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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable J. Mark Hayes, Circuit Court Judge
Opinion No. 2026-UP-119 (Heard November 6, 2025 – Filed March 11, 2026)

MAURICE ANTHONY ODOM,
PETITIONER
V.
STATE OF SOUTH CAROLINA,
RESPONDENT

APPELLATE CASE NO. 2022-001223

RETURN TO PETITION FOR REHEARING

In a unanimous, well-reasoned, unpublished opinion, a three-judge panel of this Court reversed the PCR court's denial of Petitioner's PCR application and remanded Petitioner's case to the circuit court for a new trial. Odom v. State, Op. No. 2026-UP-119 (Ct. App. filed March 11, 2026). This Court correctly held that Petitioner's counsel provided constitutionally deficient performance which prejudiced Petitioner, thus entitling him to a new trial. Specifically, this Court held that trial counsel was deficient in her advice to Petitioner regarding which, if any, of his prior convictions could be used for impeachment which resulted in an unknowing waiver of Petitioner's constitutional right to testify. This Court found there was prejudice, as the record contained sufficient evidence of what Petitioner's testimony would have been had he not waived his right to testify. This Court additionally held that counsel was deficient in failing to object to statements made by the solicitor during opening statements which impermissibly vouched for Co-Defendant Mixon and during closing statements which twice impermissibly commented on

Petitioner's right to remain silent. This Court held Petitioner was prejudiced given the evidence presented at trial. This Court properly held that Petitioner received ineffective assistance of counsel. Respondent has offered no new arguments in the petition for rehearing. This Court should deny the petition.

I. This Court correctly held there was probative evidence of prejudice in the record to overturn the finding of the PCR court regarding Petitioner's waiver of his right to testify.

Respondent again complains that there is no evidence in the record to support a finding of prejudice. This argument is wholly specious. The question before this Court is not whether Petitioner testified in detail or in response to a certain question, but whether there is *any evidence* in the record to uphold or overturn the PCR judge's finding regarding what Petitioner's testimony at trial would have been. See *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624. See also *Edwards v. State*, 392 S.C. 449, 455, 710 S.E.2d 60, 64 (2011) ("In reviewing a PCR court's decision, an appellate court is *concerned only with whether there is any evidence of probative value that supports the decision.*") (emphasis added). The evidence in the record is patent.

Q. [to trial counsel] And did you discuss the possible or *the defenses with Mr. Odom prior to trial*, any defenses you intended to raise?

A We did. My recollection is that *Mr. Odom was adamant that Mr. Mixon had taken his car and committed these crimes without him because he was a neighbor.*

App. 529, ll. 3-8 (emphasis added).

Q. [to trial counsel] Okay. With respect to allegation nine. That is the NCIC document. Did Mr. Odom ever deny owning the car? I believe you mentioned something about that before, about him, with the car situation.

A Yes, ma'am. He never denied owning the car. *His whole thing was he said Mr. Mixon had taken his car and committed these crimes.*

App. 538, ll. 6-12 (emphasis added).

Q: [to petitioner] Okay. And did I hear Ms. Wiygul correctly in that *your version of the case* was that Mr. Mixon stole your car to commit the crime. Is that fair?

A: I wouldn't say he stole it because he got, I keep my keys inside, and he had used my car before. He got my car before, he got it.

App. 574, l. 25-App. 575, l. 5 (emphasis added).

As this Court recognized, the state's case hinged on the testimony of Mixon, who testified that he and Petitioner drove Petitioner's car to commit the burglary. While other evidence connected Petitioner's car to the burglary, *only* the testimony of Mixon connected Petitioner to the burglary. Trial counsel testified repeatedly that Petitioner's defense had always been that Mixon took his car without his knowledge to commit the burglary. Petitioner himself testified to this when the state asked him what his version of the case was. As recognized by the federal courts, "the showing that a defendant must make need not be onerous, it must be sufficiently detailed to be "genuinely exculpatory." Palmer v. Hendricks, 592 F.3d 386, 396 (3d Cir. 2010). Petitioner's testimony, coupled with that of trial counsel Wiygul, was sufficiently detailed to be genuinely exculpatory – had the jury heard and believed Petitioner, it would have been obligated to find him not guilty of the charge.

Critically, Respondent can point to no South Carolina jurisprudence for the assertion that the testimony can *only* be considered if it is in response to a direct question about Petitioner's trial testimony or for the premise that the testimony must be extraordinarily detailed. Instead, Respondent attempts to rely on extraterritorial authority to support its position. However, the cited authority is highly distinguishable from the present case.

In Palmer v. Hendricks, 592 F.3d 386 (3rd Cir. 2010), Palmer appealed the dismissal of his federal habeas petition without an evidentiary hearing and the failure of the lower court to rule on the merits of his petition, including a claim that counsel was ineffective for failing to advise Palmer of his right to testify at trial and at a suppression hearing. Id. at 388. The Third Circuit concluded that "because Palmer's petition does not contain sufficient 'factual allegations, which,

if true, would entitle the applicant to federal habeas relief,' the District Court did not abuse its discretion in declining Palmer's request for an evidentiary hearing." *Id.* at 392. The court noted that Palmer did *not* testify at the suppression hearing, and the record was "*silent* as to whether he wanted to testify, what the contents of his testimony would have been, and whether his attorney discussed with him the possibility or propriety of testifying." *Id.* at 389 (emphasis added). While Palmer had detailed the allegedly deficient conduct of his trial counsel, the affidavit accompanying the petition merely stated that he "would have taken the stand to testify on [his] own behalf to explain [his] side of what really happened if [he had been] allowed to do so." *Id.* at 394. The court surmised, "we know that Palmer wished to testify, and we know the legal theory toward which his testimony would have been directed (self-defense), but we *know nothing about the facts* to which Palmer would have testified." *Id.* at 395. (emphasis added). The court held that Palmer's stated desire to tell his side of the story and his conclusory invocation of the words "self-defense" were not sufficient to satisfy Strickland prejudice. *Id.* at 395.

Similarly, in Hines v. United States, 282 F.3d 1002 (8th Cir. 2002), the appellate court once again found itself without *any evidence* in the record of a defendant's testimony from which it could determine prejudice. Hines alleged ineffective assistance of counsel for failing to call him to testify, even though he had advised counsel that he wished to testify. *Id.* at 1003. In dismissing the application, the lower court found that "Hines produced *no evidence* indicating what his testimony would have been" and therefore could not show prejudice. *Id.* at 1004 (emphasis added). The Eight Circuit affirmed the lower court, held "Hines filed an affidavit stating that he wanted to testify at trial and that counsel failed to call him, but *saying nothing about what he would have said if he had testified*...Hines has given us *no basis* to conclude that counsel's alleged failure to call him prejudiced his defense." *Id.* at 1005.

(emphasis added). In State v. Arguelles, 921 P.2d 439, 441 (Utah 1996), the court held there was nothing in the record which suggested that the defendant would have decided to testify in the absence of that advice and that neither the record nor the defendant's brief *indicated what his testimony would have been* if he had testified. Likewise, in Walden v. State, 2016 Ark. 306, 7, 498 S.W.3d 725, 731 (2016) the court held there was no evidence in the record that the defendant met the threshold showing that he desired to testify and conveyed that to counsel and that "there was little showing of what Walden's testimony would have been had he testified beyond *vague statements that Walden would have given the jury the whole story of the incident.*" (emphasis added). Unlike these cases, there is direct evidence of Petitioner's version of facts in this matter, and that story was consistently told to defense counsel, as well as to the PCR court.

In Isaac v. State, 319 Ga. 25, 901 S.E.2d 535 (2024), the court indeed began its discussion of Strickland prejudice by noting that Issac was never asked what he would have specifically testified had he gotten on the stand. Id. at 31, 901 S.E.2d at 541. However, the court recognized there was testimony in the record from Issac about the shooting, wherein he denied culpability and denied telling others he was responsible for the crime. Id. The court, assuming the testimony given by Isaac would have been his trial testimony, ultimately found the testimony was not sufficient to establish prejudice "[g]iven the *strong evidence of Isaac's guilt and the cumulative nature of his potential trial testimony*, there is not a 'reasonable probability' that had Isaac testified along the lines that he testified at the motion for new trial hearing, 'the result of the proceeding would have been different.'" Id. at 32, 901 S.E.2d at 542 (emphasis added). Unlike Issac, the testimony from Petitioner is patent in the record, not cumulative, and genuinely exculpatory. Further, there was not overwhelming evidence of Petitioner's guilt.

Respondent asserted that Rushing v. State, 711 So.2d 450 (Miss. 1998) stood for the proposition that “Rushing failed to prove prejudice under *Strickland* where she failed to present ‘substantial and detailed evidence’ of what she would have testified.” PFR. 2. In Rushing, the appellate court reviewed both direct appeal errors and claims of ineffective assistance of counsel in a single appeal. Id. at 452. In ruling on the *trial court’s* failure to rule on a motion *in limine*, the court held the trial court’s failure to rule was not error because it was well-established that “[i]t is the responsibility of the movant to obtain a ruling from the court on motions filed by him and failure to do so constitutes a waiver of same”; there was nothing in the record to indicate that Rushing sought to testify or that she was denied the opportunity to do so; and the assignment of error was procedurally barred because [of the] failure to make a proffer of the testimony he would have presented as a defendant “must preserve for the record ‘substantial and detailed evidence’ of what he would have testified.” Id. at 456. This was because “if a defendant in fact has nothing of substance to say in his own defense, we are hardly likely to give the time of day to his suggestion that his right of allocution was chilled by the foreknowledge that the prosecution would present his prior conviction.” Id.

In ruling on whether *trial counsel* was ineffective in failing to obtain a ruling on the motion *in limine*, the court held that counsel's failure to have the circuit court rule on the motion and his alleged refusal to allow Rushing to testify because her other charges would be used against her,

Especially considering that there is no evidence in the record to show that Rushing previously had been convicted of passing forged prescriptions and that the State made no effort to introduce any such evidence, her *attorney's actions were not unreasonable. Further, there is no showing that she was prejudiced by her failure to take the stand at trial.*

Id. at 458. (emphasis added). The Court in Rushing did not find the failure to present substantial and detailed evidence resulted in no prejudice but found counsel's actions were not unreasonable.

South Carolina appellate courts apply an "any evidence" standard of review to factual findings made by PCR courts. See Narciso v. State, 397 S.C. 24, 723 S.E.2d 369 (2012). "Under the proper standard of review, the appellate court's 'view' must be limited to whether there is probative evidence to support the PCR court's factual findings." Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018). When there is *probative* evidence in the record to support the PCR's factual conclusions, a reviewing court must uphold the PCR court's determination. However, when there is *no probative evidence* in the record to support the PCR court's conclusion, or as in this case where there is *probative evidence* in the record to directly refute the PCR court's holding, this Court is required to hold that the PCR court's ruling was in error. Gilchrist v. State, 350 S.C. 221, 227, 565 S.E.2d 281, 284 (2002) (the Court will not uphold the findings of a PCR court if no probative evidence supports those findings.)

All that is required is that the testimony is present and sufficient for a reviewing court to determine whether there is a reasonable probability the result at trial would have been different had the testimony be elicited. The undeniable fact is that there is evidence in the record of what Petitioner's testimony would have been had he testified at trial. He "adamantly" told trial counsel "from the beginning" that Mixon had taken his car and used it for the burglaries, and he testified to the same when questioned on cross-examination. This Court is not left to "pure conjecture" or speculation over what Petitioner's story would have been based on vague statements. Petitioner testified to his side of the story – his defense at trial, as testified to by both trial counsel and Petitioner, was that Mixon took his car without his permission to commit the

burglary, that Mixon knew he left his keys in his car, and that Mixon had taken the car in the past without incident. As reflected in the colloquy with the trial court, Petitioner had intended to take the stand to present his defense but was denied that opportunity due to trial counsel's deficient advice.

Respondent asserts the "limited evidence of Petitioner's claim that Mixon had taken Petitioner's car and used it to commit the burglary was presented only to explain counsel's theory of the case, her reasons for cross-examining Mixon about his alleged gang affiliation and her decision not to challenge the state's evidence that Petitioner owned the car used in the crime." PFR at 3. Respectfully, at no point did trial counsel testify that Mixon taking the car was *her* theory of the case. In fact, she repeatedly stated that it was *Petitioner's defense* that Mixon took the car without Petitioner's knowledge. App. 529, ll. 3-8. Petitioner himself then testified that his "story" was that Mixon took his car because he knew where his keys were and had taken it before. App. 574, l. 25 – 575, l. 5. Further, counsel testified that she questioned Mixon about potential gang affiliation because Petitioner told her he was in a gang, and she felt if Mixon was in a gang, that was a relevant fact for the jury to consider. App. 492, l. 22-493, l. 16. When asked about her decision not to challenge the evidence of Petitioner's ownership of the car, she testified that she could not recall.

Q. What on earth, strategic reason could there be for you to consent to the Government's theory of the case that Mr. Odom owned the vehicle?

A I do not recollect, Mr. Henderson. The only thing I could think of this many years later is that we might have had the trial postponed but I just cannot recollect. I agree with you that, that is something that I could have done but I did not do it.

App. 495, l. 22 – 496, l. 4. Counsel never testified as indicated by Respondent.

Respondent further asserted that the testimony of Petitioner should be ignored because "PCR counsel objected when Respondent attempted to cross-examine petitioner about his story," and

argued “Petitioner’s story about the car was totally irrelevant because it had nothing to do with the allegation that Counsel was ineffective for not challenging the state’s introduction of the DMV records.” PFR at 3-4. This is a mischaracterization of the objection. Following the question and answer about Petitioner’s side of the story, the state asked, “Okay. So in other words though, you never contested owning the car that was found at the scene? You don’t contest owning the car that links you to the crime?” PCR counsel objected, arguing Petitioner “sitting here saying, this is my car *today*, is totally irrelevant.” App. 570, ll. 9-15. When the state pushed back that the testimony was relevant, PCR counsel explained:

I believe that the Attorney General is misunderstanding what my argument is. I am not objecting to the introduction of this document in demanding that the State bring in the proper records custodian. Ms. Wiygul basically waived her right to cross-examine that employee for the North Carolina Department of Motor Vehicles. It would have been malpractice for Ms. Wiygul to call a witness from DMV. That is not what I am arguing at all. Her letting that document in and she made it too easy for the State to impeach my client, Your Honor. I want to make sure I am not arguing that Ms. Wiygul should have called anybody to get this document in. App. 570, l. 16 – 571, l. 13.

The PCR court summarized that PCR counsel’s position was the state has the burden of proof at a criminal trial, and trial counsel letting in the DMV document without objection lessened the state’s burden of proof. Therefore, the court did not think that Petitioner’s response “in today’s hearing in 2021, does he contest he owns a car or not is really -- the PCR.” App. 571, l. 14 – 572, l. 6. Counsel was not arguing, as Respondent contends, that Petitioner’s explanation about the circumstances of the robbery were irrelevant. He was arguing that whether Petitioner contested ownership of the car during the PCR hearing, when the issue was counsel’s failure to challenge the documentation of ownership at trial, was wholly irrelevant. Respondent’s argument on this point is, most respectfully, totally bogus.

Petitioner's argument that his testimony was in the record and that he was prejudiced by trial counsel's erroneous advice regarding the admissibility of prior convictions is preserved. While PCR counsel argued at the hearing on the Rule 59(e) motion that Petitioner's testimony would be "I didn't do it and then you can extrapolate from that," that was almost a year after the original PCR hearing, and he lacked the benefit of the PCR hearing transcript which contains explicit probative evidence of what Petitioner alleged occurred on the day of the burglary. Specifically, that Mixon knew Petitioner left his keys in his vehicle, that Mixon had on prior occasions used Petitioner's vehicle, and that he must have taken Petitioner's vehicle without his knowledge to commit the burglary. App. 538, ll. 10-12; App. 574, l. 25-App. 575, l. 5. Petitioner testified to his side of the story, and that probative evidence is in the record before this Court.

Finally, this Court performed the proper prejudice analysis. Respondent argues "applying the correct analysis to the present case requires the Court to examine the probably result of the jury's assessment of Petitioner's and Mixon's relative credibility." PFR at 8. Appellate courts do not determine credibility matters. See State v. Johnson, 413 S.C. 458, 467, 776 S.E.2d 367, 371 (2015) (Credibility findings are treated as factual findings, and therefore, the appellate inquiry is limited to reviewing whether the trial court's factual findings are supported by any evidence in the record.) Instead, this Court was tasked with determining if there was probative evidence of Petitioner's testimony in the record.

After determining that Petitioner's testimony was in the record, and that his testimony would have directly refuted that of Mixon, this Court relied on State v. Black, 400 S.C. 10, 31, 732 S.E.2d 880, 892 (2012) (Pleicones, J. Dissenting) and State v. Stukes, 416 S.C. 493, 500, 787 S.E.2d 480, 483 (2016), for the proposition that where testimony is critical to a defense in a case that is a credibility contest, the failure to present that testimony is not harmless beyond a

reasonable doubt. That those cases are direct appeals and not PCR appeals is not relevant, as they represent the law of this state and are applicable in any case. In determining whether Petitioner suffered prejudice, this Court had to consider whether his testimony in a case based on credibility would have created “a reasonable probability that, but for counsel’s unprofessional errors, the results of the proceeding would have been different.” Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 694). This analysis, while brief, was the same one performed by our Supreme Court in Horton v. State, 306 S.C. 252, 411 S.E.2d 223 (1991). The Horton Court noted that the State’s evidence against the defendant “consisted solely of Agent Peaster’s testimony.” Further, the defendant contended he wanted to testify about his belief that he was framed by the confidential informant but ultimately decided not to testify based on the advice of counsel. The Court concluded that the defendant had “met the second prong of the ineffective assistance test by a showing of prejudice by his reliance upon counsel’s erroneous advice; and that, but for counsel’s error, there is a reasonable probability the result would have been different.” Id. at 255, 411 S.E.2d at 225. This Court properly reached the same conclusion in the matter at bar.

The probative evidence in the record directly refutes the PCR court’s ruling. The record before this Court contains Petitioner’s version of events. The State’s case was based around the testimony of Mixon¹, and Petitioner was unable to present his side of the story due to the improper and deficient advice of Counsel Wiygul. Petitioner’s testimony as demonstrated by the

¹ Respondent asserts that Mixon had no reason to fabricate the claims against Petitioner. At the time of Petitioner’s trial, Mixon had several pending charges, including the Burglary he testified to participating in with Petitioner. App. 145, ll. 9-13; 152, ll. 4-18. On June 12, 2014, the day after Petitioner’s trial and guilty verdict, all charges against Mixon in Laurens County were nol prossed. Mixon received an extraordinary benefit for his testimony.

See <https://publicindex.sccourts.org/Laurens/PublicIndex/PISearch.aspx> Case Nos: M790635; M790636 (Burglary 3rd); M790638; M790648 (Grand Larceny); M790641; M790642 (Criminal Conspiracy); M790643; M790644 (Malicious Injury to Property);

record, was that Mixon committed the burglary using Petitioner's car without Petitioner's knowledge. Had the jury been privy to that testimony, there is a reasonable probability that the results of the proceeding would have been different. See Cherry 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Petitioner has shown both deficiency and prejudice. This Court should deny the petition for rehearing.

II. There is probative evidence in the record that the solicitor's comments were improper and prejudicial.

The PCR court held that the statements by the solicitor were not comments on Petitioner's right to remain silent because the solicitor did not directly mention Petitioner's failure to testify or that Petitioner was the only person who could contradict Mixon's testimony. However, "[p]rosecutorial comment, *whether direct or indirect*, on the defendant's failure to testify is impermissible. Where the solicitor refers to certain evidence as uncontradicted and the *defendant is the only person who could contradict that particular evidence*, the statement is viewed as a comment on the defendant's failure to testify." State v. Sweet, 342 S.C. 342, 347–48, 536 S.E.2d 91, 93–94 (Ct. App. 2000) (internal citations removed) (emphasis added).

In Petitioner's case the solicitor indirectly commented on Petitioner's right to remain silent when he repeatedly referred to the testimony of Mixon as uncontradicted. Much like Sweet, *supra*, Petitioner was the *only individual* who could have refuted the evidence presented by the state. There were two individuals accused of the burglary. Mixon admitted to being one burglar and asserted that Petitioner was the other burglar. The jury would have naturally understood that the only other person who could refute Mixon's claims was Petitioner. Thus, the only party that could contradict Mixon's testimony would have been the second burglar who the State asserted was Petitioner. The arguments made by the solicitor were indirect comments on Petitioner's right to remain silent as Petitioner was the only individual with the information to contradict

Mixon. See Sidebottom v. Delo, 46 F.3d 744, 759 (8th Cir. 1995) (Indirect references to a defendant's failure to testify are also prohibited if they either “(1) manifest the prosecutor's intention to call attention to the defendant's failure to testify, or (2) are such that the jury would naturally have understood them as a comment on defendant's failure to testify.”...The prosecution may comment on the defense's failure to present evidence to contradict the State's case “unless the defendant alone had the information to do so.”)

Respondent's reliance on State v. Stroman, 281 S.C. 508, 316 S.E.2d 395 (1984) is misplaced. Our Supreme Court did not “explicitly” hold, as suggested by Respondent, that “such remarks by a solicitor do not constitute improper comments on a defendant's exercise of the right to remain silent.” PFR, 10. In Stroman, our Supreme Court briefly touched on the issue of improper comments on a defendant's right to remain silent writing,

Appellant next asserts the trial court erred in failing to grant a mistrial based on two statements made by the solicitor during final arguments of the guilt phase of trial. First, appellant argues the solicitor improperly commented on appellant's silence in violation of the Fifth Amendment. We disagree. During trial, the State had introduced evidence identifying a fingerprint found at the crime scene as that of appellant. In his closing argument, the solicitor alluded to the fact that appellant had not attempted to contradict this evidence. “The control of argument is normally within the discretion of the trial judge, and we will not disturb his ruling where there is no abuse of discretion.” *State v. Penland*, 275 S.C. 537, 539, 273 S.E.2d 765, 766 (1981). We find no abuse.

The Stroman court found that the *allusion* that the defense did not challenge a solitary piece of evidence was not a comment on Stroman's right to remain silent. Petitioner's case is easily distinguishable from Stroman. Unlike Stroman, the solicitor in the case at bar did not suggest a single piece of evidence was uncontradicted but instead argued the testimony of the state's key witness and the only person connecting Petitioner directly to the burglary was uncontradicted. The reliance on Sweet was proper as Petitioner was the only person who could have contradicted the testimony of Mixon. The solicitor repeatedly and indirectly commented on Petitioner's right

to remain silent. The PCR court's finding on this point is directly refuted by the probative evidence in the record and by the jurisprudence of this state. See Gilchrist v. State, 350 S.C. 221, 227, 565 S.E.2d 281, 284 (2002) (the Court will not uphold the findings of a PCR court if no probative evidence supports those findings.) This Court correctly found the comments by the solicitor were improper, indirect comments on Petitioner's right to remain silent and that Counsel Wiygul was deficient in failing to object. See State v. Sweet, *supra*.

This Court correctly held that based on probative evidence in the record the solicitor's comments about Mixon were vouching as the comments "constitute[d] an assurance by the prosecuting attorney of the credibility of a [g]overnment witness through personal knowledge or by other information outside of the testimony before the jury." United States v. Walker, 155 F.3d 180, 184 (3d Cir.1998). In opening statements, the solicitor personally assured the jury that Mixon was simply there to tell the truth and then told the jury "I believe you will find [Mixon] in spite of his criminal record to be a credible witness." The only reasonable inference from this statement is that the jury would find Mixon to be credible because the State had found Mixon to be credible and believable. This is a direct comment with personal assurances to the jury that the solicitor personally believes Mixon and therefore the jury should believe him as well.

In closing arguments, the solicitor again vouched for the credibility of Mixon by arguing his testimony was truthful because the defense did not challenge it with his prior statement. Mixon's prior statement to police was never entered into the record during trial. The State relied on the unintroduced statement that was not presented to the jury to support Mixon's in court testimony, a tactic which our appellate courts have repeatedly held is vouching. See Vaughn v. State, 365 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) citing State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001) ("A prosecutor improperly vouches for a witness' credibility and places the

government's prestige behind a witness by making explicit personal assurances or indicating that information not presented to the jury supports the testimony.”)

The case against Petitioner was entirely dependent on the credibility of Mixon. His testimony was *the only evidence* connecting Petitioner to the burglary as there was no forensic evidence and the intruders were masked. Finding Petitioner’s car along an exit on I-26 near the scene was hardly probative evidence of his participation in the crime, especially when combined with the fact that Mixon knew where Petitioner’s keys were and had borrowed Petitioner’s car in the past. The evidence of Petitioner’s guilt was far from overwhelming. Thus, there was a reasonable likelihood that the improper witness vouching and repeated commenting on Petitioner’s right to remain silent infected the trial with unfairness as to make his conviction a denial of due process.

This Court correctly overturned the PCR court’s findings and held that Petitioner received constitutionally ineffective assistance of counsel entitling him to a new trial. Respondent has offered no compelling reason for this Court to depart from its holding. This Court should deny the petition for rehearing.



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This 12th day of May, 2026

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Laurens County

Honorable J. Mark Hayes, Circuit Court Judge

MAURICE ANTHONY ODOM,

PETITIONER-RESPONDENT

V.

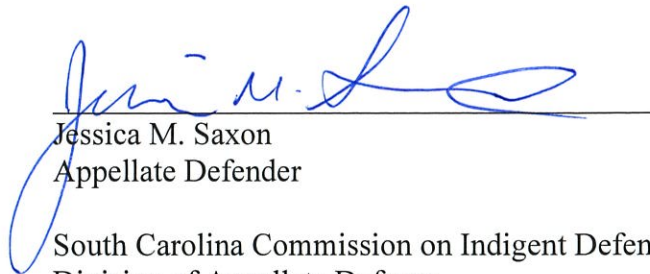
STATE OF SOUTH CAROLINA,

RESPONDENT-PETITIONER

APPELLATE CASE NO. 2022-001223

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Return to Petition for Rehearing in the above-referenced case has been served upon Zachary W. Jones, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Maurice Anthony Odom, #199677, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 12th day of May, 2026.



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

RECEIVED

May 12 2026

SC Court of Appeals

From: [Stock, Chris](#)
To: [Zachary Jones](#); [Zilcia Williams](#)
Cc: [Saxon, Jessica](#); [Warren, Kaylynn](#)
Subject: 2022-001223 - Maurice A. Odom v. State - Return to Petition for Rehearing
Date: Tuesday, May 12, 2026 3:39:00 PM
Attachments: [2022-001223 - Maurice A. Odom v. State - Return to Petition for Rehearing.pdf](#)

Mr. Jones,

Please find attached for service the Return to Petition for Rehearing for Maurice Anthony Odom's appeal which will be filed with the Court of Appeals today.

If you have any questions, please let me know.

Thank you,

Chris Stock
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Commission on Indigent Defense
Appellate Division
(803) 734-1330