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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Richland County

Honorable Donald B. Hocker, Circuit Court Judge

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BRIAN N. WHITE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002438

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*JOHNSON* PETITION FOR WRIT OF CERTIORARI

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## ISSUE PRESENTED

Whether the PCR court erred by refusing to find trial counsel ineffective for failing to properly prepare petitioner for his trial testimony, where his testimony was crucial to his case, and he was thus prejudiced as a result of trial counsel's deficient performance?

## STATEMENT

In June of 2019, the Richland County grand jury indicted petitioner for murder. App. 1328-29. On November 18, 2019, petitioner proceeded to trial before the Honorable DeAndrea Gist Benjamin and a jury. App. 1. April W. Sampson, Samuel C. McGlothin, and Harrison M. Pratt prosecuted the case for the state. App. 1. Megan A. Eigenbrot, Tracy E. Pinnock, and Richard E. Marsh, III, represented petitioner. App. 1. The jury found petitioner guilty as indicted. App. 1127, l. 19 – 1128, l. 4. Judge Benjamin sentenced petitioner to 38 years imprisonment. App. 1139, ll. 2-5. Petitioner filed a timely notice of appeal, and his conviction and sentence were ultimately affirmed. On January 20, 2023, petitioner's petition for rehearing was denied. App. 1191-1203.

On July 26, 2023, petitioner filed an application for post-conviction relief (PCR). App. 1204-1216. On November 29, 2023, the state filed a return and partial motion to dismiss. App. 1217-1235. On April 7, 2025, an evidentiary hearing was convened before the Honorable Donald B. Hocker. App. 1236-1292. D. Russell Barlow, II, represented the state, and Chelsey F. Marto represented petitioner. App. 1236. On November 21, 2025, Judge Hocker signed an order denying PCR and dismissing petitioner's application with prejudice. App. 1293-1327.

This petition follows.

## ARGUMENT

The PCR court erred by refusing to find trial counsel ineffective for failing to properly prepare petitioner for his trial testimony, where his testimony was crucial to his case, and he was thus prejudiced as a result of trial counsel's deficient performance.

**Relevant facts**

*Trial*

On December 8, 2016, officers were dispatched to Patricia Drive for a shooting incident. App. 187, ll. 17-21; 199, ll. 12-16. Crystal Posey (hereinafter, Crystal) was the original complainant and the individual who called 911. App. 188, ll. 17-19. Several witnesses testified that they heard gunshots on the morning of December 8th. App. 211, ll. 5-11; 281, ll. 1-4. The police found a man, later identified as James Scott Turner, sitting inside a van parked outside of a residence. App. 188, ll. 2-5; 193, ll. 5-12. The forensic pathologist testified that the cause of Turner's death was multiple gunshot wounds. App. 755, ll. 23-25.

Crystal and Turner were romantically involved for almost eight years. App. 289, ll. 1-3; 954, ll. 11-13. Crystal and Turner lived in a home along with Crystal's adult daughter, Shena Nicole Bryant (hereinafter, Nicole). App. 287, ll. 23-24; 288, ll. 8-16; 347, ll. 5-8. Petitioner also lived in Crystal's home when he was romantically involved with her daughter, Nicole. App. 288, ll. 8-10; 347, ll. 5-8; 951, ll. 10-17, 19-24. Petitioner moved out during the summer of 2016 when he and Nicole broke up. App. 320, ll. 19-23; 348, ll. 7-22. Nevertheless, Nicole and petitioner remained close friends. App. 348, ll. 23-25; 951, ll. 16-18.

During her testimony, Crystal explained that Turner was supposed to pick her up from work. App. 291, ll. 1-9. She called him, and he never answered, so she assumed he was high on "[c]rack." App. 291, ll. 11-24. When she got to her house, her television was missing, and she

thought Turner took the television to sell it for drugs. App. 293, ll. 2-14. She contacted her daughter, Nicole, and Nicole later arrived at the house with petitioner and two of his friends. App. 293, 11. 17-23. They all talked for a while but eventually everyone, but Nicole left. App. 294, ll. 3-8. She awoke the next morning to gunshots. App. 295, ll. 8-9. She went to her front door and saw a van with the driver-side window blown out. App. 295, ll. 14-16. Crystal testified that she spoke with police after the incident the best she could. App. 311, ll. 10-18. On cross-examination, Crystal testified that she did not remember sending a text on December 8, 2016, at 5:21 a.m. that read "This m.f. just came in," to Nicole. App. 334, ll. 1-13. She agreed, however, that she documented Turner's comings and goings in her calendar. App. 341, ll. 1-5.

Nicole testified that her relationship with Turner was "fine," but that he "did [her] mom wrong." App. 347, ll. 9-14. She testified that on December 7, 2016, she went to the Marriott hotel with petitioner and two of petitioner's friends. App. 350, ll. 4-7. Her mom called crying and told her the television was stolen, and Turner was gone. App. 353, ll. 10-20. She had petitioner take her to her mom. App. 353, ll. 20-24. Nicole testified that petitioner told her that he would "take care," of Turner. App. 355, ll. 1-10. She testified that she was woken up by gunshots and ran to the door where her mom was. App. 358, ll. 9-20. She saw Turner laying in the van in both the driver's and passenger seat. App. 359, ll. 1-20. She testified that she was interrogated and gave law enforcement consent to search her phone. App. 362, l. 6 – 364, l. 13.

The lead investigator, Cris Truluck, admitted that although he considered Crystal and Nicole to be "victims," he was suspicious of their involvement almost immediately. App. 789, ll. 12-18; 791, ll. 6-15; 792, ll. 12-25. He noted that when he asked to look at the contents of her cell phone she was "very hesitant" and told him that "something crazy happened to her cell phone" on the night Turner was shot and killed. App. 793, ll. 1-24. The lead investigator "never

deemed Nicole to be a suspect as far as a shooter," but he "always suspected them of being involved." App. 796, ll. 20-23; 877, ll. 10-12; 880, ll. 9-16. He "always felt that they put [petitioner] up to it or -- or he did it for them. … [He] always suspected them of being involved." App. 795, l. 24 – 797, l. 5. The lead investigator "fe[lt] like this [was] all coordinated between all of them." App. 880, ll. 9-16. He elaborated that he "felt like Crystal might've had knowledge of it, especially after it, but wasn't going to throw her daughter under the bus, so to speak. [He] never felt Crystal really was in the plannings of it. Nicole? [He] felt she had knowledge of what was going to happen." App. 883, ll. 1-8.

*Petitioner's trial testimony*

Petitioner testified in his defense at trial. *See generally* App. 948-1008. He testified that he did not shoot Turner. App. 949, ll. 21-24. He explained that he picked up Nicole from Patricia Drive and they went to the Marriott together. App. 951, l. 25 – 952, l. 6. Both petitioner and Nicole received several calls and texts from Crystal. App. 952, ll. 20-25. Crystal told them that Turner did not pick her up from work and she was locked out of her house. App. 953, ll. 7-13. Nicole asked him to take her back to the house. App. 954, l. 25 – 955, l. 1. He drove everyone back to Patricia Drive. App. 955, ll. 2-14. Later, petitioner left with his two friends. App. 957, ll. 22-24.

Petitioner testified that he stayed at the Marriott for most of that night. App. 958, ll. 9-14. Petitioner testified that during the night, Nicole texted him about her concerns that Turner may have a gun. App. 959, ll. 1-4. Nicole asked him to bring a gun over because she was concerned about what would happen if Turner came back. App. 959, ll. 4-8. He went to his friend's house to get a gun. App. 959, ll. 19-25. He asked his friend for a rifle, however, that gun did not have ammunition, so his friend lent him a pistol that he had bullets for. App. 962, ll. 1-6. He left and

went to Nicole's house where she told him to park down the road from the house. App. 963, l. 21 – 964, l. 1. He walked to the house and when he saw Nicole, she asked if he had brought the gun. App. 965, ll. 13-17. He told her he had the gun and lifted his shirt to show her. App. 965, ll. 18-19. He described that "she immediately grabs the gun from [his] waist, turns towards the door, and starts shooting." App. 965, ll. 20-21. Once Nicole finished shooting she shoved the gun back to petitioner and asked him to get rid of it. App. 966, ll. 1-5. Petitioner took the gun back to his friend's house. App. 969, ll. 20-21. Finally, as to the statement he provided police, he testified that he did not read the statement when it was completed but he did sign it. App. 978, ll. 9-20. He testified that he did not shoot Turner, but that Nicole did. App. 980, ll. 13-17.

On cross-examination, petitioner agreed that it was his signature on his statement and that he did not make changes to his statement. App. 982, l. 9 – 984, l. 24. He agreed that he did not include Nicole's involvement in his statement and that he was saying that for the first time at trial. App. 986, ll. 17-24. He testified that he lied to Nicole when he said he was going to go take care of it. App. 987, ll. 23-25. He agreed that he lied to his friend about the purpose he was borrowing his gun for. App. 988, ll. 9-17. While being questioned about his statement, petitioner testified that the wording was different than what he said. App. 995, ll. 14-24. Petitioner testified that he "definitively never used the words 'I fired the gun' at all in any time sitting in front of law enforcement that day." App. 998, ll. 11-15. He agreed that he lied in his statement that he took the gun apart and threw it away. App. 999, ll. 17-23. He again reiterated that he never said he shot Turner. App. 1001, ll. 11-14. He testified that he did not remember saying that Nicole and Crystal should not be held responsible. App. 1002, ll. 7-15.

*Verdict and sentencing*

Ultimately, the jury returned a guilty verdict as to the murder charge. App. 1127, l. 19 – 1130, l. 25. The trial court then imposed a sentence of 38-months imprisonment with credit for 1,079 days of time-served. App. 1139, ll. 2-5.

*Evidentiary hearing*

At petitioner's evidentiary hearing, he testified that he did not feel prepared to testify on the stand and believed trial counsel could have provided more guidance on his testimony. App. 1243, ll. 8-14. He explained that there were several times during his testimony where he was flustered and more planning would have helped him prepare for "what might come [his] way." App. 1244, ll. 1-6. Further, on cross-examination, petitioner explained that additional preparation would have helped him to understand what could have been asked. App. 1256, ll. 8-11. He explained that he could have better reacted and understood what may have been turned against him. App. 1256, ll. 11-16. He testified that he believed that trial counsel "could have gone through more scenarios just to have [him] mentally prepared." App. 1256, ll. 20-22. Finally, on re-direct examination, petitioner explained that the only evidence or witness presented in his defense was his testimony. App. 1269, ll. 4-10. He testified that he did not feel prepared for getting on the stand to testify. App. 1270, ll. 5-7.

Trial counsel testified that initially petitioner was not going to testify, but it was later decided that petitioner would testify at trial. App. 1274, ll. 6-15. She testified that they spent "as much time as we possibly could with him, preparing him." App. 1274, ll. 16-17. She continued that she did not "know that you can ever fully prepare everybody to be testifying in a hearing when their life is on the line." App. 1274, ll. 17-20. She testified that they met with petitioner several times to go through testimony and practiced direct examinations. App. 1274, ll. 20-22.

However, trial counsel could "not remember if we practiced cross-examination with him." App. 1274, ll. 23-25. She testified that they discussed issues of cross and what they thought may be brought up. App. 1274, ll. 22-23. She stated that generally it was her practice to review cross-examination with a client that planned to take the stand. App. 1275, ll. 2-5.

Finally, on cross-examination, trial counsel testified that she did not specifically remember practicing cross-examination with petitioner, but her notes showed that they discussed issues that could come up on cross. App. 1280, ll. 13-18. Trial counsel also testified that while she did not think there was much else they could have done to prepare petitioner for his testimony, they could have brought him "to sit in the courtroom and recognize the gravity of the situation from the witness stand." App. 1280, ll. 6-12. She further testified that running through cross-examination usually does help. App. 1280, ll. 19-23.

*The PCR court's ruling*

In its order of dismissal, the PCR court found that petitioner's allegation that trial counsel failed to properly prepare him to testify was without merit. App. 1312. The PCR court found that petitioner failed to overcome the strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment. App. 1313. Specifically, the PCR court found that trial counsel *credibly* testified that she practiced petitioners' testimony with him and told him what to anticipate on cross-examination. App. 1313 (emphasis in original). The PCR court continued that petitioner "failed to identify anything specifically that he would have testified to that a) he did not testify to at trial, and b) would have led to a different outcome at trial." App. 1313. The PCR court thus concluded that petitioner failed to present sufficient evidence to establish either *Strickland* prong as he did not establish any deficiency by trial

counsel, or any prejudice flowing therefrom. App. 1313. Accordingly, the PCR court denied and dismissed the allegation. App. 1313-1314.

**Discussion**

The PCR court erred by refusing to find trial counsel ineffective for failing to properly prepare petitioner to testify in his own defense during trial. Specifically, trial counsel's deficient performance by failing to adequately practice cross-examination with petitioner, when petitioner's defense case relied solely upon his testimony, prejudiced petitioner as there is a reasonable probability that but for counsel's errors the result of his trial would have been different.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). The United States Supreme Court has established a two-pronged test to evaluate allegations of ineffective assistance of counsel. A petitioner must prove "that counsel's performance was deficient" and fell below reasonable professional norms, and that the deficient performance prejudiced the petitioner. *Strickland*, 466 U.S. at 687. Under the second prong, petitioner must show "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, 117-118, 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." *Thomspon v. State*, 423 S.C. 235, 245, 814 S.E.2d 487, 492 (2018) (citing *Rutland v. State*, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016).

To establish deficiency, *Strickland* requires only a "reasonably competent attorney." *Harrington v. Richter*, 562 U.S. 86, 110, 131 S. Ct. 770, 791 (2011) (internal quotations

omitted). To that end, "[j]ust as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Id.* Moreover, "when counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) (citing *Ingle v. State*, 348 S.C. 467, 560 S.E2d 401 (2002) and *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992)). "The validity of counsel's strategy is reviewed under an objective standard of reasonableness." *Id.* (internal quotations omitted).

In petitioner's case, trial counsel rendered ineffective assistance of counsel by failing to adequately prepare petitioner for his trial testimony. *Strickland*, 466 U.S. at 687. Petitioner had a constitutional right to testify in his own defense. *See Rock v. Arkansas*, 483 U.S. 44, 51 (1987) (holding a criminal defendant has a constitutional right to testify in his own defense). However, "if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment . . .." *Brown v. State*, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). Therefore, it was of utmost importance for trial counsel to ensure that petitioner was properly prepared to take the stand in his own defense and to practice cross-examination with petitioner. In addition, trial counsel did not articulate a strategy for failing to thoroughly prepare petitioner to testify by practicing cross-examination, and instead agreed that practicing cross-examination usually helped a testifying defendant. App. 1274, ll. 23-25; 45, ll. 19-23; *Lounds*, 380 S.C. at 462, 670 S.E.2d at 650. Trial counsel acknowledged that she did not remember if she practiced cross-examination with petitioner and noted that they could have brought him to sit in the courtroom and recognize the gravity of the situation from the witness stand. App. 1274, ll. 23-25; 1280, ll. 6-12. The result is that trial counsel performance fell below reasonable professional norms given

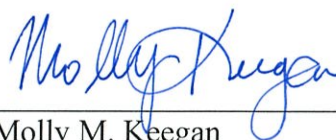
that testifying is a "perilous" decision and trial counsel did not ensure that petitioner was prepared to subject himself to cross-examination. *Strickland*, 466 U.S. at 687; *see Brown*, 340 S.C. at 594, 533 S.E.2d at 310. In fact, petitioner highlighted during his testimony at his evidentiary hearing that he was flustered, did not feel prepared for what could be asked of him, and felt that trial counsel could have gone through more scenarios to aid in his mental preparation. App. 1243, ll. 8-14; 1244, ll. 1-6; 1256, ll. 8-22; 1270, ll. 5-7. Thus, the PCR court erred by finding that petitioner failed to present sufficient evidence to establish trial counsel's deficiency. App. 1313-1314.

Petitioner was also prejudiced by trial counsel's deficient performance. As both trial counsel and petitioner acknowledged during the evidentiary hearing, the defense case rested on petitioner's testimony wherein he explained to the jury that he did not shoot Turner and the inaccuracies in his statement which law enforcement recorded. App. 1269, ll. 4-10; 1274, ll. 6-15. Contrary to the PCR court's order, petitioner identified that additional practice would have aided his mental preparation, he would have understood what could have been asked of him, he would not have been as flustered, and he could have reacted better to what might have been "turned against him." App. 1313; *see also* App. 1243, ll. 8-14; 1244, ll. 1-6; 1256, ll. 8-22; 1270, ll. 5-7. For instance, during cross-examination, petitioner was confronted with the statement he gave to police and the lies it contained. *See generally* App. 982-1002. Given that petitioner's case relied on his testimony, and, more importantly, his credibility with the jury, there is a reasonable probability that had trial counsel adequately prepared petitioner for what he might encounter on cross-examination that the result of the proceeding would have been different. *See e.g.*, *State v. Robinson*, 426 S.C. 579, 598, 828 S.E.2d 203, 213 (2019) (Discussing the impeachment value of a prior crime and explaining that "[t]he purpose of the impeachment is not

to show the witness is a bad person but rather to show background facts which impact the witness's credibility."); *Thomspon*, 423 S.C. at 245, 814 S.E.2d at 492. Accordingly, the PCR court erred by determining that petitioner failed to show that prejudice flowed from trial counsel's deficient performance. App. 1313-1314; *Strickland*, 466 U.S. at 687.

## CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari to allow further briefing on the issues.



Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of June, 2026.

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BRIAN N. WHITE,

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RESPONDENT

---

PETITION TO BE RELIEVED AS COUNSEL

---

Counsel for Brian Neil White states:

1. She is 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 before Judge Donald B. Hocker, which was held on April 7, 2025, 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 Brian Neil White.

Respectfully Submitted,

Molly M. Keegan
Appellate Defender

ATTORNEY FOR PETITIONER

This 5th day of June, 2026.

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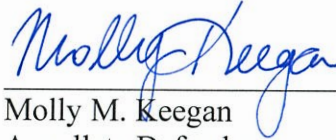
Jun 05 2026

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."



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ATTORNEY FOR PETITIONER

This 5th day of June, 2026.