RECEIVED
MAR 02 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Colleton County
Honorable Frank R. Addy, Circuit Court Judge

BRADLEY L. JACKSON,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001621

PRO SE RESPONSE TO JOHNSON PETITION FOR WRIT OF CERTIORARI

Bradley L. Jackson
Allendale Corr. Inst.
F3-A01
1057 Revolutionary Trail
Fairfax, SC 29827
Pro Se Petitioner

ISSUE PRESENTED

Was Trial Counsel Ineffective For Failing To Enter An Objection or An Exception Where Trial Court Allowed State The Final Closing Argument To The Jury Where Defendant Did Not Offer Evidence In His Defense On His Own Behalf?

Was Trial Counsel Deficient For Failing To Call A Medical Expert To Challenge The State's Medical Evidence?

PCR Counsel Rendered Ineffective Assistance of Counsel In Failing To Raise Two Great Meritorious Issues In Amended PCR Application Rendering His Conviction and Sentence Fundamentally Unfair.

Did trial counsel render ineffective assistance where he failed to enter an objection or exception to the trial court allowing the State the final closing argument to the jury where Petitioner offered no evidence in his defense on his own defense?

During Petitioner's trial, while discussing closing arguments, the trial court stated: You are opening and closing, Miss Keeney, or not?
Miss Keeney: I'm going to go up once because I start and I'm done, right?
The Court: He didn't put in any evidence.
Miss Keeney: He didn't put in any evidence.
Mr Walker: [trial counsel] I'm not sure that is the rule anyone.
The Court: I'm not sure it is anymore, but you're fine by doing that?
Mr. Walker: I'm not going to argue with that.
The Court: Yeah, okay.
Mr. Walker: If we did, I would request that she open in full.
The Court: Definitely open in full. And the reason why they changed it is because the State always still has the burden of proof, even if the defense doesn't put on evidence, but it's up to you.

Ms. Keeney: I should actually know this, but when the defense puts in evidence, I always open in full, and then they go, and I do a brief reply. What's the actual rule?

Mr. Walker: State goes, you will open in full and then your reply.

The Court: your rebuttal is very short. It's obviously anything you didn't cover in the first.

Miss Keeney: I can open in full and do my brief rebuttal.

The Court: Okay. She'll get a very brief rebuttal....

App. 258, Line 25 - 260, Line 10

In the present case, Petitioner did not offer no evidence in his defense on his own behalf and asserts that he was entitled to the final closing.

When a defendant in a criminal case offers no evidence, he is entitled to the final closing argument to the jury. State v. Rogers, 269 S.C. 22, 24, 235 S.E.2d 808, 809 (1977)(citing State v. Gellis, 158 S.C. 471, 487, 155 S.E. 849, 855 (1930)). "The right to open and close the argument to the jury is a substantial right, the denial of which is reversible error." Rogers, 269 S.C at 24-25, 235 S.E.2d at 809.

In Herring v. New York, 422 U.S. 853, 95 S.Ct. 2550

(1975) the United States Supreme Court elaborated on the role of closing argument as a basic and fundamental right of the accused to make his defense: For the defense, closing argument is the last clear chance to persuade the trier of fact that there may be reasonable doubt of the defendant's guilt. Id. at 862, 95 S.Ct. at 2555.

In South Carolina, it is well established that where the defendant calls no witnesses and offers no evidence in his behalf, his counsel is entitled to have the concluding argument to the jury. State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972); State v. Gellis, 158 S.C. 471, 155 S.E. 849 (1930); cf. State v. Garlington, 90 S.C. 138, 72 S.E. 564 (1911).

Here, Petitioner presented no evidence in his defense, no witnesses were offered in his behalf, it follows he was entitled to present the last closing argument, and the failure of trial counsel to enter an objection or an exception to the trial court allowing the State the final closing was deficient and prejudiced Petitioner. Petitioner was prejudiced by trial counsel's deficient performance, in that counsel acted as a prosecutor in agreeing with the State and the trial court because he was not aware

of the rule pertaining to closing arguments.

Prior to 1802, the practice regarding closing in all public prosecutions on behalf of the State was to allow the State the privilege of opening and concluding the arguments in every case addressed to the jury. See State v. Brisbane, 2 S.C.L. 451 (1802). This partiality shown to prosecutors was a "relict of the Kingly perogative." Id. However, in Brisbane, the Constitutional Court of Appeals of South Carolina (the predecessor of this Court) formulated a rule governing closing arguments in criminal courts, holding that in all cases in which a defendant calls no witnesses, he should have the privilege of concluding to the jury. Id. at 454.

In State v. Huckie, 22 S.C. 298, 298-99 (1885), the Supreme Court held that when a defendant in a criminal prosecution offers no evidence, he is entitled to the last argument; however, when two or more defendants are jointly tried, if any co-defendant introduces evidence, the State is entitled to the reply argument. Id. at 300-01. See also State v. Mouzon, 326 S.C. 199, 485 S.E.2d 918 (1997); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972).

In State v. Garlington, 90 S.C. 138, 144-45, 72 S.E. 564, 566 (1911), the Supreme Court held that in cases in

which no defendant introduces evidence, the defendant(s) have the right to open and close during closing argument but may waive the right to both arguments or may waive the right to open and instead present full argument to the jury after the State's closing argument. In State v. Gellis, 158 S.C.471, 485-86, 155 S.E. 849, 855 (1930) the defendant did not call witnesses in his defense, but he introduced letters and telegrams into evidence through a prosecution witnesses. Holding the defendant did not have the right to the final argument, we clarified that "if a defendant offers any evidence on trial of the case, the state is not deprived of its general right to the opening and concluding arguments". Id. at 486-87, 155 S.E. at 855. Consequently, the loss of the

On January 28, 2016, the Supreme Court initiated the prescribed legislative process by proposing amendment to the South Carolina Rules of Criminal Procedure to add Rule 21. See Re: Amendments to South Carolina Rules Criminal Procedure, 2014-002613 (S.C. Sup. Ct. Order dated January 28, 2016). Proposed Rule 21 stated, "Closing argument in all non-capital cases shall proceed in the following order: (a) the prosecution shall open the argument in full; (b) the defense shall be permitted to reply; (c) the prosecution shall then be permitted to reply in rebuttal." Id. However,

by concurrent resolution, the General Assembley, as was its prerogative, rejected proposed Rule 21 in April 2016, see Con. Res. 1191, 121st Gen. Sess. (S.C. 2016)

While we acknowledge and respect the limitations placed on this Court's power pursuant to article V, section 4A of our Constitution, in order for our criminal court system to operate efficiently, effective, and consistently, clearly stated rules governing the content and order of closing arguments are required. Our current closing argument rules consist of the following patchwork: Pursuant to the common law rule pronounced in Brisbane and as clarified in Garlington, in cases in which no defendant introduces evidence, the defendant(s) have the right to open and close, but may waive the right to both or may waive opening and present full argument after the stating closing argument. In cases in which the defendants are jointly tried, if any one defendant introduces evidence, the State has the final closing argument.

Pursuant to the common law rule as clarified in Gellis, in cases in which a defendant introduces evidence of any kind, even through a prosecution witness, the State has the final closing argument. State v. Beaty, Id. at 42-43, 813 S.E.2d at 510-11.

Petitioner was prejudiced by trial counsel's deficient performance where trial counsel agreed with the trial court allowing the State to open closing arguments, the Petitioner the mid argument and the State the final [rebuttal] closing argument, where Petitioner was entitled to the closing argument. Petitioner presented no evidence in his defense and no witnesses were presented on his his behalf. Trial counsel failed to object or enter an exception to the trial court allowing the State to have final argument. Trial counsel's deficient performance prejudiced the Petitioner due to his apparent lack of knowledge of the rule on closing arguments, deprived Petitioner of a fair trial, the ability to point inconsistency in the State's evidence and testimony of various persons, and failed to preserve issue for appellate review.

Petitioner asserts that he has satisfied the prejudice prong of Strickland as he has demonstrated that that a "reasonable probability that the outcome of the trial would have been different had counsel not committed the deficiencies as stated above. See Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 353 (2016).

Did trial counsel render ineffective assistance where he failed to call a medical expert to challenge the State's medical evidence?

During Petitioner's trial, on direct examination, the State questioned the minor:

State: Tell me what was going on with [Petitioner] back then?

Minor: I would get touched.

Q. Where would he touch you?

A. My vaginia, my butt, and my chest.

Q. What would he touch you with? What parts of his body?

A. His penis.

Q. Anything else?

A. Tongue.

Q. Anything else?

A. Finger

Q. Okay. And when you said he touched you with his penis, where would his penis go?

A. In my butt.

Q. Anywhere else?

A. Vagina.

Q. In your vagina?

A. Yes.

Q. Anywhere on your body?

A. My mouth.

Q. And when he touched you with his penis in your vagina, would it be on the outside of your vagina or the inside of your vagina?

A. The inside sometimes.

Q. Okay. And then he touched you with his penis, would it be on the outside of your butt or the inside?

A. The inside

App. 159, Line 1 - 160, Line 9.

Q. Okay. Tell me about when he put his penis in your vagina part. How would that happen and what would happen?

A. It wouldn't really go in.

Q. Would it go in a little bit?

A. A little bit.

Q. Okay. But the whole thing wouldn't go in?

A. No.

Q. And what would happen next?

A. He would turn me over and put it in my butt.

Q. He would put it in your butt?

A. yes.

App. 163, Lines 2-14.

Q. Put it my butt?

A. yes.

Q. Did it go inside your butt.

A. Yes.
App. 164, Lines 4-7.

Malloy Powers-Sessions, on direct by State:
Q. Miss Sessions, where do you work?
A. At the Medical University of South Carolina.

Miss Sessions is a nurse practitioner. She went to the University of South Carolina, graduated in 2013 with a bachelor's degree in nursing, then graduated with her master's degree in nursing in 2018. Miss Sessions has been certified as a nurse practitioner since 2018. App. 201, Lines 1-23.

Miss Sessions for pediatric trauma surgery in Columbia for a year. Then in 2020 got a job with the Medical University of South Carolina with the Child Abuse Pediatrics Division of MUSC. App. 202, Lines 1-5.

Miss Sessions is a sexual assault nurse examiner, known as a SANE nurse, certified. App. 202, Lines 6-10.

Miss Sessions testified that she examined Minor on June 1st of 2021, and that minor was almost 10, nine, almost 10. App. 207, Lines 10-15.

That Minor made a disclosure of sexual abuse. That Minor's exam results, that she had a normal anal and genital exam. No STD. That it is rare to actually find any injuries. And very rare to find injuries. App. 208, Lines 21-

209, Line 7.

Miss Sessions explained why it was very rare to find injuries. That the vaginal mycosis is very vascular and heals very quick. She explains it to parents and caregivers. It heals like the roof of your mouth getting burned on hot food. Two days and its healed. Depending on the time, Minor may have had an acute injury at the time of the assault and it could be completely healed with no evidence of injury.

The degree of penetration is also a variable that goes in come play. I use the cave analogy. You could be right outside of the cave. You could be in the cave, in the middle of the cave, or all the way to end of cave, it doesn't really matter. You're still in the cave. There's still penetration but the degree of it could play into how many injuries you cause. Penetration rarely has any injuries. There's multi-factorial reasons why there's rarely injuries. App. 209, Line 5 - 210, Line 5.

During cross by defense counsel, miss Sessions testified:

Counsel: Have you ever said there was no sexual abuse that occurred to this person I've just examined?

Miss Sessions: What we say is that the sexual abuse is -- we don't have enough evidence. We never say that it didn't occur in my report. There's no way for you to

ever prove really that sexual abuse did not occur unless -- I mean, there's really not.
Counsel: So you use language that leaves the possibility that it occurred in every exam that you've ever done.
Ms. Sessions: For the most part.
Ms. Sessions stated that she made a finding of sexual abuse, based on Minor saying that she was sexually abused, based on Minor's disclosures. App. 212, Line 10 - 213, Line 7.

Ms. Sessions further testified that Minor had no behavioral concerns, physical activities similar to peers, no developmental concerns, school performance average. Minor did not have "no difficulty sleeping." "No hyperactive or impulsive behavior," no fearful of being alone," "no sad or crying easily," "not to quiet or withdrawn," "no angry outbursts," "no hitting or biting," "no difficulty in making or keeping friends," "has not run away from home," "No trying to hurt herself," "no sexualized behavior." "No weight loss."
"No painful urination," "No bloody urination," "No urinary tract infection," "No bedwetting," "No soiling of the pants," "No genital itching, lesions, bleeding, pain," "No vaginal discharge," "No anal itching, pain, lesions and bleeding." App. 215, Line 10 - 217, line 8.

Miss Sessions testified that one of the few findings of forced oral sex can be petechiae, known basically as bruising or trauma to the mouth. That there was no bruising or trauma to the mouth when she did the exam. App. 218, Lines 11-18.

That anus, normal anus without lesions, discharge or evidence of trauma. App. 219, Lines 9-10.

That Minor's hymen was smooth with no interruptions noted, no abnormal lesions or discharge were present. App. 219, Lines 19-21.

There was no injuries to Minor's hymen. App. 220, Line 17.

In Miss Sessions general exam checked box that says, "No finding of sexual abuse." And after that, Miss Sessions did not check box that says "sexual abuse is strongly indicated." App. 221, Lines 10-17.

Miss Sessions checked the box, "The patient gives a clear disclosure of sexual abuse." App. 221, Lines 18-21

That "the anal genital examination is normal or non-specific." App. 221, Lines 22-25.

That it was Minor's disclosure that led Miss Sessions to check the sexual abuse allegations, not the exam.

In this case, counsel's failure to call a gynecological expert to challenge the State's medical evidence was deficient performance. Counsel's deficient perform-

mance prejudiced Petitioner, but for counsel's unprofessional errors, the proceeding would have been different. Strickland, 466 U.S. at 693.

Had trial counsel retained a gynecological expert, Petitioner could have shown that Minor showed no signs of sexual abuse and no signs of behavioral changes, no physical abuse contrary to the State's expert's testimony based only on Minor's allegation that Petitioner sexually abused her.

In McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) this Court held that "trial counsel was ineffective in failing to investigate medical evidence contradicting the State's expert testimony. In Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (2015) the Court of Appeals held that "trial counsel rendered ineffective assistance of counsel for failing to investigate and present the testimony of a gynecological expert to challenge the State's medical evidence, and counsel's deficient performance prejudiced the Petitioner and granted a new trial.

PCR counsel rendered ineffective assistance of counsel in failing to raise to two great meritorious issues in amended PCR Application rendering his conviction and sentence fundamentally unfair.

PCR counsel was ineffective for failing to raise the above two issues in her amended application. The grounds are meritorious.

In Rule 71.1(d), South Carolina Rules of Civil Procedure states: If, after the State has filed its return, the application presents questions of law or fact which require a hearing, the court shall promptly appoint counsel to assist the applicant if he is indigent. Counsel shall be given be given a reasonable time to confer with the applicant. Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.

Pursuant to §17-27-90 of the South Carolina Code Ann. all grounds for relief must be raised in applicant's original, supplemental or amended application as this Court disfavors successive PCR applications especially the new grounds that Petitioner raises could have been raised in his initial application [or amended application]. Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991).

The failure to consider these claims will result in a fundamental miscarriage of justice.

Petitioner requests the Court to grant him a new trial, or, remand to the PCR court to consider the merits of these two grounds.

Respectfully Submitted this 24th day of February, 2026.

Bradley L. Jackson
Bradley L. Jackson
#391410
Allendale Corr. Inst. F3-A01
1857 Revolutionary Trail
Fairfax, S.C. 29827

My indictment numbers are 2021-GS-15-00605 and ~606 but trial court sentenced me on an indictment # 2021-GS-15-00650. I have not idea who's indictment this is. I request that the Court dismiss this indictment and the conviction and sentence, for lack of subject matter jurisdiction. App 327 line 12-13

Trial Counsel violated my Due Process by taking me to trial without an Discovery.

I am requesting that both Conviction(s) and sentence(s) be vacated with Presudice.