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**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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On Petition for Writ of Certiorari to Charleston County  
Honorable Roger M. Young, Sr., Circuit Court Judge  
Honorable Kristi F. Curtis, Post-Conviction Relief Judge

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Appellate Case No. 2024-001776

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CARLOS A. RUIZ,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**RETURN TO PETITION  
FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

### **Petitioner's Question**

Did the PCR judge err in refusing to find trial counsel ineffective in failing to properly object, as irrelevant and bolstering, to testimony from a DSS worker that indicated she believed Minor's accusations, but Minor's mother did not believe Minor, finding the testimony was part of a valid strategy to question Minor's credibility?

### **Respondent's Counterstatement of Question**

Whether the post-conviction relief court properly determined Petitioner failed to prove deficiency and prejudice where 1) Petitioner failed to set forth what legal objection he believed should have been made, 2) Trial Counsel articulated a valid trial strategy, and 3) it is not reasonably likely an objection would have changed the outcome because the testimony was cumulative to other testimony elicited as part of the valid strategy?

## **STATEMENT OF THE CASE**

### ***Procedural History***

Petitioner, Carlos A. Ruiz, was indicted at the January 2017 term of the Charleston County Grand Jury for three counts of first-degree criminal sexual conduct (CSC) with a minor (2017-GS-10-00875, -00876, -00877) and three counts of second-degree CSC with a minor (2017-GS-10-00878, -00879, -00880). On January 9-13, 2017, Petitioner proceeded to a jury trial before the Honorable Roger M. Young, Sr. Public Defenders Mary Ford and Nicolas Smit represented Petitioner. Assistant Solicitors Deborah Herring-Lash and Nina Savas prosecuted the case. The jury convicted Petitioner as indicted, and Judge Young sentenced him to concurrent life sentences for each first-degree CSC with a minor and twenty years for each second-degree CSC with a minor.

Petitioner filed a notice of appeal, which was perfected by Chief Appellate Defender Robert M. Dudek. On appeal, Petitioner argued the trial court erred in allowing testimony of DSS caseworker Letrice Smalls that was irrelevant and improperly bolstered the Minor victim. The Court of Appeals affirmed, finding the issue was unpreserved. State v. Ruiz, 2019-UP-044 (filed January 30, 2019). The remittitur was returned on February 15, 2019.

On January 23, 2020, Petitioner filed an application for post-conviction relief. An evidentiary hearing was held on June 30, 2023, before the Honorable Kristi F. Curtis. Christopher L. Murphy represented Petitioner. Assistant Attorney General Danielle Dixon represented the State. In an order filed September 26, 2024, Judge Curtis denied relief and dismissed the application.

On October 21, 2024, Petitioner filed a timely notice of intent to appeal. Petitioner filed his Petition for Writ of Certiorari on May 1, 2025.

This Return to Petition for Writ of Certiorari follows.

## STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Further, appellate courts "defer to the PCR court's credibility findings as to witnesses who testified before the PCR court." Thompson v. State, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018). "Where matters of credibility are involved, this Court gives great deference to a judge's findings, because this Court lacks the opportunity to directly observe the witnesses." Foye v. State, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, pure questions of law are reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

## ARGUMENT

**The post-conviction relief court properly determined Petitioner failed to prove deficiency and prejudice where 1) Petitioner failed to set forth a valid, legal objection he thinks should have been made, 2) Trial counsel articulated a valid trial strategy, and 3) There is no reasonable probability further objection would have changed the outcome of trial.**

Petitioner argues that the post-conviction relief court was incorrect in finding trial counsel was not ineffective for not objecting to the testimony from a DSS caseworker. However, the post-conviction relief court correctly found trial counsel's representation was not constitutionally ineffective where trial counsel articulated a valid reason and strategy for not objecting. Additionally, Petitioner failed to set forth a valid legal objection that trial counsel should or could have made. Furthermore, Petitioner failed to establish the requisite prejudice necessary for relief—that the result of his proceeding would have been different but for trial counsel's failure to object to the DSS caseworker's permissible testimony. The post-conviction relief court correctly determined Petitioner was not entitled to relief since he failed to meet his burden of establishing either deficiency or prejudice as required. This Court should deny certiorari.

In a post-conviction relief action, Petitioner bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Petitioner 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 (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 v. Washington, 466 U.S. 668. First, Petitioner must prove that counsel's performances was deficient. Id.; Cherry v. State, 300 S.C. .115, 117, 386

S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C at 117, 386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. At 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Petitioner such that "there is 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.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally

unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Strickland, 466 U.S. at 691.

The “use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation.” United States v. Nguyen, 379 F. App’x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) (“[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland.”); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

***1. Petitioner failed to set forth a valid, legal objection.***

The post-conviction relief court properly found that Petitioner did not set forth a valid, legal objection that he thinks should have been made. In a post-conviction relief action, a Petitioner bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813, 814 (1985). Petitioner alleged counsel was ineffective for not objecting to the following testimony of the DSS case worker Letrice Smalls:

Q. And have you worked with lots of families where the supportive parent of—the non-abusive parent is non-supportive and non-believing?

[Trial counsel]: Objection. I’m not quite sure where this is going.

[Solicitor]: That’s it about.

[Trial counsel]: Well, relevance to this case, Your Honor.

The Court: Is she offering some sort of opinion? What is she testifying about?

[Solicitor]: That it’s not unusual at this point the children remain in

foster care.

The Witness: They remain in foster care? Yes, Ma'am.

By [the solicitor]:

Q. What would have to happen for the Department of Social Services to return them—

A. There would have to be a change of circumstances. Currently Mr. Ruiz resides in the home with Ms. Lorenzo and the other issue is that Ms. Lorenzo doesn't believe Minor, and because of this, the agency would feel that she's unable to protect.

[Solicitor]: Those are all the questions I have, Ms. Smalls. Thanks. Please answer any questions [trial counsel] has.

(App'x p. 353-54).

To support Petitioner's contention, Petitioner relies on State v. McKerley<sup>1</sup> and State v. Chappell<sup>2</sup>. However, Petitioner's reliance on McKerley and Chappell is misguided. In both McKerley and Chappell, the Court of Appeals addressed testimony that improperly bolstered the victim's credibility. In the present case, the DSS worker did not assert that she or anyone from her agency believed the victim's claims to be credible. Instead, her testimony focused on the procedural aspects of child placement during an investigation involving a minor alleging sexual abuse. The testimony given in the present case is vastly different than the testimony given in McKerley and Chappell. Moreover, in direct opposition to the Petitioner's claim that the testimony leaves no room for alternative interpretation, this argument neglects the clear, factual nuances of the text.

Nevertheless, Petitioner merely alleged counsel should have objected and presented no testimony or evidence to support this allegation. Petitioner thus did not meet his burden of proof.

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<sup>1</sup> State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012).

<sup>2</sup> State v. Chappell, 429 S.C. 68, 837 S.E.2d 496 (Ct. App. 2019).

See Butler. The post-conviction relief court properly found Petitioner failed to set forth a valid, legal objection trial counsel should have made to this questioning and thus failed to prove deficiency and prejudice.

**2. Trial counsel articulated a valid trial strategy and thus was not deficient.**

The post-conviction relief court properly found trial counsel's strategy was reasonable under prevailing professional norms and not deficient. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Trial counsel must be granted the flexibility to make strategic decisions that are both reasonable and necessary for effective advocacy. Strickland v. Washington, 466 U.S. 668 (1984). "No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." Strickland at 688-89. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. For that reason, "[j]udicial scrutiny of counsel's performance must be highly deferential." Id. at 689. Under Strickland, to prove a claim of ineffective assistance of counsel, "the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id.

If counsel provides a valid strategic reason for their actions or inactions, their performance should not be deemed ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed

ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). Determining whether a stated reason for counsel’s conduct is a valid strategic reason depends on the circumstances of each case; therefore, courts take a case-by-case approach to decide what constitutes a valid trial strategy. Solomon v. State, 347 S.C. 635, 557 S.E.2d 666 (2001) (finding failure to request not guilty option on verdict form presented to jury was not unreasonable for strategic reasons where counsel’s strategy was to argue that defendant was guilty of only the lesser and not the greater offense).

At the post-conviction relief hearing, trial counsel articulated that the strategy was to undermine the minor victim’s credibility in part by highlighting the fact that the victim’s mother did not believe the sexual abuse occurred. The post-conviction relief court found this to be supported by the record. See Wood v. Allen, 558 U.S. 290 (2010) (finding the PCR court was reasonable in inferring from evidence in the record that trial counsel’s failure to pursue or present evidence of defendant’s mental deficiencies was a strategic decision); Koon v. Rushton, 364 Fed.Appx. 22, 29 (4th Cir. 2010) (upholding PCR court finding that Petitioner failed to carry his burden where trial counsel had an articulable strategy behind his method of impeaching a witness).

At trial, trial counsel cross-examined Smalls, where she elicited testimony that the primary reason the mother did not have custody of her children was that she did not believe the sexual abuse occurred. (App’x p. 354-58). Trial counsel further elicited testimony from the mother on direct examination that she did not believe her daughter’s accusations against the Petitioner. (App’x p. 440-41, 463, 466, 468-74, 484-886). Lastly, in trial counsel’s closing argument, she argued:

You heard a lot from Nancy and from Ms. Smalls, the DSS worker, about Nancy not being able to have the kids back, and that’s why she’s such a credible witness, because all she has to do is say the magic words: I believe. It doesn’t have anything to do with the fact that [Petitioner] is currently staying with her because he wasn’t

there for months and months and months, and they never would give her the kids back. They wouldn't give her the kids back now if [Petitioner] wasn't there. She has to say, I believe.

Many people may think, just as a parent, you should say—even if you don't believe, you should say it to get your kids back, and so maybe you believe that's the right thing to do as a parent. Maybe that's what Nancy should have done, but Nancy can't do that because she can't lie. She can't lie, especially when it comes to having to sacrifice someone.

(App'x p. 553).

The post-conviction relief court rightly determined that trial counsel employed a sound and strategically justified approach, thoroughly supported by the record. Specifically, the strategy of emphasizing the minor victim's mother's disbelief—used to impeach the victim's credibility—was not only reasonable but aligned with prevailing professional standards. Evidence of this strategy is clearly demonstrated through Small's testimony, in which she confirmed that the mother did not believe her, reinforcing the validity of this tactic. Furthermore, trial counsel's direct examination effectively elicited the mother's disbelief, and this critical point was compellingly highlighted again during closing arguments. Such consistent and well-founded tactics undeniably fall within the realm of competent legal representation, and the court's affirmation of this approach was both correct and justified.

Petitioner further argues that "Trial Counsel did not need the DSS worker's testimony to establish that Minor's mother did not believe her because the mother testified at the trial that she did not believe Minor." (PWC pg. 10). Nevertheless, given that the record indicates the DSS worker provided testimony considerably earlier in the proceedings than the mother, it would be unreasonable to expect trial counsel to possess prescient knowledge of the specific testimony that the mother would offer subsequently during the trial. As the post-conviction court found, this testimony supported trial counsel's valid strategy.

Further, Petitioner speculates, “The purpose of the DSS worker’s testimony was to inform the jury that the DSS worker and her agency believed Minor. There is no other way to interpret the testimony other than to mean the witness believes Minor is telling the truth.” (PWC pg. 11). However, the solicitor states explicitly on the record that the reason for the testimony was that it is not unusual at that point for the children to remain in foster care. (App’x p.553). Smalls did not testify that they believed the witness, just that the mother did not, and so the child remains in foster care. As the post-conviction relief court found, this testimony supported trial counsel’s valid strategy.

The post-conviction relief court properly found trial counsel articulated a valid trial strategy under prevailing professional norms and thus was not deficient.

**3. *There is no reasonable probability further objection would have changed the outcome of trial.***

The post-conviction relief court properly found that it is not reasonably likely further objection to the foregoing would have changed the outcome of trial and thus Petitioner did not prove prejudice. Trial counsel’s deficient performance must have prejudiced the Petitioner such that “there is 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.

As the post-conviction relief court found, it is highly unlikely that a subsequent objection on relevance or an objection on bolstering would have led to the exclusion of the testimony or altered the trial’s outcome. Had trial counsel objected on the basis of bolstering, it would not have changed the outcome of trial because the testimony was not bolstering. Improper bolstering occurs when testimony “indicates the witness believes the victim, but does not serve some other valid purpose”. Briggs v. State 421 S.C. at 325, 806 S.E.2d at 718. As discussed *supra*, the purpose of the testimony was the procedural aspects of child placement during an investigation involving a

minor alleging sexual abuse. The witness did not testify to whether the victim was telling the truth. There is not a reasonable probability this testimony would have been excluded, and thus it is unreasonable to conclude that an additional objection would have changed the final result of the proceedings in any meaningful way. See Cherry, supra.

The court further found that because the testimony supported the valid trial strategy of attacking the victim's credibility and ultimately was cumulative to other testimony elicited as part of this valid strategy, it is not reasonably likely that an objection would have changed the outcome. Petitioner did not suffer prejudice because the testimony was helpful to Petitioner and the same testimony was elicited on cross-examination and again through the mother on direct examination. Therefore, it is unreasonable to conclude that an additional objection would have changed the final result of the proceedings in any meaningful way. See Cherry, supra.

The post-conviction relief court properly found that it is not reasonably likely that further objection would have changed the outcome of trial and thus Petitioner did not prove prejudice. This Court should deny certiorari.

**CONCLUSION**

Based on the foregoing, the PCR court correctly determined that Petitioner failed to show that trial counsel provided constitutionally ineffective assistance. Therefore, this Court should deny Petitioner's Petition for Writ of Certiorari.

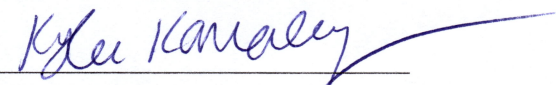
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