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Jan 27 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable J. Mark Hayes, II, Circuit Court Judge

App. Case No. 2020-001361

Oshaun J. Robinson,

Respondent,

vs.

State of South Carolina,

Petitioner.

PETITION FOR REHEARING
AND FOR REHEARING *EN BANC*

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STATEMENT OF THE CASE

This appeal stems from the granting of post conviction relief on the convictions and sentences resulting from a guilty plea entered in front of the Honorable Edward W. Miller on March 4, 2009. Also, relevant to this appeal are the trial proceedings that resulted in convictions and sentences on January 15, 2009 preceding the guilty plea.

A. Trial

In August 2008, Respondent was indicted by a Greenville County Grand Jury for armed robbery and possession of a weapon during the commission of a violent crime (2008-GS-23-5382), conspiracy (2008-GS-23-5383), and assault and battery of a high and aggravated nature (ABHAN) (2008-GS-23-5384) (trial charges). App. pp. 439-443. These indictments were derived from an incident occurring on December 10, 2007.

On January 14-15, 2009, Respondent and his co-defendant, Kenneth Workman (Workman), proceeded to a joint trial in front of the Honorable C. Victor Pyle, Jr., in Greenville County.¹ Andrew Burke Moorman (Attorney Moorman) represented Respondent. App. p. 169. The jury found both defendants guilty as indicted but for a finding of guilty on the lesser included charge of assault and battery. App. p. 426. Respondent was sentenced to concurrent terms of twenty-five years for armed robbery, five years for conspiracy, five years for possession of a weapon during the commission of a violent crime, and thirty days for assault and battery. App. pp. 432-433, 445-448.

A timely notice of appeal was filed by Attorney Moorman and the appeal was perfected by Robert Pachak, Esquire, from the Office of Appellate Defense. App. p. 463. After briefing and oral argument, this Court affirmed Respondent's convictions and

¹ On December 1-2, 2008, a joint trial was held for Respondent and Workman that resulted in a mistrial due to a hung jury. App. pp. 1-168.

sentences via unpublished opinion. *State v. Robinson*, Op. No. 2012-UP-042 (S.C. Ct. App. filed January 25, 2012). App. pp. 499-502. The remittitur was issued on February 14, 2012. App. p. 503.

On December 5, 2012, Respondent timely filed an Application for Post Conviction Relief. App. pp. 504-512. The State filed a Return on June 21, 2013. App. pp. 514-519. On February 18, 2014, an evidentiary hearing was held in front of the Honorable G. Edward Welmaker during which Respondent and Attorney Moorman testified. App. pp. 521-546. Respondent was represented by Caroline Horlbeck, Esquire, and the State was represented by Karen Ratigan, Esquire. App. p. 521. On March 25, 2014, Judge Welmaker issued an Order denying the application. App. pp. 547-554. Thereafter, a timely notice of appeal was filed. App. p. 556.

Wanda H. Carter, Esquire, from the Office of Appellate Defense, perfected the appeal. On April 15, 2015, the South Carolina Supreme Court reversed the denial of relief and remanded the case for a new trial, finding the *Allen* charge given in the underlying trial was unconstitutionally coercive. *Robinson v. State*, Op. No. 2015-MO-018 (S.C. Sup. Ct. filed April 27, 2015). App. pp. 579-580.² The remittitur was issued on April 27, 2015. App. p. 581.

On remand, Respondent pled guilty, without negotiations or recommendations, before the Honorable Letitia H. Verdin on May 16, 2016 in Greenville County. Judge Verdin sentenced Respondent to concurrent terms of fifteen years for armed robbery, five

² The reversal in Respondent's PCR appeal was based upon the same issue and analysis found in the South Carolina Supreme Court's decision in Workman's PCR appeal. *Kenneth W. Workman v. State*, Op. No. 27514 (S.C. Sup. Ct. filed on April 15, 2015).

years for criminal conspiracy, five years for possession of a weapon during the commission of a violent crime and thirty days for simple assault. App. pp. 582-585.

B. Guilty Plea

In August 2008, Respondent was indicted by a Greenville County Grand Jury for criminal conspiracy (2008-GS-23-5385), assault and battery with intent to kill (ABWIK) (2008-GS-23-5386), armed robbery and possession of a weapon during the commission of a violent crime (2008-GS-23-5387) (plea charges). App. pp. 681-682, 687-688, 692-693. These indictments were derived from an incident occurring on December 14, 2007.

On March 4, 2009, Respondent pled guilty as indicted without negotiations or recommendations in front of the Honorable Edward W. Miller. Respondent was again represented by Attorney Moorman. Judge Miller accepted the guilty plea and sentenced Respondent to concurrent terms of twenty-five years for armed robbery, twenty years for ABWIK, five years for criminal conspiracy, and five years for possession of a weapon during the commission of a violent crime. App. pp. 683, 689-690. Judge Miller ordered that the sentences were to be run concurrent with the sentences on the trial charges. Respondent did not appeal his convictions or sentences.

On April 25, 2017, Respondent filed an Application for Post Conviction Relief. App. p. 586. On November 2, 2018, the State submitted a Return and Motion to Dismiss, along with a Conditional Order of Dismissal. App. pp. 595-603. The Honorable Perry H. Gravely signed the Conditional Order of Dismissal on November 8, 2018. App. p. 603. Respondent, through counsel Tara Dawn Shurling, Esquire, submitted a Response to Conditional order of Dismissal on December 4, 2018. App. p. 604. On December 18,

2018, the Honorable Perry H. Gravely issued a Form 4 Order holding the matter should be “set for a hearing.” App. p. 610.

On April 15 and 17, 2019, a hearing was held in front of the Honorable Alex Kinlaw. App. p. 612. Respondent was represented by Tara Dawn Shurling, Esquire, and the State was represented by Samuel L. Key, Esquire. App. p. 612. At the conclusion of the hearing, Judge Kinlaw requested proposed orders from both parties. App. p. 673. Both parties submitted proposed Orders. App. pp. 797-814. On April 22, 2019, Judge Kinlaw issued an Order Vacating Conditional Order of Dismissal and Granting Leave to Proceed with a Hearing on the Merits of the PCR Application. App. pp. 815.

On January 22, 2020, an evidentiary hearing was convened at the Greenville County Courthouse in front of the Honorable J. Mark Hayes, II. App. p. 824. Respondent was represented by Tara Dawn Shurling, Esquire, and the State was represented by Samuel L. Key, Esquire. App. p. 824. Via Form 4 Order issued on January 23, 2020, Judge Hayes requested proposed orders from both parties App. p. 862-863. Both parties submitted proposed Orders. App. pp. 867-892. On May 14, 2020, an Order was issued that was filed on May 19, 2020. App. pp. 893-909. On June 3, 2020, the State filed a Rule 59(e), SCRCPP, Motion to Alter, Amend and Reconsider. App. p. 910-916. On June 16, 2020, PCR counsel submitted a Reply to Respondent’s Motion to Alter or Amend Pursuant to Rule 59(e), SCRCPP, and a Supplemental Reply on June 23, 2020. App. pp. 917-925. On July 23, 2020, Judge Hayes issued a Form 4 Order denying Respondent’s Motion and asking PCR counsel to propose a formal order in line with his findings.³ App. pp. 926-927. A formal Order Denying Motion to Alter of Amend Pursuant to Rule 59(e),

³ The Form 4 Order was filed on July 28, 2020. App. p. 926.

SCRCP, was issued on September 1, 2020 by Judge Hayes and filed on September 9, 2020. App. p. 930.

Thereafter, the State filed a Notice of Appeal on October 14, 2020. On March 5, 2021, the State filed a Petition, with Appendices. On November 17, 2021, this Court accepted Respondent's Amended Return. By Order dated October 19, 2023, this Court granted the State's Petition and ordered additional briefing.

On November 6, 2023, Tara Dawn Shurling, Esquire, filed a Motion to Withdraw as Respondent's counsel. On December 5, 2023, Tricia A. Blanchette, Esquire, entered her appearance as counsel for Respondent. By Order dated December 7, 2023, this Court granted the Motion to Withdraw and found Tricia A. Blanchette would remain counsel of record for Respondent. On April 18, 2023, the State filed the Brief of Petitioner. On July 5, 2024, Respondent filed a responsive Brief.

An oral argument was held on February 11, 2025. Respondent was represented by Tricia A. Blanchette, Esquire. Petitioner was represented by Kaylee Kemp, Esquire. On January 14, 2026, the South Carolina Court of Appeals issued an Opinion, from which this Petition for Rehearing and Petition for Rehearing *En Banc* follows. *Robinson v. State*, Op. No. 6130 (S.C. Ct. App. filed January 14, 2026) (Howard Adv. Sh. No. 2 at 31).

ARGUMENT

Pursuant to Rule 221, SCACR, Petitioner respectfully petitions this Court for rehearing and for rehearing *en banc*. Petitioner would respectfully request that the panel and entire Court review the Brief of Respondent and the entirety of the arguments contained therein. Petitioner would further request that the panel and the entire Court

review the contents of the oral argument, appellate filings and record as reflected in the Appendix and reconsider the reversal handed down on January 14, 2026.

As reflected in the Brief of Respondent, the following issues were raised by the parties:

Petitioner’s Statement of the Issue: Whether the PCR court erred as a matter of law in granting relief by conflating the deficiency and prejudice prongs of Strickland, failing to apply the required presumption of competence, and relying entirely on hindsight to find counsel constitutionally ineffective for failing to advise Robinson prior to pleading guilty that a concurrent sentence on the plea convictions did not mean his trial convictions – which were pending on appeal at the time – were “merged” such that if his trial convictions were eventually overturned on direct appeal or collateral review, the plea convictions would not be simultaneously overturned, where counsel never indicated or otherwise suggested to Robinson that an appeal on convictions from the jury trial would somehow also apply to his later guilty plea, and where the voluntariness of the plea did not depend on whether Robinson understood what might happen in the future if here were successful in a different case because Robinson pleaded guilty based on the twenty-five year sentence, avoiding LWOP.

Respondent’s Statement of the Issue: Whether the lower court should be upheld in finding that counsel provided Respondent ineffective assistance of counsel prior to and during his guilty plea proceeding on March 4, 2009 that warranted the remedy of the judgments and sentences entered against Respondent on March 4, 2009 being vacated and the charges remanded.

In the Opinion, immediately preceding the reversal holding, the State’s argument is restated as follows:

The State argues the PCR court erred by finding plea counsel was ineffective for failing to advise Robinson that a concurrent sentence for the offenses to which he was pleading did not mean these offenses “merged” with Robinson’s separate, prior trial convictions and that if these trial convictions were later reversed, such reversal would not affect his guilty plea convictions. We reverse.

At the outset of the analysis section, the Opinion also states:

The State argues the PCR court erred by finding that plea counsel ineffective for failing to advise Robinson that if his trial convictions were ever overturned in any subsequent appeal, his guilty plea to separate charges would not be. We reverse.

Respondent submits that this Court's interpretation of State's argument on appeal improperly narrows the issue before this Court and misinterprets the issues raised and argued by both parties. In making this argument, Respondent hereby incorporates the detailed arguments made in the Brief and offered at the oral argument, and urges this Court to reconsider the reversal of the lower court's findings of deficiency and resulting prejudice. Respondent submits that if the Court reviews and reconsiders the entirety of the analysis made by the lower court and the arguments submitted by Respondent, this Court will find that reversal is not warranted.

In the Brief of Respondent, the Standard of Review was addressed as follows:

On appeal, great deference is given to the lower court's findings of fact, but deference is not given to conclusions of law. *Smalls v. State*, 810 S.E.2d 836 (2018). The existence of "any evidence" of probative value is sufficient to uphold findings of fact. *Webb v. State*, 281 S.C. 237, 314 S.E.2d 839 (1984). Questions of law are reviewed *de novo*, and the appellate court "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).

During oral argument, Respondent argued that the State was giving lip service to the controlling any evidence standard of review but was truly seeking a *de novo* review. Respondent further argued and it appeared this Court agreed that under the any evidence standard of review ample evidence existed to support the lower court's findings; thus, this Court was required to uphold the lower court's granting of relief.

In the standing Opinion, this Court noted:

We are mindful of our standard of review on questions of fact. However, we find no evidence in the record supports a finding that plea counsel gave Robinson any advice that would have resulted in Robinson's belief that the charges he pled guilty to somehow "merged" with the separate charges of which a jury had convicted him after trial.

No evidence shows plea counsel advised Robinson that his trial charges and guilty plea charges merged with one another such that an appeal of one would affect the other.

In making these findings of "no evidence," this Court says it is "mindful" of the standard of review, but this Court has misapprehended and overlooked the inconsistent testimony of counsel at the two hearings and the testimony of Respondent that the lower court found credible that clearly meets the any evidence standard. Additionally, in excusing counsel's deficiency by finding that counsel had no duty to suspect Respondent had a mistaken belief, this Court again ignores the testimony of Respondent, which is cited prior to the analysis and is addressed in detail in Respondent's Brief.

After errantly finding no duty of counsel to inform Respondent that the charges were not "merged" and excusing the admitted deficiency of counsel in the advice rendered by blaming Respondent for his "mistaken belief, this Court also errantly held:

Next, we hold the PCR court erred by granting PCR because Robinson failed to show there was a reasonable probability that but for counsel's deficient performance, Robinson would not have pled guilty but would have insisted on going to trial.

In reaching this holding, this Court has again ignored the basis of the lower court's findings, which were based upon the testimony of Respondent that the lower court deemed credible. Simply put, in reversing the lower court, this Court has disturbed the lower court's credibility findings and ignored the evidence in the record that support the lower court's granting of relief. It appears the Court is relying upon *Goss v. State*, 425 S.C. 101, 820 S.E.2d 373 (2018), to justify the attack on the lower court's credibility and overall findings.

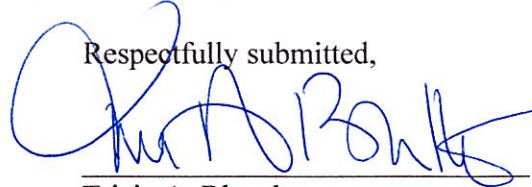
Respondent submits that the State and now the Court's reliance on *Goss* is misplaced as *Goss* is distinguishable from the instant case. In *Goss*, after the lower court and this Court denied relief, the South Carolina Supreme Court remanded the case to the lower court to properly assess the credibility of the witnesses since the lower court took judicial notice that fact/alibi witnesses would have corroborated other witnesses called at the evidentiary hearing. Unlike *Goss*, here the lower court properly found the record created, to include Respondent's testimony, was sufficient to meet the prejudice prong. *See Alexander v. State*, 303 S.C. 539, 402 S.E.2d 484 (1991), *Smith v. State*, S.C. 135, 631 S.E.2d 260 (2006), *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000), *Jackson v. State*, 342 S.C. 95, 535 S.E.2d 926 (2000), *Frierson v. State*, 423 S.C. 257, 815 S.E. 2d 433 (2018).

Based upon the foregoing, the entirety of the appellate filings and the oral argument, Respondent would urge this Court to grant rehearing. Respondent submits that if this Court is "mindful" of the standard of review relief must be upheld and the standing Opinion withdrawn.

CONCLUSION

In consideration of the above stated arguments and those previously made, Respondent respectfully requests that the Court conduct a full review and find reversal is not warranted and the relief granted by the lower court should stand.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

This 26 day of January 2026.

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APPEAL FROM GREENVILLE COUNTY
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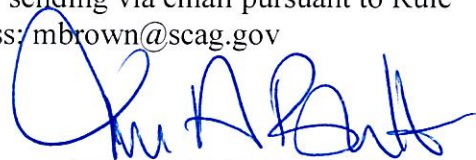
vs.

State of South Carolina,

Petitioner.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Esquire, hereby certify that I served this 26th day of January 2026 a Petition for Rehearing and Petition for Rehearing *En Banc* on Melody J. Brown, Senior Assistant Deputy Attorney General, by sending via email pursuant to Rule 262, SCACR, to her following registered email address: mbrown@scag.gov



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January 26, 2026

TB
LAW OFFICE OF
TRICIA A. BLANCHETTE

RECEIVED

Jan 27 2026

SC Court of Appeals

January 26, 2026
VIA EMAIL

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29211

RE: Oshaun J. Robinson v. State; App. Case No. 2020-001361

Dear Ms. Kitchings:

For filing, I have sent as an email attachment a Petition for Rehearing and Petition for Rehearing *En Banc* for filing with the Court. I have also attached a Certificate of Service. Please let me know if anything further is needed to complete this filing.

Yours truly,


Tricia A. Blanchette
Attorney at Law

cc: Melody J. Brown, Senior Assistant Deputy Attorney General (via email)
Oshaun J. Robinson