RECEIVED
Mar 16 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Hampton County

Honorable Frank R. Addy, Circuit Court Judge

GREGORY SANDERS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001527

JOHNSON PETITION FOR WRIT OF CERTIORARI

Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to object to the solicitor's improper closing argument, where the solicitor maintained Petitioner had the eyes of a killer, since the remarks were clearly calculated to arouse the jurors' passions or prejudices, and where Petitioner was prejudiced because there is a reasonable probability the outcome of his trial would have been different if counsel had properly objected, particularly given that there was compelling evidence that Petitioner acted in self-defense?

STATEMENT OF THE CASE

Petitioner and Tyhira Harrington were friends. App. 294, ll. 16-20; App. 335, ll. 13-18. On May 10, 2016, Petitioner was aware that there were rumors going around Estill that were damaging his friendship with Harrington. App. 590, l. 21 – 591, l. 2. Consequently, Petitioner went to see Harrington at her apartment to "clear his name." App. 298, ll. 13-14; App. 340, ll. 1-2; App. 590, l. 25 – 591, l. 13. Harrington had been drinking all day. App. 344, ll. 22-23; App. 355, ll. 2-23. Initially, the two engaged in a civil discussion. However, Harrington punched Petitioner and her friends, Kywana Bradley and Yhantyse "Daisy" Priester, joined in to assist Harrington. App. 298, l. 22 – 299, l. 21. Eventually, Petitioner was able to escape Harrington's apartment. App. 591, ll. 14-24.

Later that night, Petitioner and his girlfriend, Javasha Forrester, were walking down the street going home. App. 259, ll. 14-18; App. 594, l. 12 – 595, l. 1. A car drove past them, slammed on brakes, backed up, and then pulled into a parking lot within inches of the pair. App. 259, ll. 22-25; App. 343, ll. 10-13; App. 356, ll. 12-24; App. 595, ll. 10-24. From the car emerged Harrington, Priester, and two young men named Randy White and Marquis Alston. App. 260, ll. 11-17; App. 272, ll. 23-25; App. 344, ll. 7-8; App. 595, l. 18 – 596, l. 18.

Petitioner was scared. App. 596, ll. 1-2; App. 601, ll. 6-7. Harrington was in "full effect" and immediately started threatening Petitioner and Forrester. App. 259, l. 24 – 260, l. 2; App. 269, ll. 2-8; App. 357, ll. 8-11; App. 597, ll. 1-11. According to White, Harrington was "full of rage." App. 269, l. 25. Harrington wanted to fight and was intent on doing violence. App. 273, ll. 1-4; App. 279, ll. 1-3; App. 287, ll. 13-15; App. 343, ll. 14-15; App. 362, l. 25 – 363, l. 1. Petitioner put Forrester behind him to shield her from Harrington and the two backed up. App. 260, ll. 3-4; App. 272, ll. 23-25; App. 273, ll. 16-19; App. 274, ll. 12-15; App. 350, ll.

3-5; App. 597, ll. 12-18. Harrington's boyfriend, Randy White, was "right beside" Harrington as she continued to approach Petitioner and Forrester. App. 273, ll. 20-24; App. 287, ll. 16-18; App. 598, ll. 3-8; App. 598, ll. 18-22. Harrington's other friends were not far behind them.[1] App. 598, l. 23 – 599, l. 1. When Forrester repeatedly assured Harrington that she did not want to fight, Harrington turned her ire toward Petitioner. App. 343, ll. 15-16; App. 346, ll. 5-7; App. 354, l. 22; App. 598, ll. 9-13. Harrington even told Petitioner at she had a gun in her car. App. 598, ll. 13-15.

Petitioner explained that there was a building behind him and the foursome had him cornered. In short, he had no avenue of retreat. App. 599, ll. 2-12. Despite Petitioner's repeated requests that the foursome, led by Harrington, leave them alone, the group continued its advance. App. 600, ll. 9-22. At that point, Petitioner did the only thing he could do. He pulled his gun and shot Harrington. App. 602, ll. 15-17. Petitioner and Forrester then ran to safety. App. 602, l. 18 – 603, l. 7.

A Hampton County grand jury indicted Petitioner on February 6, 2017, for murder and possession of a weapon during the commission of a violent crime. App. 987-990. His case was called to trial on May 7, 2018, before the Honorable Carmen T. Mullen, and a jury. App. 1. Assistant Solicitors Tameaka Legette and Bryan Hollen represented the state. Stephen Plexico represented Petitioner. App. 2.

During the state's closing argument, the assistant solicitor argued:

> And **the eyes that I saw** in this courtroom today, when he [Petitioner] took that gun and put it in his pocket and pulled it out, that was the man the night

[1] Marquis Alston claimed that when the car stopped, he got out and went to the home of a friend who lived nearby. App. 317, l. 10 – 318, l. 24; App. 320, ll. 1-7. Yhantyse Priester claimed that she sent Alston and Randy White to get Kywana Bradley to calm Harrington down. App. 344, ll. 7-11.

> of May 10, 2016.[2] **The eyes that I saw was in his element.** He pulled out the gun, and did you notice how he did it? Because remember the pathologist said that the shot goes across here, from left to right. It goes across. Just like that. Pow. Just like that. And then he hopped and ran away.
>
> . . .
>
> He [Petitioner] wasn't afraid of anybody. He wasn't fearing any man. Not any man and not any woman, because you know what he had? **If you could've seen his eyes. The eyes, the eyes tell a story. The windows to the soul. And what I saw in those eyes today when he pulled that gun and he shhh. *Eyes of a killer*.** He was not in fear. He was not in fear.
>
> . . .
>
> What did he do? He pulled that gun out of his pocket, and **his eyes told the story**. Boom. He was just that close.
>
> . . .
>
> **Malice was in his eyes today when he pulled out the gun, and pow**.

App. 645, l. 13 – 669, l. 22 (emphasis added). For whatever reason, trial counsel did not object to this inflammatory argument.

On May 9, 2018, the jury found Petitioner guilty as indicted. App. 713, l. 21 – 714, l. 2. He was sentenced to life without parole for murder, and five years' imprisonment for the weapons offense. App. 722, l. 21 – 723, l. 4.

The Court of Appeals affirmed Petitioner's convictions and sentence. State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022); App. 792-803. On appeal, Petitioner challenged the admission of a text message. The Court of Appeals held that although the text message was properly authenticated, it was inadmissible hearsay. Nonetheless, the Court of Appeals concluded the erroneous admission of the text message was harmless. App. 792-803.

[2] During his testimony before the jury, the assistant solicitor had Petitioner demonstrate in the courtroom how he shot the decedent with State's Exhibit No. 44, the gun used in the killing. See App. 624, l. 3 – 625, l. 20.

By order filed June 27, 2023, this Court denied Petitioner's petition for writ of certiorari to review the decision of the Court of Appeals. App. 869.

On July 28, 2023, Petitioner filed an application for post-conviction relief (PCR). App. 872-878. On October 2, 2023, Petitioner filed a second application for post-conviction relief. 879-885. On March 14, 2024, the state filed a return to Petitioner's first PCR application, and a return to and a motion to merge Petitioner's second application. App. 886-899. By order filed April 1, 2024, the circuit court granted the state's motion to merge the two PCR actions. App. 900-901. With the assistance of counsel, Petitioner filed an amended application on April 9, 2025, raising the claim argued in this petition. App. 902-903. An evidentiary hearing was convened on April 14, 2025, before the Honorable Frank Addy, Jr. App. 905. Assistant Attorney General Danielle Dixon represented the state. Chelsey Marto represented Petitioner. App. 905.

Petitioner testified at the hearing that trial counsel should have objected to the assistant solicitor's closing argument because it "played on the emotions of the jury." He explained, "She [the assistant solicitor] kept constantly telling them [the jurors] I've got the eyes of a cold-blooded killer, that I am a cold-blooded killer, to find me not guilty is a lapse of [common sense]. She said I'm cold-blooded. What else? There's a lot she was saying though, but she kept telling them, like, this is not self-defense, this is murder. This is not self-defense, this is murder. Once you constantly refer to something over and over and over, eventually, it's gonna get - - stuck in somebody's . . . head, and she kept painting a picture of me as being a murderer, if it makes sense." App. 918, l. 3 – 920, l. 25; See App. 939, ll. 13-18.

Petitioner testified that the solicitor did not discuss "facts" during her closing argument. Rather, "it was all emotions for the jury." App. 920, ll. 23-25. He also maintained that the

solicitor threw "stuff around the courtroom," including her "water container," and was "doing all this extra antics in the courtroom." Petitioner explained that after the solicitor put on this performance during her closing argument, the jury found him guilty after deliberating for only thirty-six minutes. App. 932, ll. 4-19.

Tameaka Legette, the assistant solicitor who prosecuted Petitioner and argued in closing for the state during trial, testified that she did not believe she used any inflammatory language during her closing argument and that she did not think her argument was "emotionally charged." App. 942, l. 18 – 943, l. 3. She stated that Petitioner testified during trial and she cross-examined him. She explained, "And the reason why I talked about his eyes [during closing argument] is because one of the questions I remember asking him was for him to show me how he did it. And at that point something in his eyes just kinda flared up at me, and the way he turned - - the way he smiled when he was describing how he actually shot the victim, and then he got off the witness stand, I think I asked him, and he turned around to run. It was as if he were - - he was living in the moment, and his eyes to me suggested that he had the eyes of a killer. So what I was able to see and what I believe the jury was able to see when he testified, and when he made those movements, was - - were facts." App. 943, ll. 4-20.

Legette maintained that she did not "throw anything around the courtroom" during her closing argument. However, she admitted that she brought a black dress to court and put the black dress in front of the jury during her argument because "one of the witnesses testified that Mr. Sanders [Petitioner] said that her [the decedent's] mother should buy a black dress because he was going to kill her daughter." App. 943, l. 24 – 944, l. 11.

Stephen Plexico, Petitioner's trial counsel, testified that he did not find any language in the assistant solicitor's closing argument objectionable. He explained that the assistant solicitor

who prosecuted Petitioner is "more dramatic than most people" and "she just has her style." However, he did not "see anything damaging" to Petitioner in the solicitor's argument. App. 955, ll. 1-15.

By order filed June 17, 2025, the PCR court denied Petitioner relief. App. 974-986. The court found trial counsel was not deficient for failing to object to the solicitor's closing argument because the court determined the solicitor did not say "anything objectionable." Accordingly, the court found Petitioner did not prove he was prejudiced by any alleged deficient performance. App. 982-983.

Because Petitioner's due process rights to a fair trial were violated when trial counsel failed to object to the solicitor's inflammatory closing argument, and since Petitioner was prejudiced by counsel's deficient performance, this petition for writ of certiorari follows.

ARGUMENT

Petitioner's Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated when trial counsel failed to object to the solicitor's improper closing argument, where the solicitor maintained Petitioner had the eyes of a killer, since the remarks were clearly calculated to arouse the jurors' passions or prejudices, and where Petitioner was prejudiced because there is a reasonable probability the outcome of his trial would have been different if counsel had properly objected, particularly given that there was compelling evidence that Petitioner acted in self-defense.

Trial counsel was ineffective for failing to object to the assistant solicitor's inflammatory closing argument. The solicitor argued Petitioner had "the eyes of a killer" and repeatedly made comments that improperly appealed to the jurors' emotions. Petitioner was prejudiced by counsel's deficient performance because there is a reasonable probability that the outcome of his trial would have been different if counsel had correctly objected, particularly given that there was compelling evidence Petitioner acted in self-defense.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). In order to show 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 the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 686; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-88.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

"Solicitors must confine their closing remarks to the record and the reasonable inferences that may be drawn therefrom." Tappeiner v. State, 416 S.C. 239, 250, 785 S.E.2d 471, 477 (2016) (citing Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). "In keeping their closing arguments within the record, solicitors additionally must tailor their remarks 'so as not to appeal to the personal biases of the jury' or 'arouse the jurors' passions or prejudices.'" Id. (quoting Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004)). "In assessing the propriety of remarks made during the state's closing argument, appellate courts must determine 'whether the solicitor's comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" Id. at 251, 785 S.E.2d at 477 (quoting Vaughn v. State, 362 S.C. 163, 169-70, 607 S.E.2d 72, 75 (2004); See Von Dohlen, 360 S.C. at 609, 602 S.E.2d at 744.

In Tappeiner v. State, this Court found Tappeiner's trial counsel was ineffective for failing to object to the solicitor's remarks during his closing argument "regarding whether the jurors would want Tappeiner babysitting their children or relatives" because the comments "improperly appealed to the jurors' emotions, rather than the evidence in the record." Tappeiner, 416 S.C. at 252-53, 785 S.E.2d at 478.

In Von Dohlen v. State, 360 S.C. 598, 602 S.E.2d 738 (2004), this Court held trial counsel was deficient for failing to object to the solicitor's closing argument when the solicitor told the jury to "put yourself in Margaret's [the decedent's] shoes, size six" while holding up the decedent's shoes and crying. The Court determined the argument "indisputably asks jurors to abandon their impartiality and view the evidence and potential sentence from [the decedent's] viewpoint." Id. at 613, 602 S.E.2d at 746. The Court stated it "strongly disapproved of such arguments because their only possible use is to improperly arouse the passions and prejudices of jurors." Id. at 614, 602 S.E.2d at 746.

In Washington v. State, 440 S.C. 550, 891 S.E.2d 668 (Ct. App. 2023), this Court held trial counsel was deficient for failing to object to the assistant solicitor's closing argument where the solicitor, the same solicitor at issue in this case, stated Washington "has a pattern of robbing old folks, intimidating old folks, kidnapping old folks, holding them up." Id. at 570, 891 S.E.2d at 679. The facts presented to the jury were that Washington robbed Frank Klem and Joan Klem, who were both in their eighties, together and no other conduct toward older people was presented to the jury. Id. This Court held the solicitor's statement could only be reasonably construed as discussing Washington's prior criminal record, which was not in the record. Id. at 574, 891 S.E.2d at 680. The Court held Washington was prejudiced by his counsel's deficient performance because the solicitor's comments about the pattern "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. at 574-75, 891 S.E.2d at 681. The Court also concluded the record did not contain overwhelming evidence of Washington's guilt. Id. at 575, 891 S.E.2d at 681.

In this case, trial counsel was deficient for failing to object to the assistant solicitor's closing argument that was clearly designed to appeal to the emotions of the jury. The solicitor

stated that Petitioner had the "eyes of a killer" and that Petitioner's eyes were evidence of malice. The solicitor's remarks were inflammatory and, unlike what she claimed during Petitioner's PCR hearing, were not based on facts in the record. See Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004) ("A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences thereto.").

Petitioner was prejudiced by counsel's deficient performance because if counsel had correctly objected to the solicitor's improper closing argument, there is a reasonable probability the outcome of Petitioner's trial would have been different. Aware that Petitioner had a strong defense, the assistant solicitor attempted to obtain a conviction by arousing the jurors' passions and emotions during her closing argument. There was compelling evidence that Petitioner shot the decedent in self-defense after the decedent, who was full of rage, and her four cohorts cornered Petitioner and his girlfriend. Because there was not overwhelming evidence of guilt, the PCR court erred by finding Petitioner was not prejudiced by counsel's deficient performance.

Respectfully, this Court should reverse Petitioner convictions and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing on the issue presented. Petitioner ultimately requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of March, 2026.

RECEIVED
Mar 16 2026
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Hampton County

Honorable Frank R. Addy, Circuit Court Judge

GREGORY SANDERS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gregory Sanders states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.

2. She has reviewed the record of Petitioner's post-conviction relief hearing, which was held on April 14, 2025, before the Honorable Frank R. Addy, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Gregory Sanders.

Respectfully Submitted,

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of March, 2026.

RECEIVED

Mar 16 2026

S.C. SUPREME COURT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

This 16th day of March, 2026.