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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.

REPLY TO RETURN TO PETITION
FOR WRIT OF CERTIORARI

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QUESTIONS 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?

ARGUMENT IN REPLY

Petitioner, Ronald Legg, raised the above-stated questions in his petition for writ of certiorari. He adheres to all the arguments contained in that petition and submits this reply to address specific arguments made by the State in its return.

- I. The lower court erred 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.**

Trial Counsel's "personal matters" were of an extreme nature, in that he was dealing with a wife who was seriously ill and financial issues which left him homeless and caused him to steal escrow funds from clients leading to his disbarment. Trial Counsel categorized the issues in his life as "...a life and death situation from my perspective...."

Although Trial Counsel was present at the trial and testified multiple times during the PCR hearing that the minor child's credibility was the central issue of the case (PCR Tr. p. 61, ll. 13-15; p. 69, ll. 12-13, 20-22; p. 70, ll. 4-7, p. 91, ll. 1-4; p.92, ll. 5-9, p. 116, ll. 19-21; p. 117, ll. 2-5; p. 128-9, ll. 24-25, 1-2; p. 130, ll. 2-8; p. 13, ll. 15-18; p. 139, ll. 15-19), he did nothing to keep the State from bolstering her credibility every chance it got, which Petitioner submits is because his mind was on the other issues going on in his personal life.

Trial Counsel failed to object to multiple witnesses (Dinita Whipple, Officer Lent, and Detective Frebowitz) testifying to matters beyond time and place when relaying to the jury what minor child told them about the alleged sexual abuse and who did it. Not only did he fail to object to these statements, but he elicited testimony from Detective Frebowitz the Petitioner digitally penetrated the minor child, which was testimony the State would not have been allowed to elicit. Trial Counsel did precisely what the *Nance* court forbade – he bolstered the State’s case against Petitioner.

“[C]ounsel did not act as an adversary to the prosecution’s case, but instead helped to bolster the case against his client.” *Nance v. Ozmint*, 367 S.C. 547, 553, 626 S.E.2d 878, 881 (2006).

II. The lower court erred 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.

The State first argues that Petitioner’s argument regarding Trial Counsel’s failure to object to multiple occasions of bolstering and eliciting inadmissible testimony was not preserved for appellate review because a bolstering argument was not raised to nor ruled upon by the PCR court.

This argument is simply incorrect. There are multiple places where the issue of bolstering was raised in both Petitioner's PCR application as well as at the PCR hearing. The following are a few examples:

Page 99 of 142 of Petitioner's PCR application:

(158). Between the forensic [sic] interviewer's lack of full knowledge about the declarant's variable state of mind, and social history, and in considering the factors of the leading aura of the setting, and leading solitives from the interviewer expecting a directed or directive performance from the declarant, the bolstering from the interviewer saying "thank you for being truthful" served to reinforce deception, the lack of statements being made under oath, at the time, lack of cross examination, lack of scrutiny for veracity, no means for the declarant's mind to be impelled by the consideration to tell the truth without pressing upon the declarant the gravity of their conduct - in light of the fact that there was no compelling use of terminology, or excited state, or convincing formulae for expression of intent or physical possibilities that could stand against a rational interlocution, in search of truth, where there was no showing that might imply that the declarant would be too sensitive for such engagements.

Petitioner highlights "the bolstering from the interviewer saying, 'thank you for being truthful' served to reinforce deception." Petitioner is clearly discussing the recorded forensic interview which played for the jury but is not part of the PCR transcript. If this statement was not stricken from the video, as the interviewer is not asking if the minor child knows the difference between the truth and a lie, but is acknowledging that she believes the child to have been truthful, this is another instance of bolstering that was not objected to by Trial Counsel and strictly forbidden by South Carolina courts. *State v. Kromah*, 401 S.C. 340, 737 S.E.2d 340 (2013).

Page 100 of 142 of Petitioner's PCR application:

¶(162). Diggs did not challenge the limitation the court put on cross-examining the declarant in the forensic interview when she took the stand. Diggs also limited his cross-examination on the other state's witnesses, especially those from the accusers social environment and history.
 (163). *Jolly v. State*, 314 S.C. 17, 443 S.E. 2d 566. "Improper corroboration testimony that is merely cumulative to victims testimony in sexual conduct prosecution cannot be harmless, because it is precisely this cumulative effect which enhances devastating impact of improper corroboration." *State v. Barrett*, 299 S.C. 485, 386 S.E. 2d 242 (1989).
 ¶(164). The witness is assumed to be credible in the absence of an attack. See *S.C. Dept. Highways and Pub. Transp. v. ESI Ins.*, 322 S.C. 147, 470 S.E. 2d 387 (Ct. App. 1996).

Petitioner cites to *Jolly v. State*, 314 S.C. 17 (1994), which is a Supreme Court case specifically about corroboration testimony in criminal sexual conduct cases.

Petitioner highlighted the following quote:

"Improper corroboration testimony that is merely cumulative to the victim's testimony, however, cannot be harmless because it is precisely this cumulative effect which enhances the devastating impact of improper corroboration."

Id., at 21, quoting *State v. Barrett*, 299 S.C. 485, 386 S.E.2D 242 (1989).

Page 104 of 142 of the PCR application:

558, 753 S.E. 2d 471 (1999).
 (191). Diggs failed to articulate such rulings based on errors, by his failing to object. All of the judge's rulings and his court room conduct was based on unfair prejudice and extensive fraud conspiracy as outlined in this complaint, and with further specifics Applicant will require the assistance of counsel for articulation.

Petitioner specifically raises the issue that Trial Counsel “failed to articulate such rulings based on errors, by his failing to object.” He further states that “Applicant will require the assistance of counsel for articulation.”

Page 133 of 142 of PCR application:

b. Solicitor misconduct
McCull.
(229). Just as the State justified its imposed story-line, it sought also to give it credence by enhancement improperly imbued with the imprimatur of a one-sided [sic] medical expert from which counsel Diggs also failed to articulate a proper thorough cross-examination as to explicitly why no physical evidence of abuse should be favorable to the State's story-line, because, such a showing of testimony served only to improperly bolster the State's case, as it would lead a jury to believe the expert considered the child's accusation truthful.
✓ [unclear] to file a motion for a new trial.

Petitioner specifically references the medical examiner, and the fact that Trial Counsel failed to thoroughly cross-examine her, which allowed her testimony to serve “to improperly bolster the State’s case.”

Page 142S of 142 of PCR application:

(327). Issue Fifty:
Cumulative Bolstering By Imprimatur Of
State's Expert Witness's Prejudicial Effects,
Improper Admission By The Court, And Counsel
Of Record's Failure To Adequately Challenge

(323). The medical expert Carol Rather and the forensic interviewer Natalia Demacio's testimonies together amounted to cumulative bolstering and the fostering of deceptive and contradictory evidence.

Petitioner specifically raises the issue of bolstering referring here to the medical expert, Carol Rather, and the forensic interviewer, Natalia Demaio, stating that their testimonies together amounted to cumulative bolstering.

On Page 47 of the PCR transcript, Petitioner questions Trial Counsel about his comments in closing regarding giving the minor child all the help she could get.

19 Q: When you told the alleged victim that she deserved all of
20 the help that she could get from the government treatment
21 programs, that's implying that she was abused ---
22 A: Well, I don't agree.
23 Q: --- when she wasn't.
24 A: I don't agree that it implies that you're guilty. I
25 think that it implies that she needs help.

Trial Counsel did not agree that it bolstered the minor child's testimony by implying that Petitioner was guilty of the allegations; however, that was precisely what that statement implied.

On Page 133 of the PCR transcript, Mr. James from the State is examining Mr. Diggs. The following exchange occurs:

3 Q: And this is the testimony of Danita Whipple. So, she
4 stayed on the phone for a second and she, she was crying, and
5 I said -- this is a redacted transcript, so it says victim ---
6 A: Okay.
7 Q: --- victim what's wrong. Is there something else wrong?
8 She said yes. I said well tell me. And she said that Don had
9 spread her legs and she told him to stop and he had put his
10 hands, his fingers down her butt crack and before she could
11 tell me anything else I said just hold on and I'll be right
12 there in 15 minutes. Did you consider objecting to that
13 testimony?
14 A: I can't recall. It may be, if this is a separate
15 occurrence, you know, to be honest with you I can't recall.
16 Q: You can't recall if there was any strategic reason?
17 A: I do not, I don't recall.
18 Q: And at the risk of sounding as though I'm arguing against
19 myself, would you agree that that is beyond the time and the
20 place of the abuse?
21 A: As I understand it, it would be.

Directly prior to this testimony, Mr. James, commented that “[t]his is not an allegation that Mr. Legg went over with you in direct, however it is raised in the amended application.” (PCR Tr. p. 132, ll. 17-19). Mr. James clearly thought the issue had been raised and questioned Trial Counsel about bolstering at the hearing. Trial Counsel was unable to recall if he had a strategic reason for not objecting to the testimony that went beyond time and place. (PCR Tr. p. 133, ll. 3-21).

The issue of bolstering was raised both in Petitioner's application, as well as at the PCR hearing by both the Petitioner and the State. Additionally, Petitioner filed a *pro se* Rule 59(e) motion on August 27, 2019, asking the court to "...rule on all issues raised in the complaint by Plaintiff, regardless of any presupposed lack of merit in the totality of the issues raised by Respondent." Petitioner is not an attorney, and his pleadings should be viewed in a light that reflects that fact. The fact remains that he did raise these issues in his pleadings, both sides questioned Trial Counsel about bolstering issues at the PCR hearing, and Petitioner filed a Rule 59(e) motion asking the court to rule on ALL issues raised in the complaint, and as such this argument was preserved and should be ruled on by the Court.

Additionally, the Court liberally construes *pro se* pleadings and holds them to a less stringent standard than formal pleadings drafted by attorneys. *Taylor v. S.C.*, 2019 S.C. C.P. LEXIS 6099, *See, e.g. Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curium); *De'Lonta v. Angelone*, 330 F.3d 630, 633 (4th Cir. 2003).

The South Carolina Supreme Court has ruled that improper corroboration testimony that is merely cumulative to the victim's testimony CANNOT be harmless. *Jolly v. State*, 314 S.C. 17, 443 S.E.2d 566 (1994).

Trial Counsel himself agrees that the jury convicted Petitioner based upon her testimony. He repeatedly stated at the PCR hearing that he was convicted due to the child's testimony. "The way I viewed the case rightly or not, it came down to her

credibility and the way the State tried to bolster her testimony during the trial. And, you know, that's the way we approached the case.” (PCR Tr. p. 91, ll. 1-4). “I think what convicted you was the child's testimony and, you know, the experts who were introduced to try to support what she was saying.” (PCR Tr. p. 116, ll. 19-21).

Trial Counsel allowed at least three witnesses to corroborate and bolster the testimony of the minor child without objection. He further elicited additional details as to the sexual abuse that the solicitor would not have been able to elicit from Detective Frebowitz. Additionally, he allowed virtually every witness for the State to refer to the minor child as a “victim,” as well as the Judge. The State argues the bolstering testimony was not “concerning to Counsel...because no witness vouched for Victim's credibility.” Yet that is EXACTLY what this testimony did.

III. The lower court erred 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.

Eight days prior to the trial, Trial Counsel filed an *Ex Parte* Motion for an Expert Witness in order to obtain funds to hire an expert to look into the issue of Attention Deficit Disorder in the minor child and funds to hire an investigator to look into the background of the minor child, as well as accusations of sexual abuse made by the minor child's brother against their biological father. The request was denied, as was a motion to continue the trial. Trial Counsel could not recall the

circumstances surrounding that motion hearing at the PCR hearing, but it shows that at the time he filed the motion on those issues, he felt as though an investigation into the issues was important. (PCR Tr. pp. 54-55, ll. 13-25, 1-10).

Trial Counsel admitted that he failed to investigate there was another man living in the house with the minor child and that it would have been relevant. “I think if he’d been a witness, you know, with respect to the allegations that were made in your case it would certainly be relevant and I should have investigated that.” (PCR Tr. pp. 62-63, ll. 24-25, 1). He further admits that he did not investigate the minor child’s social history, and it would have been important for her veracity. (PCR Tr. pp. 70-71, ll. 13-25, 1-13).

Upon information and belief, Detective Frebowitz was terminated the day Petitioner was convicted. Although the termination occurred at the time of, or shortly thereafter the conviction, an investigation regarding his termination was certainly pending, and could have been discoverable to Trial Counsel had the personnel records been requested.

Detective Frebowitz was the lead investigator on the case and provided testimony that bolstered the minor victim’s allegations. Had Trial Counsel been able to impeach his credibility, it is reasonable to find that a jury could have determined him to be not credible, which could have changed the outcome of the trial.

IV. The lower court erred in refusing to find that the cumulative effect of the deficient performance of trial counsel established prejudice requiring a new trial.

The State argues that there was no cumulative effect of trial counsel's deficient performance because two instances of inappropriate conduct towards the minor child were testified to by Shannon Lattimore, which the State alleges served as corroborating evidence of the assault.

Shannon Lattimore's testimony consisted of prior bad acts of the Petitioner, which was also not objected to even though it should have been, and only strengthens Petitioner's argument about bolstering. "South Carolina law precludes evidence of a defendant's prior crimes or other bad acts to prove the defendant's guilt for the crime charged, except to establish: (1) motive, (2) intent, (3) absence of mistake or accident, (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other, or (5) the identity of the perpetrator." *State v. Martucci*, 380 S.C. 232, 251-52, 669 S.E.2d 598, 608 (Ct. App. 2008).

The State itself concedes in its response that "[b]oth of these instances corroborated either the particular acts or general behaviors described in Victim's testimony." (State's Response, p. 17).

Petitioner submits that there were multiple errors committed by trial counsel as described, and that had Trial Counsel not made those errors, the outcome of the trial would have been different, and as such his conviction should be overturned.

CONCLUSION

In the case at bar, Trial Counsel allowed multiple witnesses to testify to matters that went outside time and place, including bad acts that were not indicted such as the testimony regarding swimming in the lake and taking minor child's underwear from her. Trial Counsel himself elicited testimony regarding digital penetration that was not indicted and would not otherwise have been able to be elicited, which further corroborated the minor child's accusations. He allowed various other statements in without objection that served to further corroborate and bolster minor child's testimony. His failure to fully investigate the minor child's background and Detective Frebowitz's personnel file allowed potential avenues of impeachment to go unutilized. Additionally, Trial Counsel's personal matters were so extreme, it is hard to believe that what was happening in his personal life did not play a part into his ineffectiveness.

Trial Counsel committed multiple errors as shown above. Taken together, the Court should find that Trial Counsel was ineffective and overturn the conviction of Petitioner.

Respectfully submitted,

s/Alissa L. Wilson

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This 20 day of October, 2025.