

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SC SUPREME COURT

CERTIORARI TO THE COURT OF APPEALS
Appeal from Edgefield County
The Honorable William P. Keesley, Circuit Court Judge

Opinion No. 2015-UP-174(S.C. Ct. App. filed April 1, 2015)

Appellate Case No: 2015-001342

STATE OF SOUTH CAROLINA,

PETITIONER,

v.

TOMMY S. ADAMS,

RESPONDENT.

CORRECTED APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 09-CP-19-00064
Appellate Case No. 2011-200566

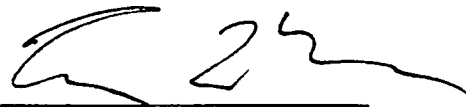
TOMMY S. ADAMS, #311901,Appellant,

v.

STATE OF SOUTH CAROLINA,Respondent.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Brief of Appellant has been served upon Respondent's counsel by first class mail, postage prepaid, addressed to counsel of record, Kaelon E. May, Post Office Box 11549, Columbia, South Carolina 29211.



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STATE OF SOUTH CAROLINA
In The Court of Appeals

CERTIORARI FROM EDGEFIELD COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Post-Conviction Relief Judge
The Honorable John C. Few, Trial Judge

Appellate Case No. 2011-200566

Tommy S. Adams,Petitioner,

v.

State of South Carolina,Respondent.

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STATEMENT OF ISSUES ON APPEAL

- I. Was a counsel, a veteran criminal defense lawyer ineffective in his presentation of Petitioner's case during the course of the trial?
 - A. Did the PCR judge err in finding Petitioner failed to prove counsel's failure to object to Petitioner's unsolicited voluntary statement regarding the victim genitalia result in ineffective assistance of counsel?
 - B. Did the PCR Judge err in finding Petitioner failed meet his burden to prove the execution of counsel's intended strategy to apprise the jury of the defense's interpretation of Petitioner's statement from Petitioner and not his other minor children resulted in ineffective assistance of counsel?
 - C. Did the PCR Judge err in finding Petitioner failed meet his burden to prove the execution of counsel's trial strategy in cross-examining from a police investigator resulted in ineffective assistance of counsel?
 - D. Did the PCR judge err in finding Petitioner failed to prove counsel was ineffective in the presentation of the opening statement and for advising Petitioner on his right to testify?
- II. Did the PCR judge err in finding Petitioner failed to prove counsel was ineffective for failing to object to disclosed private communications between a juror and a bailiff?

STATEMENT OF THE CASE

Petitioner was indicted at the September 2003, term of the Edgefield County Grand Jury for Lewd Act on a Child Under Sixteen (2003-GS-19-0416), and Criminal Sexual Conduct with a Minor—1st Degree (2003-GS-19-0418). (App.p.19). James B. Huff, Esquire, represented him. (App pp.1-175).

On October 12-14, 2005, Petitioner underwent trial, pursuant to which he was found guilty as indicted. (App.pp.1-174). The Honorable John C. Few sentenced him to confinement for fifteen years for the Lewd Act on a Child Under Sixteen and thirty years for Criminal Sexual Conduct with a Minor—1st Degree. The sentences were ordered to run consecutively. (App.p.173). Petitioner filed a Motion for a New Trial on or about June 23, 2006. (App. pp.176-82). The Honorable John C. Few issued an Order denying Petitioner's Motion for a New Trial on July 10, 2006. (App.p.183).

A timely Notice of Appeal was filed and an appeal was perfected. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. State v. Adams, Op. No. 2006-UP-560 (S.C. Ct. App. filed October 10, 2008). (App.p.199).The Remittitur was sent on October 18, 2008.

On February 23, 2009, Petitioner filed an Application for Post-Conviction Relief. (App.pp.200-19). Respondent filed its Return on July 7, 2009. (App.pp.222-26). An evidentiary hearing into the matter was convened on December 2, 2010 at the Lexington County Courthouse. (App.pp.260-390). The Applicant was present at the hearing and was represented by Teresa Norris, Esquire. The Respondent was represented by A. West Lee, Esquire of the South Carolina Attorney General's Office. The Honorable William P.

Keesley denied and dismissed Applicant's Application for PCR by Order dated September 12, 2011. (App.pp.441-464).

STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

I. The PCR judge correctly found that trial counsel was not ineffective during trial.

Counsel was not ineffective during Petitioner's trial, in which Petitioner asserts that the State's case relied on uncorroborated testimony of the alleged victim and irrelevant, inadmissible, and prejudicial testimony by a law enforcement officer.

A. The PCR Judge correctly ruled that trial counsel was not ineffective for failing to object to the admission of Petitioner's statement that was relevant underlying offense and material to the State's theory of the case.

At trial, Investigator Bledsoe testified to statements made by Petitioner in the non-custodial interview:

Solicitor: What did [Petitioner] say?

Bledsoe: [Petitioner] denied the allegations, but he made some odd statements to me that day.

Solicitor: What were those statements?

Bledsoe: [Petitioner] mentioned something about he talked frankly with his children -- his older children about sex... he told "AW" his older child -- his stepchild -- that "Your cooter belongs to your daddy, and if anybody wants to

touch that or bother that, you need to tell them to ask me.”

Solicitor: Had you disclosed to him prior to that time what the allegations were against him?

Bledsoe: Yes, sir, I did.

(App.p.67, lines 1-20). At the PCR hearing, counsel testified Petitioner’s statement was admissible because it was a statement given by the accused that could be and was reasonably interpreted as an admission of guilt to the underlying offense. (App.pp.77-8; p.85). Counsel noted the statement was harmful but was open to a neutral and positive meaning. (App.p.86). Counsel testified, “[the statement] would indicate to me it was more of a father saying, “Don’t let anyone touch you inappropriate” (App.p.336, lines 23-5). Counsel reasoned Petitioner was the witness to address the defense’s interpretation (App.p.336).

The PCR judge found the allegation was without merit where Petitioner failed to show that he was prejudiced by counsel’s alleged ineffectiveness, because there was not a reasonable probably, that but for counsel’s alleged deficiency, the result of the proceeding would have been different. (App.pp.456-7).

First, Respondent submits the PCR judge correctly found Petitioner failed to meet his burden to prove counsel was ineffective for failing to object to the admission of Petitioner’s statement. “Generally, only those parts of a confession or statement made to police which are relevant and material to the crime charged should be received into evidence.” State v. Nelson, 331 S.C. 1, 16, 501 S.E.2d 716, 723 (1998). “Under Rule 401, SCRE, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy.” State v. Cheeseboro, 346 S.C.

526, 548, 552 S.E.2d 300, 311 (2001). “Unlike a prior bad act, which always raises the risk of an improper inference based on character, a statement is an actual communication of thought which may or may not give rise to an impermissible inference, depending upon what is said and circumstances under which it is said.” State v. Gilchrist, 329 S.C. 621, 629, 496 S.E.2d 424, 428 (1998).

In State v. Cheeseboro, the court held a letter drafted by the defendant was relevant because it established the defendant’s need for money as a motive for murder. Cheeseboro, 346 S.C. at 548, 552 S.E.2d at 311. In State v. Cutro, the court held the memorabilia from the deceased victim’s seized from the defendant was relevant to the State’s theory to show defendant’s motive to gain attention. State v. Cutro, 365 S.C. 366, 618 S.E.2d 890 (2005).

Petitioner’s contention that Petitioner’s statement was not relevant to underlying charges is patently absurd. A reasonable facial interpretation shows Petitioner’s comment were material to motive. Certainly, a proclamation of dominion and control to an eleven-year old child regarding her sexual autonomy implied an ability to stifle disclosure. AW testified the abuse occurred when she was isolated from her mother and siblings. (App.p.40). Furthermore, AW testified she feared retribution for non-compliance, let alone reporting the abuse to her mother, an older sibling, or an adult at school. (App.p.41). The solicitor argued in closing that the Petitioner’s statements evidenced a zealous motive to safeguard dominion and control over AW’s sexual autonomy necessary to foster the exploitation. The solicitor summarized the State’s case against Petitioner as a “betrayal of [AW]’s trust.” (App.pp.138-42; p.142, lines 9-10).

State v. Gilchrist, 329 S.C. 621, 628, 496 S.E.2d 424, 428 (Ct. App. 1998) is instructive to the present case. This Court in Gilcrest noted that “In considering a Rule 403, SCRE, challenge, the trial court must consider the nature of the statement, as well as the context in which it was made.” Id. This Court noted the comment at issue “[that store] looks like a good place to rob would not normally be prejudicial, for example, if made in a security evaluation.” Id. at 630, 496 S.E.2d at 429 (internal citations omitted). This Court determined a statement only becomes unduly prejudicial when its only purpose is would be to convey the impression of a general criminal intent. Id. (citing United States v. Bonds, 12 F.3d 540, 567 (6th Cir.1993) (“Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.”)).

Here, the PCR judge correctly found “the cooter comment” was presented in its entirety by Investigator Bledsoe’s testimony at trial, and was not presented out of context. Respondent submits context shows the statement was not prejudicial. A general desire for a parent to safeguard a child’s virtue does not indicate bad character. See Cutro, 365 S.C. at 366, 618 S.E.2d at 890 (“collecting memorabilia of a deceased child, while perhaps uncommon, is not behavior that itself indicates a bad character.”). Counsel presented several witnesses that testified Petitioner was an exemplary parent.

Furthermore, evidence of probative value supports the PCR judge’s finding that counsel articulated a valid trial strategy on the matter. Strickland requires that trial counsel be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of

circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992).

Petitioner testified that in regards to trial strategy, the intent when the case began was that Petitioner was going to testify and clear up his statement in order to maximize an effective counter-punch. (App.p.336). It is generally accepted that trial counsel cannot be held ineffective for failing to anticipate every possible event or outcome. Reasonable efforts and performance are all that is required of trial counsel. See Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993). At the PCR hearing, counsel further testified that the context of the comment would be made clear primarily when Petitioner testified and that standing alone, it's not subject to only one interpretation. (App.p.337). Counsel further testified that the corrected testimony, as it were, would come out in Petitioner's testimony, but ultimately he chose not to testify, which understandably surprised trial counsel. (App. p.338).

Certainly Petitioner was the only logical witness to explain the context of his statement to the jury. The PCR judge found that trial counsel had no way of knowing that Petitioner would ultimately choose not to testify until he presented all prior witnesses and thereby eliminate Petitioner's opportunity to clear up the context of the comment through his testimony. (App.pp.456-57). Therefore, this Court should affirm the PCR judge.

B. The PCR Judge correctly found counsel was not ineffective for failing to rebut the state's interpretation of Petitioner's

statement by eliciting cumulative testimony from his other minor children.

The PCR judge found that trial counsel did not call Petitioner's two sons as rebuttal witnesses based on counsel's preparation on what Petitioner's sons would testify to (App.pp.452-53).

At the PCR hearing, counsel testified that he and Petitioner discussed what Tommy Adams, Jr. and Cody Adams' testimony would be. (App.p.361). Counsel testified that he had prepared a list of witnesses with specific topics that would be covered. (App.p.331). Furthermore, counsel did not want to accentuate the comment. Counsel noted that all of his trial witnesses testified in a manner he planned for and predicted. Counsel testified all of his trial witnesses testified in a manner he planned for and predicted. (App.p.339).

Petitioner failed to show the beneficial impact of having either one of his son's testify to manner in which Petitioner discussed AW's genitalia. "Where evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it forward." Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011). Tommy Adams, Jr. testified the comment was taken out of context and that he understood it to mean Petitioner did not want anyone to date AW or **anything like that** without Petitioner's seal of approval. (App.pp.289-90) (emphasis added). Cody Adams testified Petitioner did not want men to harm AW. (App.p.292). The new testimony was cumulative and not distinguishable from a plain reading of Petitioner's comment. Notably, although both

sons claimed Petitioner “protected” all of his children in the same manner, neither witness testified that Petitioner made similar possessive and peculiar comments to them. Also absent was testimony from now teenage sons regarding a possible traditional gender approach to mitigate an unflattering interpretation of Petitioner’s statement. Therefore, this Court should affirm the PCR judge.

- C. The PCR Judge correctly ruled counsel was not ineffective for eliciting testimony from the police investigator that she believed the alleged victim because counsel effectuated a thorough cross-examination of the witness that resulted in no detriment to Petitioner.**

At trial, counsel cross-examined Bledsoe as follows:

Counsel: When you assume that what people tell you when they -- in one of these type of child sex abuse cases, you’re assuming what they’re telling you is true?

Bledsoe: Yes, and I believe what AW has told me on this case.

(App.p.70, lines 11-6). Counsel immediately objected and moved to strike the testimony as non-responsive; a brief hearing on the matter was held outside the presence of the jury.

(App.pp.70-7). Counsel apprised the trial judge, “what I have tried to very delicately do is through this witness to put in the jury’s mind that some accusations are true, some accusations are false. I have not asked her nor does she have the right to give her opinion sua sponte of who she believes. (App.p.73, lines 12-7). The trial waived on a ruling yet sua sponte decided to strike the testimony. (App.p.76). A stipulation to an appropriate curative instruction was reached. (App.p.76).

At the PCR hearing, counsel testified he posed a neutral question that he believed would “take away from the State’s case.” (App.p.357, lines 1-3). The purpose of the

question was to attack veracity in the context of motive. (App.p.357). Counsel testified to his general diligence in trial preparation regarding cross-examination. (App.p.348).

The PCR judge denied the allegation and found Petitioner failed to meet his burden to prove counsel was ineffective here. The PCR judge found counsel executed his valid trial strategy absent any detriment to Petitioner in light of the judge's thorough curative instruction that directed the jurors to disregard Bledsoe's non-responsive answer. (App.pp.457-8).

Evidence of probative value supports the PCR judge's ruling. Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Where counsel articulates a strategy, it is measured under an objective standard of reasonableness. Id. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." Strickland, 466 U.S. at 688, 104 S. Ct. 2052. "The nature and scope of cross-examination is inherently a matter of trial tactics." United States v. Neresian, 824, F.2d 1294, 1321 (2nd Cir. 1987).

Ellenburg v. State, 367 S.C. 66, 625 S.E.2d 224 (2006) is instructive to the present case. The court in Ellenburg held the defense attorney's strategic decision to attack the co-defendant's credibility in his closing was valid despite opening the door the State's invited response.

Here, counsel successfully executed his crafted cross-examination of Bledsoe who notably acknowledged she entered an investigation with a presumption of an accused's guilt. (App.p.70). See State v. Brewington, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976)

(citing Rule 608(c), SCRE) (“On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality’ of the witness.”). The trial judge’s curative instruction negated any detriment:

All right ladies and gentleman, let me clear a couple a things up before we move forward. I suppose that it is somewhat obvious that there may be people who on different sets of facts and other situations have made accusations against people that are not people and some people have made accusations against other people that are true.

It will be your job in this case to determine what it is that the State has proven beyond a reasonable doubt. That’s your job to determine that on the facts of the case.

Now, with regard to the last statement by the witness, [the court] is going to instruct you to disregard anything that you may have heard this witness say regarding whether or not she believes or does not believe any other witness. That is a matter for you.

It is not for a witness to tell you who they believe. It is for you to decide who you believe.

(App.p.77, line 15—p.78, line 10). See State v. Longworth, 313 S.C. 360, 371, 438 S.E.2d 219, 225 (1993)(“An instruction to disregard incompetent evidence is usually deemed to cure any error in its admission”). Furthermore, Petitioner received a windfall benefit when the trial judge incorporated a summary of counsel’s intended theme of the cross-examinations at issue, that purported victims can make false accusations. (App.p.73). Counsel referenced his cross-exemption of Bledsoe to show police involvement does not certify credibility. (App.p.128). Counsel further expanded upon the pending domestic action between Petitioner and AW as the motive. (App.p.127).

Second, Respondent submits the PCR judge correctly found the trial judge's curative instruction cured any possibility of prejudice. The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes" stated into the record by the trial judge. State v. Kirby, 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977) Granting of motion for mistrial is an extreme measure that should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way. State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999).

Respondent submits that Petitioner fails to set forth any basis on which trial counsel should have made a motion for mistrial. Respondent further submits a motion for mistrial was without merit because counsel unintentionally elicited the improper testimony. See State v. White, 361 S.C. 407, 605 S.E.2d 540 (2004). Regardless, the present issue is frivolous because reflects the trial judge made the decision to give a curative instruction. (App. p.70-78). Therefore, this Court should affirm the PCR judge.

D. The PCR Judge correctly found counsel was not ineffective for his selection of syntax employed in his opening statement and for advising Petitioner on his right to testify

At the PCR hearing, counsel testified that he has never promised a jury that his client was going to testify and he was not trying to imply that he was promising that Petitioner was going to take the stand. (App.pp.370-1). Trial counsel testified that Petitioner's story or version could be derived on cross-examination and from the evidence presented. (App. p.370).

The PCR court found that trial counsel provided a rational explanation as to the language he used in his opening statement. (App. p.459). The PCR judge noted "it is easy

as a lawyer to reflect back on a particular argument and see that he could have stated it differently; and this Court appreciates trial counsel's honesty in stating that he believes he misstated himself to some degree in this one comment and should have used the word "versions" instead of "people." (App p.459-60).

The PCR judge correctly ruled that Petitioner failed to show prejudice. Simpson v. Moore, 367 S.C. 587, 598, 627 S.E.2d 701, 707 (2006) (citing Butler v. State, 286 S.C. 441, 445, 334 S.E.2d 813, 816 (1985) ("[Defendant] may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective. Judicial scrutiny of counsel's performance is highly deferential and the court must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance...."). Furthermore, the State did exploit the trivial semantics at issue in its closing argument. See State v. Brown, 277 S.C. 203, 204, 284 S.E.2d 777, 778 (1981) ("An opening statement serves to inform the jury of the **general nature of the action** and defenses involved in a case so they will be better prepared to understand the evidence presented.") (emphasis added).

Second, evidence of probative value supports the PCR judge's finding that counsel was not ineffective for failing to advise Petitioner to testify. At the PCR hearing trial counsel explained the factors that in his experience are important in deciding whether or not to put the accused on the stand. (App. p.332, lines 12-14). Counsel testified that he and Petitioner discussed what the State had presented and the strength of the State's case when the State rested. (App.p.333, line 23 – p.334, line2). Trial counsel further testified that when he returned to Court rest his case, it certainly was his intention

and understanding that the Petitioner was always going to testify in this case. (App. p.334, lines 4-7). Trial counsel made clear at the PCR hearing that it was Petitioner's decision alone, whether to testify or not, and that Petitioner made the decision not to testify. (App. p.334, line 19).

The PCR court found Petitioner's testimony on this subject not credible and found trial counsel to be credible. Credibility determinations are factual determinations. As such, they "are presumed to be correct absent clear and convincing evidence to the contrary, and a decision adjudicated on the merits and based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state court proceeding." Miller-El v. Cockrell, 537 U.S. 322 (2003). The PCR court found that trial counsel and Petitioner discussed Petitioner's choice to testify or not testify, and that the Petitioner testified to the trial judge it was his decision and not trial counsel's decision that Petitioner chose not to testify. (App. p.459). The PCR court further found that trial counsel properly advised Petitioner of his rights in deciding whether to testify or not testify and that it was Petitioner's decision not to testify.

Respondent submits and the record clearly reflects that the trial judge adequately ensured that Petitioner alone was making the decision not to testify and that it was Petitioner's decision, not trial counsel's. The trial judge entered a thorough colloquy with Petitioner on the matter (App. pp.112-4). Furthermore, even Petitioner acknowledged counsel advised him that the ultimate decision to testify rested with him. (App. pp.323-4). Therefore, this Court should affirm the PCR judge.

II. The PCR Judge correctly found that counsel was not ineffective during jury deliberations for failing to object to and request the trial judge conduct additional questioning regarding a jurors innocuous inquiry to a bailiff regarding the definition of “unanimous.”

The trial judge charged the jury on the procedure for reaching a verdict after it reached a unanimous verdict. (App.p.151). The jury was informed the bailiffs would serve as their conduits during the course of deliberations. (App.p.151-2). Deliberations began at 2:58 p.m. (App.p.152). At an undisclosed time, Bailiff Watson approached the bench with a concern. Watson testified under oath that she was approached by the foreperson. (App.p.153-2). The extent of the communication was put on the record:

The Court: Okay. Now something happened back there with the jury asking you a question. Is that what happened?

Bailiff Watson: Well, I was standing with the other Bailiff back there, and they came out and asked if it had to be a hundred percent, and she told them yes.

The Court: Okay. The other Bailiff, Ms. Scurry, told them yes?

Bailiff Watson: We told them yes, uh-huh

The Court: Okay, all right. So who came out, the forelady?

Bailiff Watson: Yes.

The Court: All right. **And that was all that was said?**

Bailiff Watson: Yes.

(App.p.153, line 19—p.154 line 10) (emphasis added). Counsel took no position stating, “Judge, I think [Bailiff Scurry] said what the law is. **Of course, it more properly should have been your honor. But I’m sure nothing was done intentionally.** But we’ve got no position for that.” (App.p.154, lines 16-20) (emphasis added). The trial judge instructed Bailiff Scurry on the proper procedure to follow. (App.p.155). Following the proper

procedure after two hours and sixteen minutes of deliberating, the foreperson, informed the judge that it was the jury's desire to be discharged for the night to resume deliberations on the following day. (App.155). The jury was instructed to return to the Courthouse by 9:00 a.m. (App.p.157). Guilty verdicts were returns at 10:31 a.m. the following day. (App.p.162).

At the PCR hearing, the jury foreperson, Phoebe Oliphant, testified she had difficulty recalling the deliberations of Petitioner's trial. (App.p. 305, lines 9-14; p.305, lines 16-24). Oliphant denied she was the foreperson. (App.p.305). Oliphant testified her one hundred percent inquiry regarded the judge's charge on rendering a unanimous verdict. (App.p.306). Oliphant clarified the question was borne from her personal lack of her personal lack of experience as juror. (App.p.306, lines 11-15). Oliphant testified, "I mean, I just like was wondering, you know, what do we need to do and how do we need to do it. Because I mean, like I said, I never have been on it before so I don't know what to expect. And I want to say the right thing because I don't want to put nobody in a place." (App.p.306, lines 16-20) (emphasis added). Oliphant stated she shared the brief communication with rest of the panel.

At the PCR hearing, juror Warrena Mathis also testified to inchoate memories of the deliberations. Mathis testified she did not recall Oliphant's disclosure of her communication with Bailiff Scurry.

Counsel testified "there's momentum in trials just like there is on a football field." (App.p.351, line 16-7). Counsel testified the jury had deliberated for an hour and a half when Bailiff Watson testified to the communication with the Oliphant. (App.p.361).

Bailiff Watson's testimony left counsel with the impression the "jury was having trouble making a unanimous decision." (App.p.341, lines 21-2). Counsel further elaborated his strategy was "to just leave it alone, that I felt like we were gaining momentum with the jury, that they were really having to struggle on this case." (App.p.342, lines 2-5). Counsel testified "there's momentum in trials just like there is on a football field." (App.p.351, line 16-7).

Counsel reasoned an Allen charge was not appropriate at that juncture of the trial. Counsel noted "I'm not going to know how [the jury] see the entire case because we are never going to know what a jury thinks." (App.p.373, lines 4-6).

The PCR judge found the allegation was without merit where "there has been no showing by [Petitioner] that the outcome of his trial would have been different if any objections or requests of questioning the jurors and bailiffs had been made." (App.p.460).

"A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury." State v. Salters, 273 S.C. 501, 504, 257 S.E.2d 502, 504 (1979). "[A] new trial must be granted unless it clearly appears that the subject matter of the communication was harmless and could not have affected the verdict." State v. Cameron, 311 S.C. 204, 207-08, 428 S.E.2d 10, 12 (1993), (quoting Holmes v. United States, 284 F.2d 716, 718 (4th Cir.1960)). The mere fact, however, that some conversation occurred between a juror and a court official would not necessarily prejudice a defendant. State v. Goodwin, 250 S.C. 403, 405, 158 S.E.2d 195, 197 (1967).

In State v. Cameron, this Court held a bailiff's private miscommunication to the foreperson constituted reversible error where the bailiff misled the jury regarding the

judge's sentencing discretion. State v. Cameron, 311 S.C. at 208, 428 S.E.2d at 12. This Court noted the miscommunication, "tended to lessen the jury's sense of responsibility by employing that if they rendered a verdict of guilty without mercy, the judge had some discretion in sentencing." Id.

Respondent submits first that the subject matter of the brief communication between Bailiff Scurry and Oliphant was utterly harmless. Unlike the Cameron jury that considered a matter outside of its province, scope of the communication here concerned one juror's request to be reassured on the definition of "unanimous." Despite Oliphant's fading memory on the deliberations, she was just wanted to make certain everyone had to be in agreement. Unlike in Cameron, the private communication was disclosed to the trial judge prior to the jury rendering a verdict. At trial, counsel immediately noted the communication was neither suspicious nor was it inaccurate. Instead, counsel reasonably interpreted the occurrence as a positive omen.

Second, evidence of probative value supports the PCR judge's finding the testimonies of foreperson Oliphant and juror Mathis were utterly unpersuasive to show that either individual jurors' verdicts or the collective verdicts "were somehow affected" by Petitioner's allegation. See Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517, *cert. denied*, 510 U.S. 1014, 114 S. Ct. 607 (1993). ("[The court] has consistently given great deference to PCR judges' findings and conclusions when matters of credibility are involved."). After foreperson Oliphant's private communication was disclosed, the trial judge instructed the jury to pose any question to him in writing. The procedure was properly followed and the jury was released for the afternoon. The panel returned the

following day, deliberated for no more than an hour and a half, found Petitioner guilty, and were all individually polled on the verdicts. See State v. Hunter, 320 S.C. 85, 89, 463 S.E.2d 314, 316 (1995) (finding evidence of alleged juror intimidation unconvincing where the complaining juror neglected to disclose the misconduct to the trial judge during the course of the deliberations.).

Furthermore, counsel's decision not to request the trial judge examine each juror or request a premature and needless Allen charge was a matter of sound trial strategy. The record shows the jury was never reached a deadlock. See Dawson v. State, 352, S.C. 15, 572 S.E.2d 445 (2002). Trial counsel explained that he spoke very briefly with Petitioner as to whether or not they should do anything about the jury comment or leave it alone and that the decision was to just leave it alone, because trial counsel felt like they were gaining momentum with the jury, and that the jury was really having to struggle on this case. (App. p.341, line25 – p.342, line 5).

CONCLUSION

For the reasons stated above, this Court should affirm the lower court's ruling and deny the requested relief.

Respectfully submitted,

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By: 

ATTORNEYS FOR RESPONDENT

December 2, 2013

STATE OF SOUTH CAROLINA
In The Court of Appeals

CERTIORARI FROM EDGEFIELD COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Post-Conviction Relief Judge
The Honorable John C. Few, Trial Judge

Appellate Case No. 2011-200566

Tommy S. Adams, Petitioner,

v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I, J. Walter Whitmire, certify that I have today served the within Brief of Respondent upon Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Teresa L. Norris, Esquire
Post Office Box 11744
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served. This 2nd day of December, 2013.



J. WALTER WHITMIRE
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ATTORNEY FOR RESPONDENT

RECEIVED
DEC 05 2013

SC Court of Appeals

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Tommy S. Adams, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-200566

Appeal From Edgefield County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2015-UP-174
Heard December 8, 2014 – Filed April 1, 2015

REVERSED

Teresa L. Norris, of Blume Norris & Franklin-Best, LLC,
of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Assistant
Attorney General John Walter Whitmire, and Assistant
Attorney General Mary Williams Leddon, all of
Columbia, for Respondent.

PER CURIAM: Tommy S. Adams was convicted of lewd act on a child under sixteen and first-degree criminal sexual conduct with a minor. He appeals from the

denial and dismissal of his application for post-conviction relief (PCR), arguing his trial counsel was ineffective.¹ We agree.

We find Adams' trial counsel was ineffective in failing to object to the admission of Adams' statement to police because it was improper character evidence and should not have been admitted. *See State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) ("Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged."). The State used Adams' statement in its closing argument as evidence of Adams' bad character to prove he was guilty as charged. *See State v. Nelson*, 331 S.C. 1, 15-16, 501 S.E.2d 716, 723-24 (1998) (finding defendant's statements to police that he "was uncomfortable around adult women" and "he had fantasies about children" were improper character evidence and were not relevant to the crime charged). Further, we find trial counsel's explanation he did not object to the statement because he did not want to "wave a red flag" before the jury was not a reasonable strategy because the issue could have been litigated outside the presence of the jury. *See Dawkins v. State*, 346 S.C. 151, 157, 551 S.E.2d 260, 263 (2001) (finding trial counsel's failure to object to testimony because he did not want to confuse or upset the jury was not a valid strategy because he could have sought a determination as to the inadmissibility of the testimony out of the hearing of the jury); *see also Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002) ("[C]ounsel cannot assert trial strategy as a defense for failure to object to comments which constitute an error of law and are inherently prejudicial."). Finally, we find there was not overwhelming evidence of Adams' guilt; therefore, the PCR court erred in finding Adams failed to prove prejudice. *See generally Smith v. State*, 386 S.C. 562, 566, 689 S.E.2d 629, 631 (2010) (stating "no prejudice occurs, despite trial counsel's deficient performance, where there is otherwise overwhelming evidence of the defendant's guilt").

We decline to address Adams' remaining issues because our determination that Adams' counsel was deficient for failing to object to the admission of his statement to police is dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of another issue is dispositive of the appeal).

¹ Adams filed an application for PCR, and after an evidentiary hearing, the PCR court filed its order denying Adams relief. Adams thereafter filed a petition for a writ of certiorari, which this court granted.

REVERSED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

STATE OF SOUTH CAROLINA
In The Court of Appeals

CERTIORARI TO EDGEFIELD COUNTY
Court of Common Pleas

The Honorable John C. Few., Trial Judge
The Honorable William P. Keesley, Post-Conviction Relief Judge

Appellate Case No. 2011-200566

Tommy S. Adams, Petitioner,

v.

State of South Carolina, Respondent.

PETITION FOR REHEARING

I.

On April 1, 2015, this Court reversed the post-conviction relief (PCR) judge’s denial of Petitioner’s application for post-conviction relief. Tommy S. Adams v. State of South Carolina, Op. No. 2015-UP-174 (S.C. Ct. Ap. Filed April 1, 2015). This Court misapprehended or overlooked relevant facts of this case and the applicable law. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing and affirm the PCR judge’s denial of relief.

II.

At trial, the State’s investigator testified to statements made by Petitioner in an non-custodial interview:

Solicitor: What did [Petitioner] say?

Bledsoe: [Petitioner] denied the allegations, but he made some odd statements to me that day.

Solicitor: What were those statements?

Bledsoe: [Petitioner] mentioned something about he talked frankly with his children -- his older children about sex... he told "AW" his older child -- his stepchild -- that "Your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me."

Solicitor: Had you disclosed to him prior to that time what the allegations were against him?

Bledsoe: Yes, sir, I did.

(App.p.67, lines 1-20).

In Petitioner's Application for Post-Conviction Relief (PCR), he pled "counsel provided ineffective assistance in failing to object to Detective Bledsoe's testimony that, while Applicant denied the allegations, he made odd statements when he mentioned something about he talked frankly with his children—his older children—about sex." (App.p.228). Petitioner posited "[t]hese general comments were inadmissible because they were neither relevant nor material to the crimes charged, nor statements that could be construed as conveying an admission of guilt." (App.p.228).

At the PCR hearing, counsel testified Petitioner's statement was admissible because it was a statement given by the accused that could be and was reasonably interpreted as an admission of guilt to the underlying offense. (App.pp.77-8; p.85). Counsel noted the statement was harmful but was open to a neutral and positive meaning. (App.p.86). Counsel testified, "[the statement] would indicate to me it was more of a father saying, "Don't let anyone touch you inappropriate" (App.p.336, lines 23-5).

Counsel testified to making the tactical decision to "counterpunch" the State's testimony on Petitioner's statement concerning admissions of inculpatory conduct towards the victim by

calling Petitioner to testify to the defense's alternative interpretation. (App.p.336). Counsel testified that as a result of his pre-trial consultations with Petitioner, they had discussed and had agreed upon the tactical decision to call Petitioner to testify in the defense's case-in-chief. (App.pp.334-35). Petitioner changed his mind and communicated his desire to not take the stand during the defense's case-in-chief. Counsel noted "matter of fact, I was somewhat surprised that he made the decision not to testify." (App.p.334, ln. 19-21).

III.

In denying and dismissing Applicant's noxious PCR Action, the PCR Court found Applicant failed to meet his burden to prove Strickland's deficiency prong on two grounds. First, the PCR Court rejected Applicant's notion that Applicant's statement that "your cooter belongs to your daddy" was inadmissible and did not warrant an objection. Second, and in the alternative, the PCR Court found counsel's testimony concerning the tactical decision to not object here constituted valid trial strategy even if the statement had been inadmissible. (App.p.456).

The PCR Court also found Applicant failed to meet his burden to prove Strickland's prejudice prong. The PCR Court announced, "there has been no showing by the Applicant that the outcome of his trial would have been different if this objection had been made." (App.p.457).

A.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). The Strickland standard makes it clear

that one can only prevail on a claim of ineffective assistance of counsel if one can meet his burden of proving both deficiency of counsel and resulting prejudice.

B.

Counsel made a sound tactical decision to not object to Petitioner's statement by eliciting testimony from Petitioner concerning his statement. Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). As counsel astutely articulated at the evidentiary hearing before the PCR Court, the statement at issue held two objectively reasonable interpretations. Certainly, Petitioner was certainly the appropriate witness to testify to his intent making the statement to support his version that it showed he was apparently a good parent that cared deeply about the chastity of his children. Arguendo, had the statement been inadmissible, counsel's strategy to not object in favor of "counterpunching" by calling Petitioner as a defense witness to explain his version of the context of the statement constituted valid trial strategy that bars an assignment of deficient performance. See Bullock v. Carver, 297 F.3d 1036 (10th Cir. 2002) (emphasis added) (counsel's failure to object to molest victim's statements and hearsay was not ineffectiveness where he believed the objection would be futile and where the statements served the interest of showing allegedly suggestive interview techniques).

In reversing the PCR Court, this Court held "[f]urther, we find trial counsel's explanation he did not object to the statement because he did not want to waive a red flag before the jury was not a reasonable trial strategy because the issue could have been litigated outside of the presence of the jury." This Court cited to Dawkins v. State¹ that reiterates the Supreme Court's long held pronouncement that a defense attorney's decision to not object to inadmissible evidence out of fear of drawing further attention to inadmissible evidence, standing alone, will not provide safe

¹ Dawkins v. State, 346 S.C. 151, 157, 551 S.E.2d 260, 263 (2001).

harbor from an assignment of deficient performance under Strickland. The State posits that this Court's reversal of the PCR Court's denial is contrary to the South Carolina Supreme Court's holding in Rhodes v. State, 349 S.C. 25, 33, 561 S.E.2d 606, 610 (2002), that determined the attorney's decision to not object to inadmissible evidence in favor of attacking and utilizing its admission in the defense's presentation of its case constituted a valid trial strategy and effective assistance of counsel. "[Rhodes' attorney] stated at the PCR hearing he purposely sought to convert this evidence to petitioner's advantage by portraying it as rumor. He brought this out in his cross-examination of Thompson and based much of his closing argument on the idea that the victims' identifications stemmed purely from rumor and innuendo." Id. (emphasis added). In the present case, counsel made a similar decision to forgo an objection to admissibility in order to attack and convert the State's evidence to a strength of the defense's case.

The valid trial strategy was unrealized because of Petitioner's unforeseen decision to not testify. The long standing principle has governed PCR jurisprudence that a defense attorney does not hold a duty of clairvoyance to anticipate either changes of law or facts during challenged representation. Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993). Strickland explicitly states "a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690 (emphasis added); Phoenix v. Matesanz, 233 F.3d 77, 84 (1st Cir. 2000) (strategic choices are given greater latitude during trial when time is short.).

After numerous pre-trial consultations, strategy session, and countless hours of preparation, Petitioner made an impromptu decision to not testify. Petitioner has only himself to blame on this matter. Therefore, the State requests this Court reconsider its opinion and affirm

the PCR Court's finding that counsel's decision to not object here constituted valid trial strategy here.

C.

Petitioner's statement was admissible. "Generally, only those parts of a confession or statement made to police which are relevant and material to the crime charged should be received into evidence." State v. Nelson, 331 S.C. 1, 16, 501 S.E.2d 716, 723 (1998). The statement concerned Petitioner's conduct towards the child victim on a matter incredibly relevant to the State's case against him: the child victim's sexuality. Petitioner's contention that the statement was not relevant to underlying charges is patently absurd. A reasonable facial interpretation shows Petitioner's comment was material to the evidence and testimony presented at trial. Certainly, a proclamation of dominion and control to an eleven-year old child victim regarding her sexual autonomy implied an ability to stifle disclosure. Furthermore, the child victim testified she feared retribution for non-compliance, let alone reporting the abuse to her mother, an older sibling, or an adult at school. (App.p.41). The solicitor argued in closing that the Petitioner's statements evidenced a zealous motive to safeguard dominion and control over the child victim's sexual autonomy necessary for exploitation. The solicitor summarized the State's case against Petitioner as a "betrayal of [child victim]'s trust." (App.pp.138-42; p.142, ln 9-10). Alternatively, the defense's case made Petitioner's characters an issue in the case from opening statement on and opened the door to the admissibility of the statement on other grounds. Thus, the PCR Court made the correct finding that an objection here lacked merit for numerous reasons.

Second, the probative value of the statement was not substantially outweighed by the prospect of unfair prejudice. Here, the PCR Court correctly found "the cooter comment" was

presented in its entirety and was not presented out of context. Respondent submits context shows the statement was not prejudicial. A general desire for a parent to safeguard a child's virtue certainly does not insinuate criminal behavior.² See State v. Cutro, 365 S.C. 366, 618 S.E.2d 890 (2005) ("collecting memorabilia of a deceased child, while perhaps uncommon, is not behavior that itself indicates a bad character."). Counsel presented several witnesses that testified Petitioner was an exemplary parent. Therefore, the State requests this Court reconsider its opinion.

C.

The State urges this Court to reconsider its holding that "[f]inally, we find there was not overwhelming evidence of [Petitioner]'s guilt; therefore the PCR Court erred in finding [Petitioner] failed to prove prejudice." The PCR Court did not address whether Petitioner's conviction was supported by overwhelming evidence of guilt. On the relevant issue, the PCR Court ruled that "Applicant has failed to show that he was prejudiced by counsel's alleged ineffectiveness." (App.p.456). Thus, the State requests this Court to reconsider this matter and conform its holding to the standard of review on whether there is probative evidence to support the PCR Court's finding of fact. See Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996) (the Court will not uphold the findings of the PCR court if no probative evidence supports those findings).

Second, this Court's holding constituted an improper burden shift to the State. In the PCR forum, the applicant holds the burden to prove by a preponderance of evidence that his attorney's

² The word "cooter" is a red herring. Any interchangeable synonym of a child's genitals would not change the analysis here. The State posits that the "turtle word" probably holds substantially less shock value in rural Edgefield County than it holds to this Court. Simply, Petitioner cannot cry outrage about the "turtle word" when he chose the verbiage when being questioned about the offenses by law enforcement. See U.S. v. Pellerito, 878 F.2d 1535, 1543 (1st Cir. 1989) ("If counsel was ineffective in any sense, it was only because the client rendered him so, first by keeping Noriega in the dark, and then, by refusing to heed his advice. That is not the sort of "ineffectiveness" for which relief can be granted")

alleged error undermined the PCR circuit court's confidence in the outcome of the trial. Jackson v. State, 355 S.C. 568, 570, 586 S.E.2d 562, 563 (2003). Probative evidence supports the PCR Court finding that Petitioner failed to meet this burden. The State's case hinged on the credibility of the minor the victim's testimony. Furthermore, counsel presented other evidence to show that Petitioner was a commendable and caring parent; creating a counter-inference that Petitioner's statement evidenced his concern over the chastity of his children. Albeit indirectly, the defense presented testimony that would have neutralized the "cooter comment's" taint on an Edgefield County jury. In imposing Petitioner's sentences, the Trial Judge importantly commented, "As I sit here today, however, I completely agree with the verdict of the jury. I am convinced that these acts took place." See State v. Cutro, 332 S.C. 100, 117, 504 S.E.2d 324, 332 (1998) ("The trial judge, not this Court, is in the best position to be the arbiter of [the witness'] credibility").

IV.

For all of the foregoing reasons, the State submits both prongs of the Strickland analysis were not satisfied and the opinion in this case was error. The State requests the panel grant the petition for rehearing, find the PCR judge properly denied Petitioner's PCR application, and affirm the order of dismissal.

Respectfully submitted,

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By: 
Attorneys for Respondent

April 16, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Edgefield County

The Honorable William P. Keesley, Circuit Court Judge
Appellate Case No: 2011-200566

TOMMY S. ADAMS,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

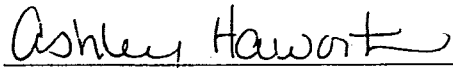
RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Petition for Rehearing** has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Ms. Teresa L. Norris
Blume Norris & Franklin-Best, LLC
900 Elmwood Ave., Ste. 101
Columbia, SC 29201

This 16th day of April, 2015.



Ashley Haworth
Legal Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 09-CP-19-00064
Appellate Case No. 2011-200566

TOMMY S. ADAMS, #311901 Appellant,

v.

STATE OF SOUTH CAROLINA Respondent.

RESPONSE TO STATE’S PETITION FOR REHEARING

Tommy Swinson Adam, through the undersigned counsel, herein responds to the State’s Petition for Rehearing, which essentially just reargues the case, without pointing out any facts that this Court misapprehended or overlooked and without pointing out any legal error by the Court, which would warrant rehearing.¹

¹The State also makes no mention of the numerous other instances of counsel’s ineffectiveness. Specifically, this Court granted review to address the following issues.

- I. Was Adams denied the effective assistance of counsel during trial, in which the state’s case relied on uncorroborated testimony of the alleged victim and irrelevant, inadmissible, and prejudicial testimony by a law enforcement officer, due to numerous instances of deficient and prejudicial conduct?
 - A. Failure to object to admission of Adams’ statements that were neither relevant nor material to the crimes

(continued...)

First, the State falsely states the facts. Counsel failed to object to Detective Bledsoe's testimony that Adams admitted telling the alleged victim ("AW"): "Your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me." Appendix ("App.") at 67. According to the State:

[C]ounsel testified Petitioner's statement was admissible because it was a statement given by the accused that could be and was reasonably interpreted as an admission of guilt to the underlying offense. Counsel noted the statement was harmful but was open to a neutral and positive meaning.

Petition for Rehearing at 2 (citations omitted). The representation that counsel believed the statement to be an admission of guilt is false. Counsel did not say the statement "could be and was reasonably interpreted as an admission of guilt to the underlying offense."

¹(...continued)

charged.

- B. Failure to rebut the state's misrepresentation of the nature of Adams' statement.
 - C. Eliciting testimony from the police investigator that she believed the alleged victim and failing to move for a mistrial.
 - D. Advising Adams not to testify after informing the jury that he would testify, or, alternatively, failing to properly advise Adams at all with respect to whether he should testify.
- II. Was Adams denied the effective assistance of counsel during deliberations because counsel failed to object, failed to request that the jurors and bailiffs be questioned, and failed to request that the jurors be returned to court for proper instructions following improper communications between jurors and the bailiffs?

This Court, in its unpublished opinion, granted relief on Ground I.A. In light of that relief, the Court declined to address the remaining issues.

On direct examination, counsel stated:

I didn't think it was objectionable. It was a statement of the accused. I think both sides get to interpret its meaning as they choose. The jury ultimately has to make that decision.

App. 336. He gave further testimony that he thought this evidence could be explained in anticipated testimony from Adams. App. 336-37.

On cross-examination, counsel testified as follows:

- Q Mr. Huff, starting specifically with the "your cooter belongs to your daddy" comment, did you believe that was basically a confession by Mr. Adams?
- A No.
- Q To either criminal sexual conduct with a minor or lewd acts?
- A Confession of nothing. Confession would have to be a recognition of guilt and admission that you've committed a crime. I did not view that statement as being that at all.
- Q Did you view it as relevant, even, to the offenses?
- A Relevant, yes. Because the State would have the ability to put the spin on it that they would desire. There's a difference between -- when it comes to admissibility, I think in trial work the actions, conduct, statements of people, specifically the defendant, is nothing more than paint. And I think both the defense and the prosecution paint the picture they want with the same paint samples they've got.
- Q If you can keep some of the prosecution's paint out, you like to keep it out, right?
- A If we can, certainly. Sometimes some of their paint helps us, sometimes it hurts us.
- Q Did "your cooter belongs to daddy" help in this case?
- A Mrs. Norris, I don't know how to answer that. I would lean towards saying no, but it depends on how the jury took it. And there a lot of times are things that come into evidence at trial that one party thinks will help their side when it may wind up helping the other.

As a general statement in this case, would I have preferred that comment not to have been in evidence? Yes. Did I think it was going to come in? Yes. Did I think we could explain it and give it a neutral and positive meaning? Yes, did that as well.

App. 344-45. He also conceded that if the evidence was objectionable, “[a]s to whether or not it could be a strategic choice to allow it in, I would generally say no.” App. 378. Specifically, he conceded that if Adams’ statements were not admissible and were “detrimental,” his failure to object “well may warrant . . . a new trial.” App. 378.

Given this testimony, the State’s argument now – that counsel made a tactical decision to “counterpunch” by deliberately allowing admission of inadmissible evidence, Petition for Rehearing at 4 – is fanciful. Counsel never said that and, in fact, said the opposite. Thus, the State’s subsequent arguments that this Court erred under *Rhodes v. State*, 349 S.C. 25, 33, 561 S.E.2d 606, 610 (2002), are simply irrelevant because counsel did not make a tactical decision to allow admission of this evidence in an attempt to utilize it for purposes of the defense. Moreover, unlike in *Rhodes*, it is not even arguable that the “cooter” comment was a “strength in petitioner’s defense and/[or] counsel effectively capitalized on the evidence,” 349 S.C. at 33, 561 S.E.2d at 610, or even desired or attempted to do so.

After arguing – incorrectly – that counsel sought to utilize the “cooter” comment as somehow favorable to the defense, the State then simply reiterates its prior arguments – which this Court already rejected – that the statement was a confession and, therefore, relevant and material evidence.

Specifically, the State asserts:

Petitioner's contention that Petitioner's statement was not relevant to underlying charges is patently absurd. A reasonable facial interpretation shows Petitioner's comment was material to motive.

Petition for Rehearing at 6. The statement – “Your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me,” App. 67 – says absolutely nothing about motive. Moreover, the solicitor, during the trial, said absolutely nothing about motive. Instead, the solicitor relied heavily on the “cooter” statement to convince the jury that this “vile” statement was indicative of Adams' character and, therefore, his guilt:

What did he tell Virginia Bledsoe? What a vile thing to say. He's just been talked to by this investigator about allegations of sexual misconduct that he's alleged on this child. And what does he tell the investigator from the Sheriff's Office? “Your cooter belongs to your daddy,” because he's using this child as his sexual plaything.

You can bet it belonged to him. He considered it his personal property, because he was using it for his own sexual benefit and lust. Yes, it belonged to him, and he showed that. It didn't belong to anybody else in the world. “If anybody else wants to come and touch you or do anything else, they've got to talk to me, because the cooter belongs to me.”

He's even telling this investigator that. What an inappropriate thing, and it shows what's in his heart, malice.

App. 134-135. *See also* App. 136 (“It belongs to him”).

She could sure tell you exactly when it started, when he started dragging her back there in that bedroom, and molesting her, and using her for his own lust and satisfaction, because it belongs to him.

He couldn't even resist throwing that in in front of this investigator after she's telling him what he's been accused of. *That's his attitude. That's his true colors*, and it came out right then. He couldn't even cover it up when he was talking to the police, because that's what he believes.

App. 138 (emphasis added). *See also* App. 139 (“[T]his child is his plaything, because it belongs to him”).

Immediately following the State’s argument that the “cooter” statement was indicative of motive and, therefore, a confession, the State makes the incredible argument that the statement was not prejudicial. Specifically, the State declares: “A general desire for a parent to safeguard a child’s virtue certainly does not insinuate criminal behavior.” Petition for Rehearing at 7. That is precisely the point. By admission of Adams’ statement, and the focus on that by the Solicitor in arguments, “[t]he State used Adams’ statement in its closing argument as evidence of Adams’ bad character to prove he was guilty as charged.” Opinion at 2.

The State then asks this Court to reconsider on the question of prejudice asserting that this Court improperly shifted the burden of proof to the State. This is patently false because this Court explicitly cited Adams’ burden in its finding of prejudice: “the PCR court erred in finding Adams failed to prove prejudice.” Opinion at 2.

Finally, the State acknowledges that the State’s entire case at trial “hinged on the credibility of the minor” alleged victim. Petition for Rehearing at 8. The State then asserts as “important” that, in sentencing, the trial court commented: “As I sit here today, however, I completely agree with the verdict of the jury.” App. 173. The State then cites *State v. Cutro*, 332 S.C. 100, 117, 504 S.E.2d 324, 332 (1998) with the parenthetical: “The trial judge, not this Court, is in the best position to be the arbiter of [the witness’] credibility.” Petition for Rehearing at 8. Once again, the State misses the point. The question before this Court in determining whether there was prejudice due to counsel’s deficient conduct has

nothing to do with the question of whether the trial court or the jury found the alleged victim to be “credible.” The proper test, under *Strickland v. Washington*, 466 U.S. 668 (1984), is whether “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. “[A] defendant need not show that counsel’s deficient conduct more likely than not altered the outcome in the case.” *Id.* at 693. “The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.” *Id.* at 694. In short, the prejudice test of *Strickland* “is not a sufficiency of evidence test.” *Kyles v. Whitley*, 514 U.S. 419, 434 (1995).² Thus, the trial court’s opinion of credibility is irrelevant to the question before this Court – one this Court already answered in finding prejudice: “counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Strickland*, 466 U.S. at 687.

²In *Kyles*, the Court reviewed a petitioner’s claim that the state did not disclose evidence favorable to the defense in violation of the rule established in *Brady v. Maryland*, 373 U.S. 83 (1963), and refined in *United States v. Bagley*, 473 U.S. 667 (1985). In *Brady*, the Court held that the government must disclose evidence that is both favorable to the defense and “material.” 373 U.S. at 87. In *Bagley*, the Court held that the “materiality” test under *Brady* was the same as the prejudice test espoused in *Strickland* for determining ineffective assistance of counsel claims. *Bagley*, 473 U.S. at 682, (Blackmun, J., with O’Connor, J., concurring) and 473 U.S. at 685 (White, J., with Burger, C.J., and Rehnquist, J., concurring in part and concurring in the judgment). Thus, the Court’s discussion of the “materiality” test in *Kyles* is equally applicable to the analysis of prejudice in resolving claims of ineffectiveness of counsel under *Strickland*.

This Court should, therefore, reject the State's Petition for Rehearing, which is nothing more than a repetition of arguments already rejected by this Court.

Respectfully Submitted,



TERESA L. NORRIS

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Columbia, SC 29201
(803) 765-1044

Counsel for Appellant

May 4, 2015.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 09-CP-19-00064
Appellate Case No. 2011-200566

TOMMY S. ADAMS, #311901 Appellant,

v.

STATE OF SOUTH CAROLINA Respondent.

MOTION FOR BOND PENDING APPEAL

Pursuant to Rules 240 and 246 of the South Carolina Appellate Court Rules, Tommy Swinson Adams, the Appellant herein, moves the Court for an order granting him bail in this matter during any further appeal by the state.

The factors to be considered in admitting a person to bail pending appeal include the probability of reversal, the nature of the crime, the possibility of escape, and the character and circumstances of the appellant.

In re Michael H., 360 S.C. 540, 553, 602 S.E.2d 729, 736 (2002). Each of these factors is addressed below.

Relevant Facts and Procedural History

Tommy S. Adams was convicted in Edgefield County, South Carolina, of lewd acts on a child and criminal sexual conduct with a minor (1st degree). On October 14, 2005, he was sentenced consecutively to the maximum terms of 15 years for lewd acts and 30 years for criminal sexual conduct.

The state's evidence during trial consisted solely of uncorroborated testimony by the alleged victim (hereinafter "AW"), who was thirteen years old at the time of trial, and an investigating officer. AW testified, in an "utterly emotionless, blank" fashion, Appendix "App." at 340, that Adams, her stepfather, sexually molested her beginning in September 1999 when she was seven years old. App. 39. She testified that he committed lewd acts on 15-20 occasions and engaged in sexual penetration 3-4 times. App. 41-42. According to AW, the abuse ended on Christmas Eve 2002, when she was ten years old, because she repeatedly physically resisted Adams' efforts to pull her pants down. App. 43.¹

¹Amanda Salas, M.D., an expert in forensic and child and adolescent psychiatry, testified in PCR that AW's testimony that she physically fought off the abuse when she was in a home alone with Adams was "improbable."

I find it improbable that a child who physically is not at a developmental stage to engage in a physical confrontation would fight back with a lot of physical aggression unless the aggressor had provoked them to that point and initiated the aggression.

App. 277. In particular:

I would not expect it to happen under those circumstances where they knew there was nobody there coming to rescue them save them or make them safe.

App. 278. Likewise, AW's lack of any manifested symptoms consistent with abuse, App. 272, continued behavioral symptoms caused by the trauma of having to physically fight off an abuser, App. 278, and continued voluntary contact with Adams, App. 279, called into doubt the credibility of AW's testimony.

AW's mother separated from Adams in February 2003. App. 47. In April 2003, AW first alleged to her mother that she had been abused and law enforcement was called. App. 50. The allegation was made in the context of AW learning from her mother that her real father had committed suicide. App. 44. When her mother told AW that Adams had been a "good father," AW alleged that he had abused her. App. 45. Her mother took her to her family doctor and she also saw a doctor at the recommendation of the state and law enforcement, App. 50, but neither testified as no evidence of abuse was found. Thereafter, AW sent Adams a Father's Day card expressing her love for him. App. 61.

Virginia Bledsoe, a former investigator for the Edgefield County Sheriff's Office, interviewed AW and Adams. She testified that Adams denied the allegations, but he made "odd statements" when he "mentioned something about he talked frankly with his children—his older children—about sex." Specifically, Bledsoe testified Adams told AW: "Your cooter belongs to your daddy, and if anybody wants to touch that or bother that, you need to tell them to ask me." App. 67. During cross-examination, Bledsoe testified that she believed AW. App. 70.²

Although defense counsel had informed the jury during opening statements that "you're going to hear two totally different stories" and "[t]here's going to be two people saying two different things," App. 35, Adams did not testify. The defense evidence presented was brief testimony from Adams' first wife, Sharon Adams, and his children from the 22-year marriage with her: Leslie Adams Boyce, Tommy Adams, Jr., and Cody Adams.

²At defense counsel's request, the court instructed the jury to ignore Bledsoe's opinion of AW's truthfulness. App. 78.

Ms. Boyce's husband also testified. App. 87-107. The defense witness testimony was generally that Adams is a loving, affectionate father, and no one in the family ever observed any inappropriate conduct or sign of abuse.

The jury began deliberations at 2:58 p.m. While the jury was out, it was disclosed that there had been communication between the jury foreperson and a bailiff, who answered the question of whether "it had to be a hundred percent" affirmatively. App. 153-54. Defense counsel did not object or request any curative action and none was taken. App. 154. Following a jury request to "continue tomorrow," the jury was excused for an overnight recess at 5:14 p.m. App. 155. Deliberations continued from 9:00-10:31 a.m., when the jury returned with verdicts of guilty. App. 162.

This Court affirmed on direct appeal. Appendix (App.) 199. Following denial of post-conviction relief by the PCR court, this Court granted review of the following issues: Specifically, this Court granted review to address the following issues.

- I. Was Adams denied the effective assistance of counsel during trial, in which the state's case relied on uncorroborated testimony of the alleged victim and irrelevant, inadmissible, and prejudicial testimony by a law enforcement officer, due to numerous instances of deficient and prejudicial conduct?
 - A. Failure to object to admission of Adams' statements that were neither relevant nor material to the crimes charged.
 - B. Failure to rebut the state's misrepresentation of the nature of Adams' statement.
 - C. Eliciting testimony from the police investigator that she believed the alleged victim and failing to move for a mistrial.

- D. Advising Adams not to testify after informing the jury that he would testify, or, alternatively, failing to properly advise Adams at all with respect to whether he should testify.
- II. Was Adams denied the effective assistance of counsel during deliberations because counsel failed to object, failed to request that the jurors and bailiffs be questioned, and failed to request that the jurors be returned to court for proper instructions following improper communications between jurors and the bailiffs?

This Court, in its unpublished opinion, granted relief on Ground I.A. In light of that relief, the Court declined to address the remaining issues.

1. The Nature of the Crime

While the alleged crimes are very serious, this Court already determined that “there was not overwhelming evidence of Adams’ guilt,” Opinion at 2, in finding that Adams’ convictions and sentences must be reversed due to the ineffective assistance of trial counsel in failing to object to the inadmissible and prejudicial “cooter” comment.

2. The Probability of Reversal

This Court has already vacated the convictions and sentences. While the State has petitioned for rehearing, Adams is simultaneously filing his response and incorporates the arguments therein. In short, the State has offered no legitimate factual or legal argument as a basis for rehearing and simply reiterates arguments already made and rejected by this Court. Thus, the likelihood of this Court granting rehearing and reversing its decision or the Supreme Court granting review and reversing this Court’s decision is low at best. Adams’ should be granted bail pending any additional appeal.

3. The Possibility of Escape

Following his arrest for these charges in June 2003, Adams was immediately released on bail, subject to the condition that he was to have no contact with AW or her family. AW was Adams' stepdaughter. Because he had other children with AW's mother, he was upset about not being asked to contact them and made calls to the cellular telephone of AW's mother and left messages that were harsh in tone and laced with profanity. Due to his violation of the terms of bond, the trial court revoked his bond, on November 7, 2003, and ordered him incarcerated. The Court reconsidered this order and again granted release on bond with additional restrictions and limitations on January 21, 2004. *See Attached Orders*, dated June 13, 2003, November 7, 2003, January 21, 2004, and September 20, 2004. Adams remained out on bond, violation free, until his trial began on October 13, 2005. The trial court revoked his bond after the jury requested an overnight recess during its deliberations at the conclusion of trial. While the bonding company was willing to continue its surety, App. 158, the trial court followed its "normal procedure" of revoking bond following the swearing of the jury and took Adams into custody, App. 161. Adams has remained in custody since that time. During his almost 10 years in confinement in the South Carolina Department of Corrections, he has been an exemplary inmate with no escape attempts and without even a single disciplinary offense. He has consistently satisfactorily completed all work assignments and is currently enrolled in the educational program at Kirkland Correctional. *See Inmate Summary from the SCDC Website.*

Adams is 59 years old. His only prior conviction was for a criminal domestic violence charge with AW's mother, during marital disputes. Prior to incarceration, he always worked and supported his family. His family ties are in and around Edgefield County.

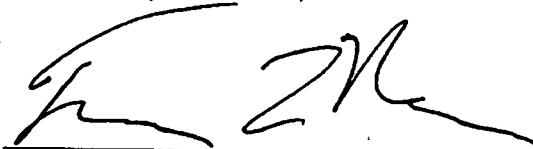
Specifically, he remains close to his first wife of more than 20 years and his children with her who are all adults now. They supported him through his trial and throughout the PCR proceedings and described him generally as a loving, affectionate father, and no one in the family ever observed any inappropriate conduct or sign of abuse.

Given all of these factors, there is little risk of escape and bond while pending appeal is appropriate.

Conclusion

Wherefore, for the foregoing reasons, Adams requests bond pending appeal.

Respectfully Submitted,



TERESA L. NORRIS

Blume Norris & Franklin-Best, LLC
900 Elmwood Avenue, Suite 101
Columbia, SC 29201
(803) 765-1044

Counsel for Mr. Adams

May 4, 2015.

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
STATE OF SOUTH CAROLINA

Ticket or Warrant No. H-116899 H-116900
IN THE COURT OF GENERAL SESSIONS
 MAGISTRATE'S COURT
 MUNICIPAL COURT OF _____

Tommy Swinson Adams
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Ball Proceeding Form 2)

Offense Charged: Crim. Sex. Conduct w/ Minors, Lewd Act w/ Minors

At a ball proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- The release of the defendant on recognizance will not reasonably assure his appearance as required.
 - The release of the defendant on recognizance will result in an unreasonable danger to the community.
- This determination was based upon the following findings of fact:

(Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.)

THEFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$ _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$ 20,000 and release to be obtained by payment to the court of 1,000 % of this bond in cash, this amount being \$ 20,000. The defendant will be obligated to the State in the full amount of \$ 20,000 such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

The defendant will provide good and sufficient surety approved in the court in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$ _____

3. That the defendant shall appear at (check one):
 the term of the court of general sessions beginning on June 13, 2003 at [Time: 9:00 o'clock, A.M., at [Place: Edgefield County Courthouse]
 and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
 the session of magistrate/municipal (circle one) court beginning on [Date: _____] at [Time: _____] o'clock, _____ M., at [Place: _____]. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant TS

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side which are marked.

Bruce B. Carpenter
Signature of Judge

6-13-03
Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

71 Hummingbird Lane
Address

Clark Hill, S.C. 29821
City/State/Zip

256 929 135, 637-1978
Social Security Number/Telephone No.

Tommy S. Adams
Signature of Defendant

6-13-03
Date

Mag. Office 637-7150
Attorney Representing Accused (if known)

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BALL PROCEEDING IN WHICH IT IS USED.

Original copy for the Trial Court - Copy for the Defendant
FORM CONTINUES ON BACK

STATE OF SOUTH CAROLINA)
CLERK OF COURT)
LEWIS H. DUBIN)
COUNTY OF EDGEFIELD) 2003 JAN 22 AM 9:38) IN THE COURT OF GENERAL SESSIONS

THE STATE,)
)
-vs-) ORDER ON RECONSIDERATION
)
TOMMY SWINSON ADAMS,) Case Numbers: 2003-GS-19-416, 418 & 419
)
Defendant.)

The issue before the court is the defendant's motion to reconsider the previous order of the court that revoked the defendant's bond. The court grants the motion, but modifies the conditions of bond as specified below.

Mr. Adams is charged with Criminal Sexual Conduct with a Minor in the First Degree, Assault with Intent to Commit Criminal Sexual Conduct with a Minor in the First Degree, and Lewd Act Upon a Child. He was originally released on bail, subject to the condition that he was to have no contact with the victim or the victim's family. The purported victim is the step-daughter of Mr. Adams. Because he has other children with the mother of the victim, he was upset about not being able to contact them. He made calls to the cellular telephone of the mother of the victim and left messages that were harsh in tone and laced with profanity. Due to his violation of the terms of bond, this court revoked his bond and ordered him incarcerated.

WPA
#1

The defendant did not threaten violence, nor did he make direct contact with any of the purported victim's family. He appeared today and expressed repeatedly that he fully understands the effect of violating a condition of bond. The court accepts that the defendant is now entitled to bail, but finds that a substantial surety bond is justified and that he must be placed under very stringent conditions. Bail is set at a total of \$35,000, surety on these charges. The following special conditions apply:

First, the defendant shall be subject to all the standard conditions of bond, except that he may travel outside South Carolina solely for the purpose of performing his work-related duties.

Second, the defendant is to have absolutely no contact of any kind, directly or indirectly, with the purported victim or any member of her family, except in strict compliance with a Family Court order issued after this date. This no-contact order does not prevent Mr. Adams's attorney in the Family Court case(s) from contacts necessary to deal with Family Court issues.

Third, the defendant is not to be within a three-mile radius of the home of the purported victim.

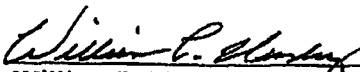
Fourth, while on bail, the defendant is not to exercise any supervisory role over any minor child, and he can only be with a minor child if a responsible adult is also present. Related to that issue, the defendant has indicated his intent to reside with his adult daughter, who has a minor child (the grandchild of the defendant) living at that location. If the defendant intends to live anywhere that a minor child is residing, the court directs that the South Carolina Department of Social Services must be notified in advance and approve the living arrangements.

#2
Fifth, the defendant must report to the Chief Investigating Officer, Virginia Bledsoe, of the Edgefield County Sheriff's Department, or her designee, at least weekly to advise her of his current address.

If the defendant posts bond, the Magistrate shall complete the paperwork necessary to effect release on bail.

The court does not have before it any charges that are not listed on this order. There was mention during the hearing of a charge of Criminal Domestic Violence of a High and Aggravated Nature. This order does not deal with bail for that charge or any other charges not listed in the caption of this order.

AND IT IS SO ORDERED.


William P. Keesley, Judge

Date: January 21, 2004

STATE OF SOUTH CAROLINA)	IN THE GENERAL SESSIONS COURT
COUNTY OF EDGEFIELD)	ELEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA)	ORDER TO AMEND BOND
VS)	
)	Case Numbers:
TOMMY S. ADAMS,)	2003-GS-19-416, 417, 418 & 419
DEFENDANT.)	

Based upon motion of the Defendant, I find that the previous order of the Court be amended to provide that the Defendant be allowed to travel into the Augusta, Georgia area within a 25 mile radius to attend Church, doctors appointments, ^{visits} ~~and meetings.~~

Will P. Long

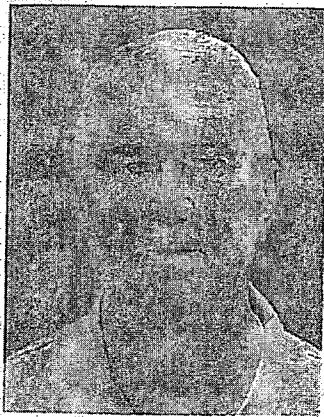
 Circuit Court Judge
 Eleventh Judicial Circuit

Sept
~~July~~ 20, 2004

Lexington, SC

INMATE SEARCH DETAIL REPORT

ADAMS, TOMMY SWINSON (00311901)



INMATE DESCRIPTION		INMATE SENTENCE AND LOCATION	
SEX:	MALE	SCDC ID:	00311901
RACE:	WHITE	SID:	SC00196481
HEIGHT:	6' 02"	OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
WEIGHT:	227 lbs.	ADMISSION DATE:	10/18/2005
AGE:	59	LOCATION:	KIRKLAND
CITIZENSHIP:	CITIZEN - NATIVE BORN	SECURITY / CUSTODY:	3 / MINIMUM IN.
BUILD:	LARGE	EWC LEVEL:	3F5
COMPLEXION:	FAIR	EEC LEVEL:	B5
HAIR COLOR:	GRAY OR PARTIALLY GRAY	PROJECTED RELEASE DATE:	11/07/2038
EYE COLOR:	GREEN	PROJECTED PAROLE ELIGIBILITY:	04/13/2031
PICTURE DATE:	01/15/2014	SUP. FURLOUGH ELIGIBILITY:	NOT ELIGIBLE

CURRENT OFFENSES

OFFENSE	SENTENCE TYPE	YRS	MOS	DYS	COUNTY	START DATE	V/NV	CAT	INDICT	STATUS
CRIM SEX COND.W/MINOR(15	ADULT-STRAIGHT SENTENCE	30	0	0	EDGEFIELD	10/13/2005	V	5	03GS19418	ACTIVE
LEWD ACT/CHILD UNDER 16	ADULT-STRAIGHT SENTENCE	15	0	0	EDGEFIELD	10/13/2005	N	4	03GS19416	ACTIVE

ESCAPES

NO ESCAPES DURING CURRENT INCARCERATION

DISCIPLINARIES

SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2009

NO DISCIPLINARIES DURING CURRENT INCARCERATION

MOVEMENT

MOVEMENT DATE	TO LOCATION	STATUS	REASON
01/09/2014	KIRKLAND	INCARCERATED	ADMINISTRATIVE
12/02/2010	BROAD RIVER	INCARCERATED	RETURN FROM COURT
12/02/2010	LEXINGTON CO	AUTH ABSENCE (AWL)	TO COURT
12/01/2010	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
12/01/2010	DORCHESTER CO	AUTH ABSENCE (AWL)	MEDICAL
08/16/2010	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
08/16/2010	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
08/01/2007	BROAD RIVER	INCARCERATED	RETURN FROM COURT
08/01/2007	EDGEFIELD CO	AUTH ABSENCE (AWL)	TO COURT
10/17/2006	BROAD RIVER	INCARCERATED	RETURN FROM COURT
10/17/2006	EDGEFIELD CO	AUTH ABSENCE (AWL)	TO COURT
11/09/2005	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/18/2005	KIRKLAND	INCARCERATED	NEW ADMISSION

EARNED WORK CREDITS

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LEVEL
CIU PROGRAM	01/14/2014			3F5
CANTEEN OPERATOR HELPER	10/07/2010	01/09/2014	INSTIT TRANSFER	3F5
PAINTER	08/06/2009	10/06/2010	INMATE REQUEST	3F5
WARDKEEPER ASSISTANT	04/09/2009	08/05/2009	INMATE REQUEST	3F5
CHIEF CLERK	01/10/2006	04/08/2009	INMATE REQUEST	3F5
WARDKEEPER ASSISTANT	11/10/2005	01/09/2006	INMATE REQUEST	3F5

561

INMATE SEARCH DETAIL REPORT

ADAMS, TOMMY SWINSON (00311901)

EARNED EDUCATION CREDITS			
EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 8-11 HRS/WK	01/14/2014		
BONUS 8-11 HRS/WK	06/19/2012	01/09/2014	INSTIT TRANSFER

The South Carolina Court of Appeals

Tommy S. Adams, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-200566

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Handwritten signatures of three judges, each followed by a horizontal line and the letter 'J.' to the right.

Columbia, South Carolina

cc: Teresa L. Norris, Esquire
John Walter Whitmire, Esquire
Alan McCrory Wilson, Esquire
Mary Williams Leddon, Esquire

FILED

May 21, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County
William P. Keesley, Circuit Court Judge

Lower Court Case No. 2009-CP-19-0064
Appellate Case No. 2011-200566

TOMMY S. ADAMS, #311901,
Petitioner,

vs.

STATE OF SOUTH CAROLINA,
Respondent.

RETURN TO PETITION FOR APPEAL BOND

The State of South Carolina respectfully submits the following in opposition to the Petitioner’s motion for appeal bond:

1. Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. Petitioner was indicted at the September 2003 term of the Edgefield County Grand Jury for the commission of a lewd act on a child under sixteen (2003-GS-19-0416); and criminal sexual conduct with a minor – 1st degree (2003-GS-19-0418). James B. Huff, Esquire, represented him. Petitioner proceeded to a jury trial from October 12-14, 2005, was ultimately found guilty on both charges as indicted. The Honorable John C. Few sentenced Petitioner to

confinement for fifteen (15) years for the commission of a lewd act on a child under sixteen and thirty (30) years for criminal sexual conduct with a minor – 1st degree. The sentences were ordered to run consecutively. Judge Few issued an Order denying Petitioner's motion for a new trial on July 10, 2006.

2. A timely Notice of Appeal was filed on Petitioner's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. State v. Adams, Op. No. 2006-UP-560 (S.C. Ct. App. filed October 10, 2008). The Remittitur was returned on October 18, 2008.
3. Petitioner subsequently filed an application for post-conviction relief on February 23, 2009. Respondent filed its Return on July 7, 2009. An evidentiary hearing was held on December 2, 2010, at the Lexington County Courthouse. Petitioner was present and represented by Teresa Norris, Esquire. A. West Lee of the Attorney General's Office represented the State. The Honorable William P. Keesley denied and dismissed Petitioner's Application for PCR by Order dated September 12, 2011.
4. Petitioner filed a timely notice of appeal. In an unpublished opinion, the South Carolina Court of Appeals reversed the PCR judge's Order. Thereafter, the State filed and served a Petition for Rehearing. That Petition is presently pending before this Court.
5. Petitioner moves this Court to issue an order releasing him on bond pending the State's Petition for Rehearing and potential appeal to the South Carolina Supreme Court. In support of his motion for appeal bond, Petitioner asserts: the nature of the crime – specifically, the lack of overwhelming evidence of guilt; the likelihood of reversal; and the possibility of escape.

6. The State asserts it is unlikely the Petitioner will prevail. The State has submitted a Petition for Rehearing outlining issues it believes to be meritorious, and in the event that it is denied, plans on continuing its appeal to the South Carolina Supreme Court.
7. The State asserts that Petitioner should be precluded from release on bond pending appeal because the sentence of imprisonment Adams received is in excess of ten (10) years. See S.C. Code Ann. Section 18-1-90 (Supp. 2011) (“bail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years.”). Petitioner was sentenced to a total of *forty five* (45) years imprisonment. As a result, granting Petitioner’s request for bond would be inappropriate.
8. However, should this Court consider Petitioner’s request pursuant to State v. Whitener, 225 S.C. 244, 81 S.E.2d 784 (1945), the State asks this Court to exercise its discretion to deny the Petitioner’s motion. Rule 243(k), SCACR, provides that Petitioner’s release on bond pending appeal from a post-conviction relief order shall be exercised with caution and only in *exceptional circumstances*. In deciding whether to exercise the discretionary authority to admit an applicant to bail, the following factors are considered: the probability the applicant will prevail on appellate review and the nature of the relief he or she will receive; the seriousness of the criminal offense committed; the danger the applicant may pose to the community if he or she is released; the likelihood that the applicant may flee if released; and the character and circumstances of the applicant. The State submits this case does not present the requisite circumstances to warrant the Petitioner’s release on bond pending appeal. Rule 243(k), SCACR (2015). For the reasons set forth below, the State strenuously opposes this motion and requests that this Court deny Petitioner’s motion for appeal bond pending appeal to the Supreme Court.

9. Petitioner's request for release on bond pending appeal must also be denied based upon the serious nature of the crime committed and the danger the Petitioner poses to the community. The Petitioner was convicted of the commission of lewd acts on a child under sixteen and criminal sexual conduct with a minor, first degree. (App.p.163) The victim in this case was the Petitioner's stepdaughter, and the abuse took place over the course of several years starting when she was eight years old. App.p.37-39. The State submits the serious nature of the crime he committed warrants denial of his request for bond pending appeal and early release into the community. The State also submits the nature of the crime suggests that the Petitioner may prey upon other children in the community.
10. Petitioner's request for release on bond pending appeal must also be denied as the Petitioner poses a flight risk. The South Carolina Department of Corrections has April 13, 2031 listed as Petitioner's projected parole eligibility date, and November 7, 2038 as his projected release date. As a result, if Petitioner fails to prevail on this appeal, even if he is granted parole at the earliest possible date, he will serve nearly an additional sixteen years. If Petitioner is not granted parole, he will serve over twenty three more years in prison. The State also notes that Petitioner has already shown a willingness to violate the terms and conditions set forth in his bond. Although Petitioner was granted bond prior to trial, on November 7, 2003 the trial court revoked his bond for violating a no contact condition with the victim's family – Petitioner made several “very menacing and somewhat threatening messages to” the victim's mother. App.p.158-159. In addition, the victim's mother has submitted a letter (“Attachment A”) documenting additional bond violations. Accordingly, the State submits it is likely Petitioner would violate the conditions of his bond again were it granted.

11. The State further argues that this Court should give great weight to Petitioner's prior criminal history. Specifically, Petitioner has a conviction for criminal domestic violence in for assaulting his then wife, the victim's mother. App. p. 167-68. Petitioner struck the victim's mother, "threw her down and threw her into a fence in the yard. One of the children that was there at the time called 911. [The victim's mother] received injuries to her face, and she had some of her hair pulled out at the time." Id. This occurred in the presence of several of the family's children. Id. Given the history of familial violence, both physical and sexual, the State's position is, that the present circumstances do not indicate that Petitioner has the appropriate character to support an appeal bond in this case.
12. The State also submits a letter from the mother of the victim ("Attachment A"), referenced above, as a supplement to the record and in opposition to bond being granted to Petitioner. Victims have the right to be notified of, attend, and comment on any post-conviction proceedings, affecting the probation, parole, or release of the offender. S.C. Code § 16-3-1560(A) (1976). Victims also have the right to make recommendations in cases for which bond is being requested. S.C. Code § 16-3-1525(I)(1) (1976). The victim's family in this case is clearly in opposition to an appeal bond.
13. Based upon all the foregoing, the State respectfully requests an opportunity to supplement its return to motion on appeal bond with any additional letters that may be provided by the victim or her family. Additionally, the State prays this Court deny the Petitioner's request for release on bond pending appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

WALT WHITMIRE

Assistant Attorney General
SC Bar #100793

May 26th, 2015



ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803)734-3737

May 18, 2015

Ms. Trisha Allen
South Carolina Attorney General's Office
1000 Assembly Street, Room 519
Columbia, S.C. 29201

Re: Mr. Tommy Swinson Adams

Dear Mrs. Allen,

I wanted to let you know that I strongly oppose the release of Mr. Adams on bond while the South Carolina Supreme Court considers the State's appeal regarding the Court's recent ruling on his PCR. I consider Mr. Adams to still be a threat to myself and my family if he is released. Although I do not currently live in Edgefield County, my children do. I own several properties in the area. So I do return quite often to Edgefield County. Mr. Adams' family still lives in the same area of Edgefield County.

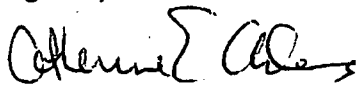
Mr. Adams violated the terms of his bond after his arrest by leaving me a threatening message on my cell phone in early 2004. Judge William P. Keesley, however, did not revoke his bond. As a part of his bond, he was under orders to not have any unsupervised contact with minors, yet I saw him riding around town alone with his minor child Cody. Unfortunately, the Sheriff's office told me it was a "he said - she said" situation and hard to prove.

Mr. Adams pled guilty to Criminal Domestic Violence in 2002 for beating me up. Mr. Adams and I were separated at the time and he had five of the six children in his care. My oldest daughter wouldn't stay with him. I went out with a girlfriend and later returned to my residence with my oldest daughter. Mr. Adams was waiting inside my residence, without my knowledge or permission, with the other children. He attacked me in front of the children, several of whom tried to get him to stop. One child called 911. I suffered bruising, cuts, and abrasions and had part of my hair torn out.

At the time, I made the mistake of thinking that this man could change and eventually reconciled with him. However, he is who he is and that is a dangerous abusive revengeful person. I doubt that his time in prison has made him a better person, no more than the anger management classes he took after the CDV conviction made him able to deal effectively with anger. The Court will never hear of the abuse my son suffered at his hands because the charges were dismissed after his conviction for the crimes against my oldest daughter.

I would hope that the Court would exercise prudence before releasing Mr. Adams on bond. Mr. Adams has always considered himself to be above the law.

Regards,

A handwritten signature in black ink, appearing to read "Catherine E. Adams". The signature is written in a cursive style with a large initial "C" and "A".

Catherine E. Adams

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Edgefield County
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2011-200566

TOMMY S. ADAMS,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Return to Petition for Appeal Bond has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Ms. Teresa L. Norris, Esquire
Blume Norris & Franklin-Best, LLC
900 Elmwood Ave., Ste. 101
Columbia, SC 29201

This 26th day of May, 2015.



ASHLEY HAWORTH
LEGAL ASSISTANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 09-CP-19-00064
Appellate Case No. 2011-200566

TOMMY S. ADAMS, #311901 Appellant,

v.

STATE OF SOUTH CAROLINA Respondent.

MOTION FOR LEAVE TO FILE OUT OF TIME AND
REPLY TO STATE'S RETURN TO
MOTION FOR BOND PENDING APPEAL

Pursuant to Rule 240, Adams requests leave to file this reply out of time. The reply was due on June 1, 2015, but counsel was unable to obtain the attached letters from his family members in the mail from Edgefield County until after that date. Since then counsel has been extremely busy working on a petition for a writ of habeas corpus, which is due for filing in the United States District Courton June 9, 2015, in the capital case of *Aleksey v. Stirling*, No. 5:14-CV-3016.

Reply

In the Return, the State responds essentially with just the nature of the alleged crimes, allegations of the possibility of escape, a bond violation more than a decade ago, and allegations of other bad acts from the alleged victim's mother, who is also Adams' ex-wife.

First, while the alleged crimes are very serious, this Court already determined that "there was not overwhelming evidence of Adams' guilt," Opinion at 2, in finding that Adams' convictions and sentences must be reversed due to the ineffective assistance of trial counsel. This Court denied rehearing and it is unlikely the Supreme Court will reverse that decision.

Second, Adams is not an escape risk. He was out on bond pending trial and made no attempt to escape. He has been in confinement for a decade without a single rule violation. He is 59 years old and has strong ties to Edgefield County, including his grown children and grandchildren who love and support him. His two grown sons are both law enforcement officers, as set forth in the attached letters from his ex-wife (different than the alleged victim's mother), his daughter, and his two daughter-in-law's.

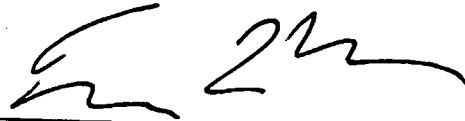
Third, the allegations by the alleged victim's mother, even assuming their truth, which is far from established, all occurred more than a decade ago during marital discord, including these allegations and pending divorce proceedings. As for any perceived "threat" to her or her family if Adams were released on bond, it is notable that the alleged victim, who is now grown, made no such allegation. Moreover, as set forth in the attached letters, Catherine Adams lives in Ohio. The alleged victim no longer lives in the United States. Adams has made no attempt to contact either since his trial. He is no threat and the

unsupported allegations of a bitter ex-wife to the contrary should be given no weight by this Court.

Conclusion

Wherefore, for the foregoing reasons, as well as those set forth in the initial motion, Adams requests leave to file out of time and requests bond pending appeal.

Respectfully Submitted,



TERESA L. NORRIS

Blume Norris & Franklin-Best, LLC
900 Elmwood Avenue, Suite 101
Columbia, SC 29201
(803) 765-1044

Counsel for Mr. Adams

June 8, 2015.

To whom this may concern,

I would like to begin by thanking you for taking the time to read my letter. This is in regards to my ex-husband, Tommy S. Adams. I was married to Tommy for twenty two years and we have three children together. We raised our daughter, Leslie, for sixteen years before her brothers, Tommy and Cody were born. As a girl, Leslie had girl friends in our house all the time and never did anyone accuse Tommy of anything. Never have I or anyone that knows him believes he did or is capable of doing was he was accused of.

In 1995 he left me for a very vindictive woman named Catherine E. Adams. She will go to any extreme to destroy people's lives; and she has. When she could not drive him to commit suicide, as her first husband did, she would get rid of him one way or another. So she accused him of something that did not happen. If he was the monster she claims he is, why did she wait until two years after he was in prison to divorce him? Before Tommy's trial the Edgefield County solicitor told his lawyer he had no plans to try him, but Cathy was threatening to go to the press if he didn't. During the trial no physical evidence was ever presented, just false accusations that have made me question what Cathy promised to Alexis? And why was his sentence so harsh? No one else in Edgefield county courts has been sentenced for that long, even in cases where people admitted to that kind of crime. During deliberation the jury sent the bailiff to ask if the decision had to be unanimous. Two jury members were then told by the rest of the jury they had to change their verdict if they wanted to go home. I didn't think that was the way the court system worked.

Cathy says she feels he is a threat to her and her children, but Tommy is not a threat to anyone. In fact, Cathy no longer lives in South Carolina. She moved her family to Ohio two years ago. The only one still living here is her youngest son, Carlton. Also, Cathy is not the alleged victim here, Alexis is, if she felt threatened why didn't she write the letter herself? All of the children are adults now and are capable of speaking for themselves. Obviously Tessa does not feel threatened because she visited her father in prison earlier this year, and she hid it from Cathy.

The past ten years has been a struggle to say the least. Tommy has missed out on his children graduating, getting married, having children, and countless other memories that he should have been here for. Not only was it a struggle for him but it was torment for our children. I am happy to say our two boys are both law enforcement officers now. Cody works for Edgefield county sheriff's office and Tommy works for North Augusta Public safety. I am very proud they have dedicated their lives to helping others. Thank God they were able to overcome the mental abuse Cathy inflicted on them when they were children. When they were small she hated them and she didn't mind showing it.

Thank you for hearing me. May God open your mind when you read this so you may see the truth.

May God Bless You,

Sharon Adams.

Sharon Adams
5-31-15

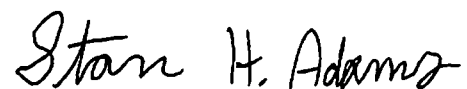
May 31st, 2015

To whom this may concern,

I am the daughter-in-law of Mr. Tommy S. Adams. Although I did not know him prior to his incarceration, I've had the pleasure of developing a relationship with him over the past seven years. Caring, loving, and giving are just a few words I can use to describe him. In the time I have known him I have seen the overwhelming amount of support and love from his family. Although it has been troubling, they have never lost hope that he would one day come home. What this family has gone through is horrible and Mr. Tommy can never re-gain the time he lost with them. He is not the dangerous man that Catherine E. Adams portrays him to be. In the ten years he has been incarcerated he has never attempted to contact Cathy or the alleged victim. Her statements are no more than hearsay and he is not a threat to her or her children. A persons actions say a lot about who they are and during his time of incarceration Mr. Tommy has never showed any signs of aggression. If he was the violent person she claims he is, he would have portrayed that at least once during his time in prison.

He does not deserve to be where he is and he isn't the only one suffering. My husband, Cody, deserves to have his father home and our daughter, Hallie, deserves to grow up knowing her grandfather. She is 14 months old and she should be able to meet her Pa Paw for the first time outside of prison walls. My hope is my words will help you see him as more than just a prisoner. Instead, I hope you can see him as a father and grandfather who was taken away from his family. You are presented with the opportunity to help correct the mistake made ten years ago. He was wrongfully accused and was not given a fair trial. I pray you can see his side of the story and do everything in your power to return him to his family.

Thank you,



Starr Adams

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Rachel Adams
260 Mill Creek Drive
Clarks Hill, SC 29821

To Whom It May Concern:

I am writing this letter today to tell you about my father-in-law Tommy Adams. I want you to know the man that I know today. A man who has nothing but love, hope, and compassion in his heart. I have known Tommy Adams for over three years now and in that time he has never showed me anything but love and kindness. It has come to my attention that his character has come into question because of a letter that that Cathy Adams wrote stating that if Tommy Adams was released he would be a threat to her and her children, but I can tell you that is not the case. Throughout Tommy Adams ten year stay in prison he has been a model prisoner he has never been violent towards anybody, gotten in trouble or even been written up. He spends his days in prison going to church and he is even working towards a degree. Cathy Adams has painted you the picture of a monster and I want to tell you he is anything but that. Do not let the words of a scorned ex-wife who has absolutely no credibility or evidence to back up her claims ruin the chance to bring my father-in-law back to his family. Tommy Adams has missed so much in our lives. He has missed his son graduate from high school, our wedding, and most importantly the birth of his grandchild. My hope is for one day my son who is 19 months old to be able to see his grandfather outside the walls of a prison. Our hope as a family is that one day his innocence will be proven and he can come live with us and we can be a family again. My husband is a paramedic, firefighter, and police officer and I can tell you with complete certainty that without his father being there to love him and support him that my husband would not be the man he is today. I am writing this letter because my family and I will never stop fighting, we will never give up until we bring our loved one home. I may be young but I know that life is short and my father-in-law deserves to spend the last years of his life with his family. I hope by reading this you will get some sense of the kind and wonderful person that I know. Thank you for taking the time to read this.

Sincerely,

Rachel Adams

Rachel Adams

5/31/2015

To Whom it May Concern,

June 1,2015

My name is Leslie Boyce. I am the oldest child of Tommy S Adams SCDC#311901. His family including myself, my 16 year old son, his 2 sons, his 2 other grandchildren, and many members of his extended family are begging for Daddy's release from prison. We/He has suffered enough from a conviction that should have NEVER happened. Daddy poses no threat to ANYONE. He NEVER has.

I'm certain his ex-wife ,Catherine E. Adams would try to convince you otherwise. Catherine, we'll call her Cathy from here, does not reside in Edgefield co. and has not for a couple of years. She does have property in the county which is where her son from her first marriage lives. He is an adult now. Cathy and daddy's two daughters are also grown now. The oldest is away at college and their youngest has just graduated high school in Ohio where Cathy currently lives. I'm sure she will be going off to college in the fall. As far as the alleged victim she too is a grown woman and is living out of the country.

Over the ten years of daddy being in prison I have had contact with Cathy numerous times. Her two youngest daughters are my 1/2 sisters. Cathy has brought them to my home for various birthday celebrations, cook outs and holidays. I always assumed the girls knew where daddy was. However ,I learned a couple of years ago that neither did until one day the oldest did some research and found him on the SCDC website. At that time she contacted me about how she could go about seeing our daddy. I explained the requirements and as soon as she turned 18 she visited daddy. It was a very emotional yet joyous visit. She had not seen her/our daddy in over 13 years. Keep in mind she did all of this without her mother, Cathy ,knowing. She was afraid that if Cathy found out she would be very mad and possibly prevent her from visiting him.

We ALL need our daddy back home to live out the rest of his life and make up for all of the things that have happened while he was gone. He missed finishing raising his sons (my brothers) .He missed out watching his first born grandson grow up (he was 5 when daddy was sentenced). He missed my brothers graduating, getting married and the birth of their children. Daddy has all of us ready to open our homes to him so that'll he'll be in a loving environment as he heals from the mental and physical strains of prison not to mention his large extended family of brothers and sisters.

I am begging the court to PLEASE free our daddy. Its been too long without him and we need our family whole again.

Sincerely,

Leslie A. Boyce

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM EDGEFIELD COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 09-CP-19-00064
Appellate Case No. 2011-200566

TOMMY S. ADAMS, #311901,.....Petitioner,

v.

STATE OF SOUTH CAROLINA,Respondent.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Motion for Leave to File Out of Time and Reply to State's Response to Motion for Appeal Bond has been served upon Respondent's counsel by first class mail, postage prepaid, addressed to counsel of record, J. Walt Whitmire, Post Office Box 11549, Columbia, South Carolina 29211.



TERESA L. NORRIS

Blume Norris & Franklin-Best, LLC
900 Elmwood Avenue, Suite 101
Columbia, S.C. 29201
(803) 765-1044

Counsel for Appellant

June 8, 2015

The South Carolina Court of Appeals

Tommy S. Adams, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-200566

ORDER

Petitioner appealed from the denial and dismissal of his application for post-conviction relief (PCR), arguing his trial counsel was ineffective. He now moves to be admitted to bail pending disposition of this appeal. This court filed its opinion on April 1, 2015, reversing the PCR court's decision. See Adams v. State, Op. No. 2015-UP-174 (S.C. Ct. App. filed April 1, 2015). The State filed a petition for rehearing, and this court denied the petition on May 21, 2015. On June 24, 2015, and July 7, 2015, our supreme court granted the State's requests for an extension to serve and file its petition for a writ of certiorari. We remand Petitioner's motion for bail to the Court of General Sessions for Edgefield County. In re Michael H., 360 S.C. 540, 552, 602 S.E.2d 729, 735 (2004) (citing Rule 221(b), SCACR, and stating the court of appeals retains jurisdiction until the Supreme Court grants or denies a petition for certiorari).

Paul G. Short, Jr

J.

U. Ke

J.

John Beathan

J.

581

Columbia, South Carolina

cc:

Teresa L. Norris, Esquire

John Walter Whitmire, Esquire

Alan McCrory Wilson, Esquire

Mary Williams Leddon, Esquire

FILED

July 9, 2015 *27*