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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Roger M. Young, Circuit Court Judge

SAMUEL OLALDE GONZALEZ,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2024-000135

REPLY BRIEF OF PETITIONER

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ARGUMENT IN REPLY

The State's assertion that the issue of counsel's ineffective assistance in failing to object to evidence of his "Nazi" tattoo was not preserved is without merit and was not the basis for the PCR court's ruling below.

The State argues that Petitioner's request for a new trial should be rejected as not preserved for this Court's review on a basis not relied upon by the PCR court. "Here, Petitioner - who bore the burden of proof - never raised any claim related to Rule 404(b). Because this argument was never presented to the PCR court, this Court should not consider it. See Pruitt v. State, 310 S.C. 254,255, 423 S.E.2d 127, 128 (1992) ("[W]e are not abandoning the general rule that issues must be raised to, and ruled on by, the post-conviction judge to be preserved for appellate review.")" Brief of Respondent p. 8.

Contrary to the preservation issue asserted by Respondent, trial counsel was questioned about his failure to object to the testimony regarding the tattoo and responded with an explanation for not objecting, and never claimed there was no basis to object.¹

Q. Okay. Do you think you could have objected based upon relevance?

A. A tattoo that has been covered up is more beneficial, it's no longer an acknowledgement. It's not like some that have swastikas, it is a I had this, it's gone. That's better than I have it here and look at it.

App. 314, ll. 19 – 25.

¹ Petitioner's Brief alludes to two possible grounds for objection: Trial counsel was ineffective in failing to object to this evidence, either as irrelevant or improper character evidence under Rule 404(a), SCRE. Petitioner's Brief p. 8. Relevance and Rule 404(a), SCRE, would not be an exhaustive list of reasons for objecting (Rule 403, SCRE, would be another basis), as such a list would be irrelevant with trial counsel's assertion that the "growth" the alteration showed was his reason for not objecting to the tattoo evidence.

Respondent's assertion that the matter is not preserved for review also ignores the underlying basis for the PCR Court's denial of relief. The PCR court specifically ruled that trial counsel's reasoning for not objecting to the clearly irrelevant and prejudicial evidence regarding the "Nazi" tattoo was credible and that no prejudice resulted from the introduction of the tattoo.

Counsel testified that he did not object because he felt it would be favorable testimony that Applicant's tattoo was now covered up by another tattoo. Counsel stated he felt that it was better that the tattoo was covered up so that others could not see the Nazi symbol. Counsel explained that he felt Applicant's actions of covering up the Nazi tattoo with another tattoo showed that Applicant had changed. This Court finds credible Counsel's foregoing testimony. Further, this Court finds Counsel's performance was reasonable under prevailing professional norms. Likewise, without more, this Court finds Applicant has failed to establish prejudice.

App. 339 – 340.

The PCR court never found there was no basis for objection regarding interjecting "a symbol of hatred tattooed on his body" into the trial. App. 237, ll. 11 – 19. There was no serious dispute during the PCR hearing, as reflected in the PCR court order, that the evidence regarding the "symbol of hatred" was subject to objection and should have been omitted from petitioner's trial. This is reflected in the basis for trial counsel's response when questioned regarding the introduction of the tattoo evidence (coming up with a theory of how it could be helpful) and the basis for the PCR court's ruling (accepting that theory as valid trial strategy).

To preserve an issue for appellate review, the "objecting party must be sufficiently clear in framing the objection; however, the party is not required to use the exact name of a legal doctrine to preserve the issue." Cone v. State, 443 S.C. 487, 493–94, 905 S.E.2d 368, 372 (2024). "[A]ppellate courts are to be 'mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner' and thus should not apply preservation rules in a manner that 'elevat[es] form over substance to trap trial lawyers so as to prevent the

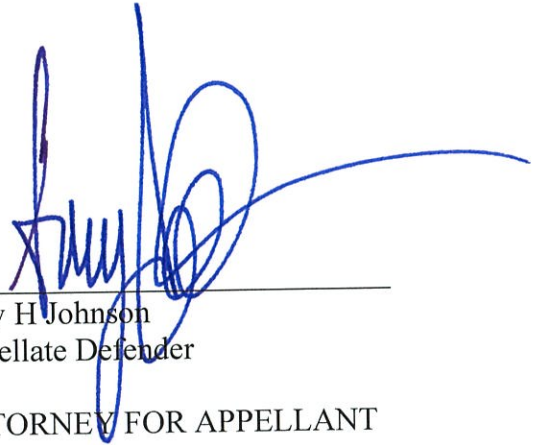
appeal of a legitimate issue.” Moses v. State, 442 S.C. 263, 269, 898 S.E.2d 174, 177 (Ct. App. 2024) (citing State v. Morales, 439 S.C. 600, 889 S.E.2d 551 (2023)).

While 404(a), SCRE, was not specifically mentioned during the PCR hearing, trial counsel asserted a strategic reason for not objecting to the evidence, foreclosing any need to question counsel as to why he failed to object. The PCR court based its ruling on accepting trial counsel’s reasoning as credible. *There was no dispute below that there was no basis for objection, only that trial counsel had a reason to not object.*

“Appellate courts should not apply preservation rules ‘in a technical manner as if this is some sort of game of ‘gotcha’ elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.” Cone, 443 S.C. at 494, 905 S.E.2d at 372. Here, the PCR court erred in finding a valid strategy existed which protected trial counsel from assertions of ineffective assistance surrounding the admission of evidence (and the use of that evidence in closing argument).

CONCLUSION

As there was no serious contention that there was no basis under which the tattoo evidence was not subject to objection, Respondent's preservation argument places form over substance and should be rejected by this Court.



Gary H Johnson
Appellate Defender
ATTORNEY FOR APPELLANT

This 18th day of May, 2026.

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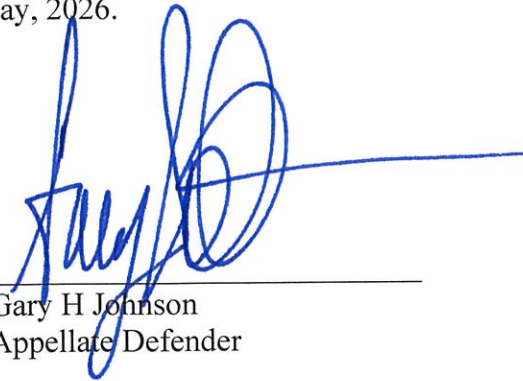
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Reply Brief of Petitioner in the above-referenced case has been served upon Danielle E Dixon, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Samuel Olalde Gonzalez, 376196, Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 18th day of May, 2026.



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