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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHEROKEE COUNTY
Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2025-001051

BRYSON JAMAR SMITH PETITIONER.

v.

THE STATE RESPONDENT.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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October 24, 2025

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AUTHORITIES

United States Supreme Court Cases

- *Strickland v. Washington*, 466 U.S. 668 (1984)

South Carolina Supreme Court Cases

- *Winkler v. State*, 418 S.C. 643, 795 S.E.2d 686 (2016)

- *Teamer v. State*, 416 S.C. 217, 786 S.E.2d 109 (2016)

Statutes

- S.C. Code Ann. § 17-27-20 et seq.

Petitioner respectfully submits this Reply to the Return of Respondent, addressing the authorities relied upon and demonstrating why relief should be granted.

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO JURY

INSTRUCTIONS

Respondent cites *Winkler v. State*, 418 S.C. 643, 795 S.E.2d 686 (S.C. 2016) and *Teamer v. State*, 416 S.C. 217, 187, 786 S.E.2d 109 (2016) for authority that counsel is not required to anticipate changes in the law that did not exist at the time of Petitioner's conviction. These cases are distinguishable from the present one.

In *Winkler*, the PCR judge found counsel ineffective for failing to instruct the jury of the effect of a deadlock in jury deliberation. This court reversed the PCR judge and held that the Petitioner was not entitled to such an instruction. *Winkler* differs from the present case in that in this case the instruction was in fact defective.

In *Teamer*, this court found counsel was not ineffective for failing to object to an instruction found questionable five years later. In the present case, certiorari had already been granted on March 12, 2020. Petitioner was tried on November 3, 2020. Trial counsel knew that Stewart had applied for Certiorari to the Supreme Court. (Appendix p. 577 line 16-33, 23-25 to p. 578 line 4) The only thing trial counsel had to do was make an objection to the jury instruction.

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT

TESTIMONY OR EVIDENCE THAT MAIL FOUND ON THE PREMISES WAS

NOT RECENT

Petitioner does not argue that counsel did not call Petitioner's mother as a witness. Petitioner contends that counsel did not ask the witness any questions as to the age of the items. The mail was an important piece of evidence in the State's case. Counsel made no effort to investigate the age of the mail. This was highly prejudicial to the Petitioner. Whether

Petitioner had dominion and control of the room was a disputed issue at trial. Counsel failed to present evidence that the mail was not of recent origin. He did not even discuss the issue with Petitioner's mother (Appendix p. 561 line 12-20). Counsel's representation was ineffective on this issue.

On the remaining issues, Petitioner stands on his arguments made in the petition.

GOVERNING LEGAL STANDARD

Under *Strickland v. Washington*, 466 U.S. 668 (1984), Petitioner must show that counsel's performance was deficient and that the deficiency prejudiced the defense. Here, counsel's failures- in both preserving a live issue subject to certiorari and failing to challenge key evidence- satisfy both prongs of the test.

CONCLUSION

For the foregoing reasons, and those set forth in the Petition, Petitioner respectfully requests this Court grant the Petition for Writ of Certiorari.

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