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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
PICKENS COUNTY APPEAL
The Honorable John C. Few, Trial Judge
The Honorable R. Scott Sprouse, Post-Conviction Relief Judge
Lower Case No. 2013-CP-39-0836

JASON ERVIN BLACK,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Appellate Case No. 2025-002119

BRIEF OF RESPONDENT

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PETITIONER'S QUESTIONS PRESENTED

1. Did the Court of Appeals improperly weigh witness credibility in this sexual assault case when it found appellate counsel's error harmless?
2. Alternatively, if this Court finds the deficiency in this PCR case is attributable to trial counsel instead of appellate counsel, is the error harmless?

STATEMENT OF THE CASE

In March 2007, the Pickens County Grand Jury indicted Petitioner Jason Evin Black (Black), for first-degree criminal sexual conduct (CSC) with a minor (2007-GS-39-0675) and committing a lewd act upon a child¹ (2007-GS-39-0673). (App. 556–69). On June 25, 2007, Black stood trial before a jury. The Honorable John C. Few, then-circuit court judge, presided. Assistant Public Defender John DeJong represented Black and Assistant Solicitor Peter Them prosecuted the case. On June 26, 2007, the jury convicted Black as indicted. (App. 333). Judge Few sentenced Black to concurrent terms of twenty years’ imprisonment for first-degree CSC with a minor and fifteen years for committing a lewd act upon a minor. (App. 339).

Black filed a timely notice of appeal. Chief Appellate Defender Joseph L. Savitz, III, perfected Black’s appeal by filing a brief with the Court of Appeals on the following issue:

Whether the trial judge committed reversible error by allowing the State to impeach Black’s corroborating witness with two Florida manslaughter convictions from 1987, as this evidence violated Rules 404 and 609, SCRE.

(App. 341–49).

Following briefing and oral argument, the Court of Appeals affirmed Black’s convictions and sentences in an unpublished per curiam opinion. (App. 366–67). Black then filed a petition for rehearing, which the Court denied by order dated August 27, 2010. (App. 370–71).

On November 3, 2011, this Court granted Black’s petition for writ of certiorari. (App. 393). Meanwhile, Counsel Savitz retired from the Office of Appellate Defense. Appellate Defender Breen Stevens took over Black’s case and filed the brief of petitioner. (App. 394–402). Following oral argument, our Supreme Court affirmed Black’s convictions and sentences in a published

¹ The lewd act statute was repealed in 2012, and the “crime that was lewd act is now classified as criminal sexual conduct with a minor in the third degree.” *State v. McGaha*, 404 S.C. 289, 293, 744 S.E.2d 602, 604 (Ct. App. 2013).

opinion issued October 3, 2012. *State v. Black*, 400 S.C. 10, 732 S.E.2d 880 (2012) (App. 420–37). The case was remitted back to the circuit court on October 19, 2012. (App. 438).

Black timely filed his PCR action July 2, 2013. (App. 439–63). However, the State was never served with the application and therefore did not know it had been filed prior to being contacted by the Pickens County Clerk of Court on August 21, 2019. (App. 464). The State submitted its return requesting an evidentiary hearing on December 12, 2019. (App. 464–78). Black, through PCR counsel, filed an amended application on December 27, 2019, and a second amended application September 7, 2020. (App. 479–80, 481–82).

An evidentiary hearing convened via WebEx on March 4, 2021, before the Honorable R. Scott Sprouse. (App. 483–529). Black was present and represented by Don A. Thompson, Esquire. Assistant Attorney General Lillian L. Meadows represented the State.

On April 5, 2021, Judge Sprouse issued an order granting relief on the claim of ineffective assistance of appellate counsel and denying the remaining claims. (App. 530–39). In response, on April 15, 2021, the State filed a motion to alter, amend, and reconsider pursuant to Rule 59(e). (App. 540–54). Judge Sprouse denied the State’s motion by order issued April 16, 2021. (App. 555).

On October 28, 2021, the State filed a petition for writ of certiorari. On cross appeal, Black filed a petition for writ of certiorari on November 3, 2021. The State filed a return to Black’s petition on February 23, 2022. On March 30, 2022, this Court transferred the case to the Court of Appeals. On October 19, 2023, the Court of Appeals granted both petitions for certiorari and ordered the parties to serve and file the appendix and briefs as provided by Rule 243(j), SCACR. After briefing, oral argument was held on May 27, 2025. On July 30, 2025, the Court of Appeals reversed the grant of relief. (Cert.Pet.App. 39-45). Black petition for rehearing which the Court

of Appeals denied on September 18, 2025. (Cert.Pet.App. 50). This Court granted Black's petition for review on January 16, 2026, and Black filed his Brief of Petitioner on February 26, 2026. This Brief of Respondent follows.

RESPONDENT'S STATEMENT OF FACTS

On May 16, 2006, Victim was a fifteen-year-old girl living in Pickens County with her mother. Black, her boyfriend of approximately six months, was twenty-six years old and a twice-convicted sex offender. (App. 82–83, 157–59, 163). Throughout Black's relationship with Victim, Black had another girlfriend. (App. 92). He lived in Liberty, South Carolina with his other girlfriend and their two-year-old-son. (App. 92, 129). Consequently, Victim never went to Black's home, but she spoke with him on the phone regularly. (App. 84, 93). Victim kept the relationship with Black a secret from her parents because he was eleven years older than her. (App. 83, 85–86).

On Saturday, May 10, 2006, Black and Victim had planned to spend the day together. (App. 83). That morning, Black called Victim's cell phone while she was at her father's house and arranged for her to meet him at a nearby landfill. (App. 85). He then took Victim to a beach near Clemson, where they stayed for three to four hours. (App. 84, 87). Around four o'clock, Black took Victim to meet a friend at a convenience store so that she could be at work by five o'clock. (App. 87–88). While Victim was at work, Black called her and told her to meet him at a trailer belonging to his friend, Richard Bush, later that night. (App. 89, 112). After work, the Victim went with her friend Candie to a skating rink. (App. 88–89). While at the skating rink, Black called Victim asking her to come to Bush's home. (App. 89–90). Shortly after, Victim along with Candie and Candie's boyfriend left the skating rink to meet Black at Bush's home. (App. 91). Bush was a sixty-six-year-old former convict with an admitted drinking problem. (App. 273). Prior to the night in question, Victim had met Bush five or six times. (App. 91). She recalled that he always carried a water bottle filled with liquor. (App. 91–92). While Candie and her boyfriend entered Bush's

home with Victim, they left around ten to fifteen minutes after arriving to go to McDonald's. (App. 95). Victim recalls that Candie and her boyfriend were gone for about thirty minutes. (App. 95).

After Victim's friends left, Black walked to the trailer bedroom and asked Victim to join him. (App. 95-96). After watching television briefly, Victim and Black engaged in sexual intercourse. (App. 96-98). Victim explained that throughout the duration of this incident Bush was in the living room watching the television. (App. 96). After the incident, Victim and Black returned to the living room with Bush. (App. 98). Five minutes later, Candie picked Victim up and they went to Candie's home. (App. 98). Once back at Candie's home, the Victim noticed her underwear was bloody. (App. 99). She immediately showered and changed into clean clothes. (App. 100). Before deciding to wash her underwear, she discussed the sexual encounter with Candie and showed her the bloody underwear. (App. 100). At trial, Candie confirmed the Victim's disclosure and seeing the bloody underwear. (App. 139-42). Several days after the sexual encounter, Victim disclosed to her mother what had happened at Bush's the previous Saturday. (App. 102-03).

On November 28, 2005, Lieutenant Tony Robinson of the Pickens County Sheriff's Office met with Black. (App. 199-200). In the midst of this discussion, Lieutenant Robinson and Black discussed the age of Victim. (App. 200). Specifically, Lieutenant Robinson informed Black that Victim was fifteen years old. (App. 201).

Black testified his relationship with Victim was solely platonic and never developed into a sexual relationship. (App. 260). Their friendship began between October and November 2005 after they met outside of Victim's neighbor's home. (App. 228-29). In the weeks to come, Black and Victim met up several times. (App. 229). Despite Lieutenant Robinson's testimony to the contrary, Black stated on direct examination that he believed Victim was seventeen years old. (App. 200-01, 229).

In regard to the night in question, Black testified that he went to the mobile home of Mr. Robert Bush to watch the Saturday night NASCAR race at 7:30 p.m. (App. 234–36). Approximately two hours later, Bush received a phone call from Victim asking if she could come to his house to speak with Black. (App. 241, 261). While Candie and her boyfriend entered Bush’s home with Victim, they left around ten to fifteen minutes after arriving to take her boyfriend home. (App. 242–43). According to Black, Candie returned to the home between 11:00 and 11:30 p.m. to pick up Victim (App. 243–44). Throughout Victim’s entire visit, Black insisted that he was never alone with the Victim. (App. 244). Specifically, Black testified that neither he nor Victim ever left the living room. (App. 244).

Black testified on direct examination that he met with Lieutenant Robinson via phone sometime between February and March 2006. (App. 246–47). Black recalled a second meeting with Lieutenant Robinson at the jail sometime after he was arrested for the incident in question. (App. 244). During these meetings, Black stated that he and Lieutenant Robinson never discussed Black’s sexual relationship with Victim. (App. 248). Black confirmed that he was convicted of assault with intent to commit criminal sexual conduct in 1997. (App. 248).

Subsequently, on cross-examination, Black revealed that his 1997 conviction involved criminal sexual conduct with a minor. (App. 248-49). Despite Lieutenant Robinson’s testimony, Black insisted he never met Lieutenant Robinson in person until after he was arrested in 2006. (App. 253-54). However, Black admitted that Lieutenant Robinson had informed him, via telephone conversation, months earlier that Victim was fifteen years old. (App. 255–56). Black acknowledged based on his prior criminal history, that he knew the legal consequences of engaging in a relationship with a fifteen-year-old. (App. 256–57). Despite this knowledge, Black continued the relationship. (App. 256). On re-direct, Black admitted to meeting Victim two to three times

after learning that she was fifteen years old. (App. 260). On the night in question, Black claims to have informed Victim that they could no longer see each other. (App. 260).

Bush testified on Black's behalf, stating he was at the trailer with Black and Victim on the night in question. (App. 265-66). Specifically, Bush testified that Black never went in the bedroom with Victim. (App. 269).

Prior to the State's cross-examination, Bush testified *in camera* that he was convicted on two counts of second-degree murder in Florida in 1987. (App. 271-72). As a result of that conviction, Bush was sentenced to twenty-two years' imprisonment, but was released in 1993. (App. 272). The State subsequently clarified that Bush was convicted of two counts of manslaughter, to which he was sentenced to two concurrent sentences of fifteen years' imprisonment. (App. 275-76). Bush was also convicted of one count of shooting or throwing a deadly missile, to which he was sentenced to a consecutive sentence of seven years' imprisonment. (App. 275-76). The State indicated their intent to use the prior convictions as impeachment evidence. (App. 27273). After hearing argument of counsel, the circuit court ruled the manslaughter convictions were admissible for impeachment purposes because the probative value substantially outweighed the prejudicial effect. (App. 280-82).

STANDARD OF REVIEW

In PCR matters, the standard of review “depends on the specific issue” presented. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). Appellate courts “defer to a PCR court’s findings of fact and will uphold them if there is evidence in the record to support them.” *Id.* Appellate courts give no such deference to a PCR court’s conclusions of law, and the review is *de novo*. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

ARGUMENT

The Court of Appeals correctly reversed the grant of post-conviction relief in finding Black failed to carry his burden of showing *Strickland* prejudice when the record did not support a reasonable probability of a different result for Black had appellate counsel argued a witness's prior conviction for throwing a deadly missile could not be used for impeachment.

[Black's Questions I and II].

Black's argument is that Court of Appeals erred in considering witness credibility in determining an absence of *Strickland* prejudice after finding deficient performance by appellate counsel. (BOP at 4). He then pivots to argue if that position is rejected, the Court should find trial counsel was ineffective in failing to preserve the issue. (BOP at 15). Black's arguments are hopelessly mired in legal error.

Relevant Law:

Claims of ineffective assistance of trial counsel are controlled by the familiar test: A petitioner must first demonstrate that his attorney's "representation fell below an objective standard of reasonableness," and that but for counsel's deficient performance, "there is a reasonable probability" that "the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*, at 694. A convicted defendant challenging his counsel's representation must carry his burden of showing both *Strickland* test components: "Unless a defendant makes both showings, it cannot be said that the conviction ... resulted from a breakdown in the adversary process that renders the result unreliable." *Id.*, at 687.

However, both components of the test need not be ruled upon to deny an ineffective assistance of counsel claim:

In particular, a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object

of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.

Id., at 697.

To determine whether the prejudice showing has been made, a reviewing court "must consider the totality of the evidence before the judge or jury." *Id.*, at 695. "Taking the unaffected findings as a given, and taking due account of the effect of the errors on the remaining findings, a court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors." *Id.*, at 696.

"[T]he *Strickland* test provides sufficient guidance for resolving virtually all ineffective-assistance-of-counsel claims[.]" *Williams v. Taylor*, 529 U.S. 362, 391 (2000). This includes claims against appellate counsel.

"Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel." *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). The questions to answer would be "1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance." *Id.*

Discussion:

Black's argument misconstrues the legal requirements and the Court of Appeals' application of the *Strickland* standard. When viewed correctly under *Strickland*, there is no error.

- a. The prejudice prong is the only prong decided by the Court of Appeals. Deficiency was not decided and may not be assumed.

The Court of Appeals found that lack of *Strickland* prejudice was dispositive of the issue regardless of whether appellate counsel could be found deficient in failing to raise a preserved issue, or trial counsel was deficient in failing to preserve the issue. (Cert.Pet.App. 43 and 45).

Black *assumes* deficient performance by appellant counsel, but no such determination was made nor was one required. The *Strickland* test does not require a linear march to completion. The best evidence? The Court said so, “Although we have discussed the performance component of an ineffectiveness claim prior to the prejudice component, there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Strickland*, at 697. The Court of Appeals correctly followed *Strickland* in avoiding the unnecessary deficiency analysis. And, Black agrees that the prejudice analysis is the same. (*See* BOP at 9, 15 and 17). Thus, deficiency is not an issue and all. The argument on whether counsel was deficient under an objective standard – either trial court or appellate counsel— need not be reviewed here, in fact, should not be reviewed here. The only issue is whether the Court of Appeals correctly applied *Strickland’s* second prong. Black’s argument to the contrary must be rejected.

In the alternative, Black has not made an actual showing of deficiency. Black cannot reasonably show on this record that this Court would have considered the missile conviction issue was unpreserved for appellate review, *only that the issue was not raised by appellate counsel. See State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012) (not distinguishing between admission of “Bush’s 1987 Florida convictions”). Appellate counsel, Mr. Savitz, testified at the PCR hearing that he did not believe the missile conviction issue to be preserved, therefore, he only argued the manslaughter convictions. (App. 519). That was counsel’s considered opinion after review of the transcript – a decision difficult to show as objectively unreasonable. *See Strickland*, 689 (“Judicial scrutiny of counsel’s performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular

act or omission of counsel was unreasonable.”). Black’s arguments against trial counsel fare little better.

Trial counsel, John DeJong, testified at the PCR hearing and described to the PCR judge that upon review of the transcript, he recalled there was a motion hearing on using Bush’s three prior convictions to impeach him, which Judge Few allowed. (App. 508). DeJong also testified that when Bush began to testify as to the convictions, he made a contemporaneous objection as well. (App. 509). When asked if he believed Judge Few was only concerned with the manslaughter convictions, DeJong stated he believed the discussion pertained to all three prior convictions. (App. 509). The record supports DeJong’s testimony that he discussed all three convictions outside the presence of the jury, and the Court provided a *Colf*² evaluation of the impeachment value of Bush’s prior convictions ultimately allowing the prosecution to use them. (App. 271-85). The PCR found that trial counsel was not ineffective:

Lastly, as to the issue of trial counsel failing to object to the admission of the remote conviction to impeach the defense witness, Bush, I find this assertion to be without merit. After reviewing the transcript, it is clear that trial counsel did raise this objection, as it was included in trial counsel’s argument regarding the admissibility of the defense witness’ prior convictions. Furthermore, the appellate courts found the issue to be preserved. I find that trial counsel adequately preserved this issue for appellate review.

(App. 537).

Consequently, Black’s argument that trial counsel could be deficient lacks support in the record. But again, this case is not a deficient performance case; it is a lack of prejudice case. There is no cause to discuss deficient representation. The point is that, regardless of potential deficiency, Black cannot show sufficient prejudice. That was the Court of Appeals’ ruling. (Cert.Pet.App. 44). Specifically, the Court of Appeals found it “unlikely” that Black “would have prevailed on

² *State v. Colf*, 337 S.C. 622, 525 S.E.2d 246 (2000).

appeal even if the issue had been raised.” (Cert.Pet.App. 44). Though that is squarely under *Strickland*, the prejudice prong necessarily required that the Court of Appeals look at the state of the record in the direct appeal, and the record supports the conclusion – no reasonable probability of a different result. To challenge the Court of Appeals ruling on lack of prejudice, Black makes two arguments. Both must be rejected.

- b. Black’s argument the Court of Appeals misconstrued the analysis in the direct appeal opinion in finding there was not sufficient evidence to support *Strickland* prejudice is faulty given the Court of Appeals was guided directly by this Court’s opinion.

Black argues that the Court of Appeals erred in interpreting this Court’s opinion in the direct appeal and that skewed its review of prejudice. (BOP at 9). However, Black fails to acknowledge that the Court of Appeals was first considering the very limited analysis included by the PCR court in granting relief. The PCR court made light reference to the direct appeal opinion and determined “Black was prejudiced by the deficiency, without elaboration.” (Cert.Pet.App. at 43). The Court of Appeals found the reference insufficient, and correctly found the PCR court’s singular and narrow reference “conflicts with the supreme court’s opinion in the direct appeal; the supreme court ultimately found that although Bush’s credibility was ‘diminished by the admission of the unchallenged conviction or shooting/throwing a deadly missile, ... the error could not have reasonably impacted the result in this case[,]’ because Balck’s “*own* credibility was seriously impeached at trial as well by testimony that had a criminal record that included two prior offenses for CSC with a minor[,]’ ‘an investigation with the Pickens County Sheriff’s Department testified that he had contacted [Black] before the incident alleged here and specifically warned him that [Victim] was only 15 years old[,]’ and ‘[Black] acknowledged this conversation and conceded that he knew having a relationship with a 15-year-old could get him in “trouble.” ’ ” (Cert.Pet.App. 44, quoting *Black*, 400 S.C. at 29-31, 732 S.E.2d at 891). This is correct.

In the direct appeal, this Court provided a harmless error analysis finding that despite the trial court improperly allowing the prosecution to impeach Bush with two prior convictions of manslaughter, a reasonable jury could consider the totality of evidence of Black's guilt and credibility. It is true that this Court also found that Bush's credibility was impeached by the missile conviction and that would have "diminished the jury's view of his character," this Court also considered the evidence and testimony from Victim and her friend Candie that conflicts with Black and Bush's version of events:

In the current appeal, we believe a review of the entire record indicates the error was harmless under the circumstances. **In addition to the fact that Bush's credibility had already been significantly compromised by the revelation that he was a former convict**, we note, in considering the overall strength of the State's case, that Petitioner's *own* credibility was seriously impeached at trial as well by testimony that he had a criminal record that included two prior offenses for CSC with a minor. In addition, an investigator with the Pickens County Sheriff's Department testified that he had contacted Petitioner before the incident alleged here and specifically warned him that the Minor was only 15 years old. Petitioner acknowledged this conversation and conceded that he knew having a relationship with a 15-year-old could get him in "trouble."

It was undisputed that the Minor was at Bush's home to visit Petitioner the night of the incident, and there was evidence at trial that conflicted with that of Bush and Petitioner and that corroborated the Minor's version of events. For example, despite Petitioner's and Bush's testimony that the Minor never left the confines of the living room, the Minor was able to describe some of the contents of Bush's bedroom, where she maintained Petitioner had taken her to have sex. Moreover, there was corroborating evidence from Candie Hudson, who picked up the Minor from Bush's home around 11:00 p.m., that she saw blood on the Minor's underwear after they returned to Candie's home, that she helped the Minor wash the garment, and that the Minor asked to borrow another pair from her. There has been no allegation any limitation was placed on the parties' ability to conduct cross-examination. Considering the foregoing and all of the other evidence adduced at trial, we find the admission of the additional impeachment evidence against Bush could not reasonably

have affected the jury's result in this case and we deem the error harmless beyond any reasonable doubt.

Black, 400 S.C. at 29-30, 732 S.E.2d at 891.³

The facts apart from the missile impeachment issue are unchanged and remain applicable to the current prejudice analysis. To state it differently, Black's argument to this Court appears to be that because Bush's credibility may have been enhanced by lack of the prior record, that alone will show a reasonable probability of a different result. Not only does that conflict with the four corners of the order (small as those corners may be), but his present argument also runs afoul of *Strickland* and does not support relief.

- c. Black misconstrues the review of the entirety of the record review under *Strickland* to be a credibility analysis alone.

Black argues that the Court of Appeals erred in "weighing the credibility of the witnesses." (BOP at 9). He urges this Court to let a jury decide whether to believe Bush or not and how that may have affected the remainder of the testimony. (BOP at 12-14). However, undermining the argument is that Black argues the jury *should not have credited the victim's testimony*. (BOP at 13-14). What is implicit in the tension is that both Black and the Court of Appeals are critically considering the evidence of record. That is not discounting testimony as a jury credibility determination may involve; that is making the *Strickland* analysis of whether there is a reasonable probability of a different result. Though the Court of Appeals does say Black's testimony reads as "evasive" and "not credible in other ways," (Cert. Pet.App. at 44), that is arguably a comment

³ In addition, not noted in the *Black* opinion, Victim testified that she considered herself to be in a relationship with Black when she was 15 years old, and he was 26 years old. (App. 83). She testified they had been dating for about 5 or 6 months and would drive around together and frequently talk on the phone. (App. 85). Further, Darlene Taylor, Victim's mother, testified that Black had attended church with her and Victim because Black's cousin also attended the same church. (App. 161-62). Taylor testified that she believed Black was 18 years old until she later discovered that he was 26 years old with a criminal record. (App. 163). She then asked Black to stay away from Victim. (App. 163).

on the demonstrated limitations of the testimony, not simply Black's credibility. Moreover, that is very much like the analysis this Court performed in *Jackson v. State*, 355 S.C. 568, 586 S.E.2d 562 (2003).

In that case, trial counsel was deemed deficient in failing to request a self-defense charge. *Id.*, at 572, 586 S.E.2d at 564. In considering whether there was *Strickland* prejudice, this Court found that its "confidence in the outcome of Jackson's trial [was] not undermined" because "Jackson's testimony was unsupported by the physical evidence and highly incredible." *Id.*, at 573, 586 S.E.2d at 564. The Court noted, among other things, several shots into the murder victim's body was at a downward angle, while Jackson had indicated he shot upwards; that ammunition and a magazine for the caliber of gun used was found in his bedroom, but "Jackson testified he did not know what happened to the weapon he used to shoot Smith; further, "Jackson gave inconsistent statements and testified that he did not remember noteworthy event[.]" *Id.* This Court concluded that the absence of the self-defense charge "would not have affected the outcome of trial due to the overwhelming evidence of Jackson's guilt." *Id.*, at 573, 586 S.E.2d at 565. *See also Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) ("the PCR court should consider the strength of the State's case in light of all the evidence presented to the jury").

Thus, while the phrasing of Black's testimony as "evasive" could be read to assign jury-like credibility determination, it could also be considered to describe the testimony as it appears in the record as to its strength, much like this Court described in *Jackson*. Consider that throughout Black's testimony, he admitted that Victim and himself were "seeing each other," but contends they were not in a relationship, such as in this passage:

Q You knew after you talked to him that a relationship with a 15-year old girl could get you into trouble, didn't you?

A Yes, sir

Q And you continued that relationship?

A There again, it wasn't really a relationship in my eyes.

Q Did you not use the words we were seeing each other?

A Seeing each other, yes, sir.

Q Isn't that what young people call dating nowadays or going out together or whatever they call it?

A I guess in some people's opinion, that may be, yes, sir.

Q Isn't that what you meant, you were going out with this girl?

A. I guess so, yes, sir.

(App. 258).

That is hardly a clear denial, and evasive does appear to fit. But even if that one point should be considered outside the *Strickland* analysis, once again, the remainder of the points that impeach him – the two prior CSC with a minor convictions and the other evidence of record – are pulled directly from the record and the direct appeal opinion. Essentially, the prejudice analysis here mirrors the harmless error analysis this Court performed. Black must argue that if Bush was not impeached with any Florida offense, then the limitations in his own credibility may have been overcome. That requests the reviewing court overlook the weakness of the defense case (even other elements of bias and credibility challenging aspects to Bush's testimony) and also set aside the strength of the State's case. That is not a proper *Strickland* analysis. Black's argument should be rejected.

The Court of Appeals did not err in applying *Strickland* and reversing the grant of post-conviction relief. Black is not entitled to relief.

CONCLUSION

Based on the foregoing, this Court should affirm the denial of post-conviction relief.

Respectfully submitted,

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