduct any inquiry as to which, if any, aspects of petitioner's prior record could be used for impeachment purposes. App. 260, l. 12 – 262, l. 19.

B. How the issue was raised during PCR.

During the evidentiary hearing, petitioner testified that the reason he elected not to take the stand in his own defense centered on trial counsel's advice regarding his prior record:

> I already had talked to my attorney and he told me, you know, they would use my background against me. That's why I didn't even try to speak. And me being young, I didn't have no bad background.

App. 371, ll. 15 – 18.

Petitioner felt that the jury would have benefited from hearing his side of the story directly:

> Q. Okay. Another one of the grounds that you stated in your application is ineffective assistance of counsel because you wanted to testify, but your attorney told you no, you couldn't testify. Is that right?
>
> A. Yes, sir. I heard everyone else's side of the story, and you know, the -- and every -- everyone else's story wasn't true, you know? The only one that knows the story is me, you know, so, I -- I feel that if I had the freedom -- the freedom of speech to speak for myself, you know, maybe the jury wouldn't have found me guilty on that charge.

App. 370, l. 22 – 371, l. 7.

Trial counsel acknowledged his belief that petitioner's record played a role in not calling him as a witness.

> Yes. My recollection of that is we were both in agreement that that as not a good idea. The jury had already hurled -- hold -- heard a almost four, you know, four or five hour statement from him where he had changed his story like three or four different times. And we felt additional testimony there would just give the State so much impeachment opportunity that anything he could say would not be helpful.
>
> *Plus, he had a -- he was currently on YOA probation that would have been an admissible conviction of a felony that could have been brought up.* Strategically, I just felt like that wouldn't add anything to the trial and could potentially hurt us. And it was my recollection that Mr. Singleton agreed with my assessment at the time.

App. 378, l. 22 – 379, l. 11.

C. How the PCR court ruled.

The PCR court ruled that the "the trial court engaged in a thorough colloquy with Applicant explaining his right to testify or not and the consequences of either choice . . ." App. App. 393. The PCR court, based upon what was deemed credible testimony from trial counsel, petitioner "was properly advised of right to testify and voluntarily chose not to." App. 393 – 394.

D. How the PCR court erred.

> The right to testify is also found in the Compulsory Process Clause of the Sixth Amendment, which grants a defendant the right to call "witnesses in his favor," a right that is guaranteed in the criminal courts of the States by the Fourteenth Amendment. *Washington v. Texas*, 388 U.S. 14, 17–19, 87 S. Ct. 1920, 1922–1923, 18 L.Ed.2d 1019 (1967). Logically included in the accused's right to call witnesses whose testimony is "material and favorable to his defense," *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867, 102 S. Ct. 3440, 3446, 73 L.Ed.2d 1193 (1982), is a right to testify himself, should he decide it is in his favor to do so.

Rock v. Arkansas, 483 U.S. 44, 52 (1987).

A defendant's waiver of this right must be knowing and intelligent. *See* Brown v. State, 340 S.C. 590, 595, 533 S.E.2d 308, 310 (2000). In Brown, this Court noted trial counsel "failed to inform respondent of his Fifth Amendment privilege and the consequences of waiving that privilege" before Brown took the stand and that "[f]ailure to inform a client of his Fifth Amendment rights and the consequences of exercise and waiver of those rights falls below an objective standard of reasonable representation." Id., 340 S.C. at 595, 533 S.E.2d at 310.

Here, petitioner was entitled to competent advice concerning which aspects of his prior record could have been used for impeachment purposes in order to knowingly and intelligently waive his right to testify in his own defense.

> Rule 609 sets boundaries on the admissibility of the conviction by requiring the court to balance the probative value of the conviction against its prejudicial effect. The specific balancing test to be

> conducted depends upon the type of conviction, whether the witness is the accused in a criminal case, and whether the conviction is remote. As noted above, Rule 609(b) provides that a remote conviction is not admissible "unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

State v. Brewton, 442 S.C. 169, 178–79, 898 S.E.2d 132, 136–37 (2024).

Moreover, this Court has reminded

> the trial bench and the bar of the importance of an on-the-record evaluation of the weight to be given each *Colf* factor (and any other relevant factor). Such an evaluation allows the appellate court to fully consider the degree of discretion exercised by the trial judge in admitting, excluding, or limiting the evidence.

Brewton, 442 S.C. at 182–83, 898 S.E.2d at 139.

Here, trial counsel made no effort to exclude petitioner's prior convictions under the guidance of Rule 609(a)(1), SCRE, or Rule 403, SCRE. As such, the trial court was therefore not required to rule on the Coif[2] factors or balance the probative value of the convictions with their prejudicial impact. Trial counsel failed to articulate a valid strategic reason for waiving any argument over the admissibility of the prior record, simply accepting the convictions would be admissible regardless: "Plus, he had a -- he was currently on YOA probation that would have been an admissible conviction of a felony that could have been brought up."

Prejudice.

> An accused's right to testify "is either respected or denied; its deprivation cannot be harmless." *McKaskle*, 465 U.S. at 177 n. 8, 104 S. Ct. 944. As such, the error is structural in that it is "'so basic to a fair trial that [its] infraction can never be treated as

---

[2] 1. The impeachment value of the prior crime; 2. The point in time of the conviction and the witness's subsequent history; 3. The similarity between the past crime and the charged crime; 4. The importance of the defendant's testimony; 5. The centrality of the credibility issue.

State v. Colf, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2000).

> harmless error.'" *Fulminante*, 499 U.S. at 289, 111 S. Ct. 1246 (*quoting* Chapman, 386 U.S. at 23, 87 S. Ct. 824).

State v. Rivera, 402 S.C. 225, 249–50, 741 S.E.2d 694, 707 (2013). Since trial counsel's ineffectiveness prevented petitioner from exercising a fundamental right, the depravation of which is a structural error, no prejudice need be shown to justify reversing petitioner's conviction and ordering a new trial. While this Court in Brown v. State, 340 S.C. 590, 533 S.E.2d 308 (2000) conducted a full prejudice analysis, that was required since Brown had in fact testified during trial. Here, petitioner was improperly denied his right to knowingly and intelligently waive his right to testify due to ineffective assistance of counsel. As such, the impact is structural in nature as dictated by Rivera.

To the extent prejudice would be required, the state's case was based on the credibility of witnesses and the impact of petitioner's "confession." As petitioner's counsel acknowledged:

> That [petitioner's statement] was the State's main evidence in this case, in my opinion. Of course, you had the testimony of the victim, and you had some other kind of very circumstantial things; but the State deemed that a confession. They deemed that Mr. Singleton first lied about where he was and then admitted to being on scene and then admitted to ultimately doing it and then retracting it.

App. 377, ll. 12 – 19.

The charges stemmed from an incident on December 14, 2016, at around 2:00 a.m. when Travis Dow ("Travis") was shot by an intruder at his sister's house. App. 111, ll. 10 – 21. After being shot, Travis ran to his parent's house next door to alert them of what happened. App. 114, ll. 14 – 15. Initially, Travis told his father that he did not know who shot him. App. 246, ll. 18 – 20. Later that night, however, Travis claimed that "Malik" was the person who shot him. App. 243, ll. 11 – 14. Investigator Charles Bonner spoke with Travis at the hospital about what happened. App. 161, l. 20 – 162, l. 2. Investigator Bonner obtained a written statement from

Travis in which he claimed that "Malik Wright" was the person who shot him. App. 162, ll. 14 – 25. Petitioner was then detained by officers and transported to the Sheriff's Office at 4:50 a.m. App. 163, ll. 16 – 20. Investigator Bonner then left the hospital and went to the Sheriff's Office and immediately began to interrogate petitioner. App. 163, l. 21 – 164, l. 1.

As to the value of petitioner's eventual statements of involvement, trial counsel's summation to the jury during trial centers on the jury's need to find the "confession" credible and believable considering the manner of the interrogation:

> And now we get to the interrogation video, that I thank you for your patience in watching. That was over four hours. I know it was very tedious to watch. And Malik was 20 years old when that happened. He was in that room for over four hours. They told him, right after they talked to TJ at the hospital, right after they knew he was okay, they told him he was going to die. They told him he was going to be charged with attempted murder. They did nothing to avail that. They fed right into it.
>
> . . .
>
> I find it hypocritical that the police can say, Oh, it's their job to find the truth, in these tactics, when they lie to him over and over again. They say, Oh, that's tactics. That's a bluff. It simply wasn't true. They told him, Oh, the family is not going to let you come to the funeral. They knew TJ wasn't going to die. They had just spoken with him at the hospital.

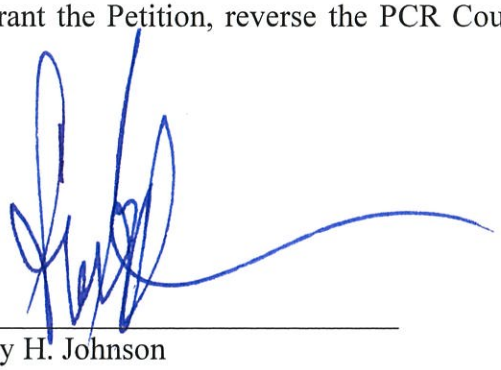
App. 301, l. 11 – 302, l. 12.

The source of Dow's injuries was based solely on the credibility of the story he told to the jury and their evaluation of the lengthy interrogation of petitioner. A case that depends on the credibility of the witnesses does not lend itself to a finding of harmless error. *See* State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012) (holding the state's reliance on circumstantial evidence and credibility of witnesses negated a finding of harmless error). As in Gracely, credibility, particularly of Dow's changing story, was central to the jury's determination of guilt. Here, there is no conclusive physical evidence, and guilt depends on the jury's judgment of the

credibility of Dow and their evaluation of the value of petitioner's "confession" after a lengthy and harsh interrogation. As in Washington v. State, 445 S.C. 233, 911 S.E.2d 536 (Ct. App. 2025), the reliance on credibility precludes a finding of lack of prejudice.

CONCLUSION

For the foregoing reason, this Court should grant the Petition, reverse the PCR Court's order, and grant petitioner a new trial.



Gary H. Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of September 2025.

RECEIVED
Sep 11 2025
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Grace Gilchrist Knie, Circuit Court Judge

MALIK JABREE SINGLETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Malik Jabree Singleton states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge Grace Gilchrist Knie, which was held on July 24, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Malik Jabree Singleton.

Respectfully Submitted,

Gary H. Johnson
Appellate Defender

ATTORNEY FOR PETITIONER

This 11th day of September 2025.

RECEIVED

Sep 11 2025

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Gary H. Johnson
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 11th day of September 2025.