

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
Robin B. Stilwell, Circuit Court Judge

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Appellate Case No. 2014-000693  
Lower Court Case No. 2012-CP-42-2674

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**RECEIVED**

JUN 03 2015

**S.C. SUPREME COURT**

ANTHONY NEIL BRIGGS, #342410,

RESPONDENT-PETITIONER,

v.

STATE OF SOUTH CAROLINA,

PETITIONER-RESPONDENT.

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**RESPONDENT-PETITIONER'S PETITION FOR WRIT OF CERTIORARI**

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**ATTORNEY FOR RESPONDENT-  
PETITIONER.**

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## QUESTIONS PRESENTED

### **I.**

Whether the PCR court erred in finding that defense counsel's failure to impeach two jailhouse informants with evidence of the potential benefits they could receive if they testified favorably for the State and with evidence that one informant was untruthful about his convictions and the length of his sentence?

## STATEMENT OF THE CASE

The Respondent-Petitioner (hereinafter referred to as “Respondent”), Anthony Briggs, was indicted in Spartanburg County for one count of criminal sexual conduct with a minor in the first degree and one count of lewd act. On August 23-26, 2010, the Respondent proceeded trial by jury. The Respondent was represented at this proceeding by Max B. Singleton.<sup>1</sup> At the conclusion of the trial, the jury found the Respondent guilty as charged. The Honorable J. Derham Cole, presiding circuit judge, sentenced the Respondent to life imprisonment for the CSC charge and to fifteen years’ imprisonment for the lewd act charge, with the sentences to run concurrently.

The Respondent timely appealed his convictions and sentence to the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Appellate Defender with the South Carolina Office of Appellate Defense, represented the Respondent on appeal. In an unpublished opinion filed May 30, 2012, the Court of Appeals affirmed the Respondent’s convictions and sentences. State v. Briggs, Op. No. 2012-UP-323 (S.C. Ct. App. filed May 30, 2012).

On June 26, 2012, the Respondent filed an Application for Post-Conviction Relief with the Spartanburg County Clerk of Court. This Application was later amended on November, 2013. The State made its Return on June 26, 2013. An evidentiary hearing into the matter was convened on November 12, 2013, before the Honorable Robin B. Stilwell, presiding circuit judge. On March 20, 2014, the PCR court filed an Order Granting Application for Post-Conviction Relief which granted relief to the Respondent on two claims pertaining to defense counsel’s performance with regard to three allegations, and denied relief with regard to the Respondent’s remaining allegations. On February 24, 2014, the Petitioner-Respondent (hereinafter referred to as “Petitioner”) served a Rule 59(e), SCRCPC, motion to alter or amend the judgment. March 3, 2014, the PCR court filed

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<sup>1</sup> This Court recently suspended Singleton for nine months. See In re Singleton, Op. No. 27521 (S.C. Sup. Ct. filed May 13, 2015) (Shearouse Adv. Sh. No. 19 at 10).

an order denying the Petitioner's Rule 59(e) motion. Both parties subsequently appealed the PCR court's rulings.

Notice of appeal was timely served and filed. The Respondent now seeks a writ of certiorari.

## STATEMENT OF FACTS

The charges in this case arose out of allegations that the Respondent sexually abused his girlfriend's minor daughter.<sup>2</sup> These acts would occur while the Respondent was at home alone with the victim. According to the victim, the Respondent would touch his "private" and his mouth to her "private." App. p. 133, line 1-p. 134, line 1. This would occur on the pull-out sofa in the living room. App. p. 134, lines 20-25. The State's case against the Respondent had two primary fronts: (1) corroborating the victim's testimony; and (2) demonstrating that the Respondent either admitted to the conduct or did not sufficiently deny the allegations.

With regard to the State's attempts to corroborate the victim's testimony, the State presented the testimony of Judy Petty, who was a friend of the victim's father. Petty testified that the victim disclosed abuse to her, which she then reported to the police. App. p. 149, lines 3-13; p. 150, lines 19-25. The State also presented the testimony of Michele Arroyo-Staggs, a forensic interviewer, who stated that the victim had disclosed the sexual abuse to her. App. p. 173, lines 11-19. Arroyo-Staggs, who was qualified as an expert witness, also testified that she could tell if a child had been coached prior to an interview, that she could not see any signs of coaching during her interview with the victim, and that the nature and descriptions of the victim's disclosure were appropriate. App. p. 171, line 24-p. 172, line 18; p. 174, lines 16-21. Arroyo-Staggs' testimony bolstering the victim's credibility was given numerous times throughout her examination by both parties. See App. p. 179, line 8-p. 180, line 10; p. 185, lines 7-18; p. 186, lines 3-15; p. 188, lines 7-17; p. 190, line 14-p. 191, line 3; p. 192, lines 3-19; p. 193, line 21-p. 194, line 5; p. 197, lines 5-15; p. 197, line 18-p. 198, line 4.<sup>3</sup>

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<sup>2</sup> The victim was four years old at the time of the abuse, and six years when she testified at trial.

<sup>3</sup> The PCR court granted relief based, in part, on defense counsel's failure to object to Arroyo-Staggs' qualification as an expert witness and to her bolstering testimony. See App. pp. 668-673.

With regard to the State's efforts to show that the Respondent either did not sufficiently deny the allegations against him or outright admitted that he committed the offenses, the State presented the testimony of two police investigators, Danny Morgan and Nikki Cantrell, as well as two jailhouse informants, Demetrius Martin and Dwight Lamar Spears. Investigator Morgan testified that the Respondent did not "really deny very strongly [the allegations] like you would expect from someone who didn't do something." App. p. 235, lines 10-11. Investigator Cantrell testified that the Respondent "had never denied when [Investigator Morgan] would talk to him about the sexual abuse allegations." App. p. 261, lines 6-7. She further testified that "he told me he was sick and he needed help." App. p. 262, line 17. The Respondent, however, did not admit to committing the acts to either investigator. Martin testified that while he was incarcerated with the Respondent at the Spartanburg County Detention Center, the Respondent admitted to him that "he rubbed his penis in between legs, butt area, and until he ejaculated." App. p. 294, lines 20-22. Spears, who was also housed with the Respondent at the jail, testified that the Respondent admitted that he played "horsy" with the victim on multiple occasions and that one time he ejaculated. App. p. 304, lines 6-22.

The Respondent presented four witnesses: the victim's mother Wendy Richards and grandmother Donna Parker, and his mother Lakla Miller and stepfather Lonnie Miller. Both Richards and Parker testified that the victim disclosed the abuse to them individually. App. p. 331, line 14-p. 332 line 1 (Parker); p. 359, lines 7-11 (Richards). The Respondent's primary defense was that he was working with his stepfather and mother during the time the incidents were to have occurred. See App. 365, lines 2-11; p. 375, lines 2-12.

## ARGUMENT

### **I. The PCR court erred in finding that the Respondent was not prejudiced by defense counsel's failure to fully impeach the jailhouse informants.**

#### A. How the Issue Arose Below

Although the investigating officers testified that the Respondent did not deny the allegations against him, the investigating officers never elicited a confession from the Respondent. Instead, the only testimony that the Respondent admitted to the conduct came through two jailhouse informants, Demetrius Martin and Dwight Lamar Spears, both of whom were housed with the Respondent at the Spartanburg County Detention Center. As noted above, Martin testified that the Respondent admitted to him that “he rubbed his penis in between legs, butt area, and until he ejaculated.” App. p. 294, lines 20-22. Spears testified that the Respondent admitted that he played “horsy” with the victim on multiple occasions and that one time he ejaculated. App. p. 304, lines 6-22.

Both informants were serving federal sentences at the time of the Respondent's trial. Martin testified that he was sentenced for possession with intent to distribute crack cocaine. App. p. 292, lines 15-23. He also testified that he was not getting any benefit in exchange for his testimony. App. p. 293, lines 14-16. He was not questioned regarding the length of his sentence or regarding what benefit he could receive in federal court for testifying favorably. Spears testified that he was incarcerated for “white [collar] crimes” and that he only had approximately eight to nine months left to serve on his sentence before he was released. App. p. 300, line 14-p. 301, line 8. Like Martin, Spears testified that he was not promised anything in exchange for his testimony. App. p. 301, lines 9-11.

In his Amended Application for Post-Conviction Relief, the Respondent alleged that defense counsel was ineffective for failing to impeach Martin with “provisions in his federal plea agreement where his sentence could be reduced pursuant to Rule 35(b), Fed.R.Crim.P., due to his cooperation with State authorities in the prosecution of others.” App. p. 512. The Respondent also alleged that defense counsel was ineffective for failing to introduce evidence that Spears had actually been convicted of conspiracy to murder a federal law enforcement officer, had been sentenced to twenty years’ imprisonment for that offense, and could have had his sentence reduced as well due to his cooperation. App. pp. 512-513. At the Respondent’s PCR hearing, he introduced Martin’s plea agreement, which contained the language permitting his sentence to be reduced if he cooperated in the prosecution of another individual. See App. pp. 638-647.<sup>4</sup> The Respondent also introduced Spears’ indictment and verdict form, as well as the Fourth Circuit Court of Appeals’ opinion affirming his conviction, which was decided several months prior to the Respondent’s trial. See App. pp. 648-652.

At the PCR hearing, defense counsel testified that he did not research either Martin’s or Spears’ charges or sentences, and he was not aware of Martin’s plea agreement with the Government. Defense counsel testified that he would have utilized all of this information to impeach both Martin and Spears, and that it would have helped his defense. See App. p. 550, line 21-p. 558, line 19; see also p. 593, line 14-p. 594, line 22.

The PCR court denied relief on this allegation. The PCR court found that defense counsel’s performance was deficient because “defense counsel undertook no investigation as to the possible avenues of impeachment for these two informants.” App. p. 681. The PCR court concluded, however, that the Respondent failed to demonstrate prejudice because “[b]oth informants were

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<sup>4</sup> The paragraph providing for the possible reduction in sentence is found at Paragraph 9 on page 644 of the Appendix.

thoroughly questioned regarding their conversations with the Applicant, and both informants were cross-examined about their federal charges and sentences.” App. p. 681. The Respondent now respectfully asserts that there is no probative evidence to support the PCR court’s conclusions with regard to prejudice.

### B. Standard of Review

The Sixth and Fourteenth Amendments to the United States Constitution guarantee every criminal defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to prove a claim of ineffective assistance of trial counsel, the moving party must show that defense counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Id. In other words, the petitioning party must show that but for counsel’s errors and omissions, there is a reasonable probability that the result at trial would have been different. Id.

On appeal, a PCR court’s findings will be upheld if there is any evidence of probative value supporting them. Cherry v. State, 300 S.C. 155, 386 S.E.2d 624 (1989). “The appellate court will reverse the PCR court only where there is either no probative evidence to support the decision or the decision was controlled by an error of law.” Edwards v. State, 392 S.C. 449, 455, 710 S.E.2d 60, 64 (2011).

### C. Discussion

It is well established that “counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Strickland, *supra*, 446 U.S. at 691. This duty includes “an obligation to investigate possible methods for impeaching a

prosecution witness, and failure to do so may constitute ineffective assistance of counsel.” Tucker v. Ozmint, 350 F.3d 433, 444 (4th Cir. 2003).

The Respondent does not challenge the PCR court’s finding that defense counsel’s performance was deficient, though the Respondent would note that the finding is amply supported by the record. Defense counsel admitted that he had done no research into the informants prior to their testimony, and that he would have used all of the information to impeach them had he performed the investigation. See App. p. 550, line 21-p. 558, line 19. Inasmuch as these witnesses were going to both testify that the Respondent admitted to them that he committed the crime—testimony that no other witness could provide—defense counsel was under an obligation to investigate possible avenues of impeachment. By failing to conduct any investigation, defense counsel failed to impeach Martin with evidence that he had a significant interest in cooperating in order to get his sentence reduced. Defense counsel also failed to impeach Spears with evidence that he had been convicted of conspiracy to murder a federal law enforcement official, and not just minor white collar crimes, that he had a significantly lengthier sentence to serve than the few months he told the jury he had left on his sentence, and that he too could get a reduction in sentence pursuant to Rule 35(b), Fed.R.Crim.P. Moreover, all of this evidence was public record, as Martin’s plea agreement had been filed with the District Court Clerk of Court’s Office, as had Spears’ indictment and sentence. It would have taken an hour, at the most, of defense counsel’s time to conduct this basic investigation into two of the most important witnesses the State was presenting at trial. Under these circumstances, the PCR court was correct to conclude that defense counsel’s performance was deficient.

The Respondent *does* challenge the PCR court’s ruling that the Respondent was not prejudiced by defense counsel’s deficient conduct. Specifically, the Respondent contends that the

PCR court's finding that the Respondent was not prejudiced because "[b]oth informants were thoroughly questioned regarding their conversations with the Applicant, and both informants were cross-examined about their federal charges and sentences" is not supported by any probative evidence. Defense counsel's cross-examination was meaningless in light of the fact that the impeachment information was never brought forward. Beginning with Spears, he was certainly not "cross-examined about their federal charges and sentences" as defense counsel never cross-examined Spears about his actual conviction for conspiracy to murder a federal law enforcement official or his twenty-year sentence stemming from that conviction. Proper impeachment with the correct information would have been invaluable, as it would have demonstrated that Spears was lying about his own charges, a matter so fundamental that it would have cast doubt on all of Spears' testimony. Without that impeachment, the jury had no reason to doubt Spears, as he was portrayed as an inmate so close to release that there would be no motivation for him to make up the Respondent's admissions.

The same principle holds true for Martin. While the nature of his conviction and sentence were not hidden from the jury, the motivations for his testimony and what could happen to his sentence were not fully explored. Without that context, the fact that Martin was cross-examined about his sentence is meaningless. Martin's testimony, and the prosecutor's questioning, would have led the jury to believe that Martin had nothing to gain from his testimony, nor could he receive any benefit from testifying. Consequently, the jury would have had no reason to think that Martin could be lying. The plea agreement, however, contained an explicit mechanism for lowering his sentence through his cooperation with the prosecution of another individual. That mechanism, and the uncertainty surrounding what testimony would be needed to trigger the sentence reduction, would have made Martin extremely likely to lie in order to obtain favorable treatment for himself.

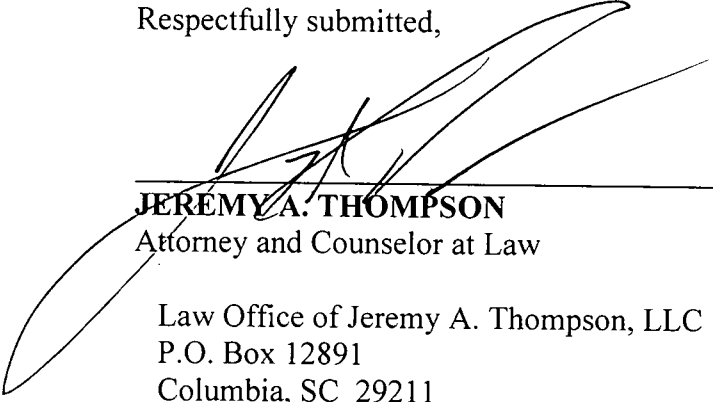
This is similar to a scenario where a co-defendant has not yet received a plea agreement in exchange for testimony. Under both circumstances, “[t]he lack of [an agreement], if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency.” State v. Mizzell, 349 S.C. 326, 333, 563 S.E.2d 315, 318 (2002). The jury needed to hear this pivotal information about Martin’s potential motivations for testifying in order to competently evaluate his credibility. Therefore, the Respondent submits that there is no probative evidence to support the PCR court’s conclusion that the Respondent was not prejudiced because the Respondent questioned Martin about his conviction and sentence.

There is certainly a reasonable probability that the result of the Respondent’s trial would have been different had defense counsel impeached Martin and Spears with this readily available information. As the PCR court recognized, the evidence against the Respondent was not overwhelming. If defense counsel had sufficiently attacked Martin’s and Spears’ credibility, then he would have significantly damaged one of the State’s two foundations of guilt: the Respondent’s admissions. Without the testimony of Martin and Spears, the State would have been left with the victim’s allegations and the Respondent’s *denials* that the investigators deemed were not made in a sufficiently strong enough manner as evidence of guilt. It is extremely likely that the testimony of the jailhouse informants tipped the scales for the jury to a guilty verdict instead of a not guilty verdict. Accordingly, the Respondent respectfully submits that the PCR court erred in denying relief on this claim, and that a new trial should be ordered.

CONCLUSION

For the reasons stated, the Respondent asks this Court to grant the petition and to allow full briefing on these issues.

Respectfully submitted,



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**ATTORNEY FOR RESPONDENT-  
PETITIONER.**

This 1<sup>st</sup> day of June, 2015.

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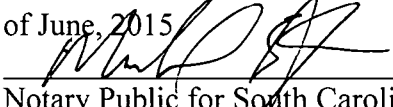
PETITIONER-RESPONDENT.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that two copies each of the Return to the Petitioner-Respondent's Petition for Writ of Certiorari and the Respondent-Petitioner's Petition for Writ of Certiorari in the above-captioned action have been served upon opposing counsel, Suzanne H. White, Assistant Deputy Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 1<sup>st</sup> day of June, 2015.

  
\_\_\_\_\_  
**JEREMY A. THOMPSON**  
ATTORNEY FOR RESPONDENT-PETITIONER

SWORN TO BEFORE me this 1<sup>st</sup> day  
of June, 2015

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: 7/10/2022