

THE STATE OF SOUTH CAROLINA
In The Supreme Court
CERTIORARI TO THE COURT OF APPEALS

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MAY - 9 2016

SC SUPREME COURT

Appeal from Spartanburg County
Court of Common Pleas

J. Derham Cole, Post-Conviction Relief Judge

Farid A. Mangal, #320609

Respondent,

v.

State of South Carolina,

Petitioner.

REPLY TO
RETURN TO MOTION FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE*

OTHER COUNSEL OF RECORD:

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By way of Reply to Respondent's Return to Motion For Leave To Participate as *Amicus Curiae*, Movant, the Solicitors' Association of South Carolina, Inc., would show that:

I.

In his Return, Respondent states that there is no need for intervention by the Solicitors' Association of South Carolina, Inc., because the Solicitors' Association did not ask to participate at any earlier stage of the proceedings in this matter. It was not until the Court of Appeals issued its opinion in this matter affecting not only the conviction in this case, but also the presentation of evidence of medical experts in future civil and criminal cases, that the Solicitors' Association determined its participation was warranted and necessary to address the impact of the opinion in cases throughout South Carolina.

II.

In his Return, Respondent also states that there is no need for intervention by the Solicitors' Association of South Carolina, Inc., because it would not be appropriate for "a subset of the Attorney General's workforce" to participate as *amicus curiae*. Respondent misunderstands the Solicitors' Association's status, its interests, and the reason why its participation as *amicus curiae* is desirable.

The Solicitors' Association of South Carolina, Inc., is not a part of the South Carolina Attorney General's Office. It is not a government entity; rather, it is a non-profit corporation whose membership consists of the 16 elected Solicitors and their duly-commissioned assistants.

The parties in this case are represented by counsel, whose focus is on this case – *i.e.*, the propriety of the opinion of the Court of Appeals and its impact on the conviction and sentence in this case. While the Solicitors' Association wishes to participate to address the issues raised by the Petitioner, its interest is not just on the conviction and sentence in this case, but on the opinion's

impact on the presentation of evidence from medical experts in future cases, both civil and criminal.

III.

In his Return, Respondent states that allowing the Solicitors' Association to participate as *amicus curiae* "would allow the State to introduce issues not previously argued by a back door." This is not only incorrect, but Respondent's claim of unfairness is interesting in light of the procedural history of the case and the arguments of Petitioner.

In this case, Petitioner has taken the position that

- (1) contrary to the holding of the Court of Appeals, there was no error in the testimony of the medical expert on direct; and
- (2) the testimony elicited on cross-examination, which was primarily relied upon by the Court of Appeals in reversing Respondent's conviction, was
 - (a) never raised in Respondent's PCR application,
 - (b) not the focus of examination or argument at the PCR hearing,
 - (c) not raised in Respondent's Rule 59(e) motion, and
 - (d) not addressed by the PCR court.

Because any argument that defense counsel was ineffective for eliciting such testimony was never raised to or ruled upon by the PCR court, the PCR court was deprived of an opportunity to hear testimony or argument on the issue – *i.e.*, whether the decision to elicit this testimony on cross-examination was part of a calculated trial strategy to discredit the state's evidence (a conclusion reasonably supported by defense counsel's closing argument, but not addressed before and by the PCR Court due to Respondent's failure to raise the issue) – and to subsequently make a ruling.

Issues that are not covered in either the PCR application or at the hearing, and not ruled upon by the PCR court, may not be considered for review and serve as a basis to grant relief. The Court of Appeals ignored this long-standing rule of issue preservation.

V.

The interests of the South Carolina Solicitors' Association, Inc., are related to those of


prosecutors in general and the Petitioner herein specifically. Allowing the Solicitors' Association to participate as *amicus* will enable the Court to hear more fully from all stakeholders, and will assist the Court in resolving this matter.

WHEREFORE, for all of the foregoing reasons and those set out in the Solicitors' Association's original Motion, the undersigned Solicitors' Association respectfully requests leave of this Court to participate as *amicus curiae*, to include the filing of a Brief of *Amicus Curiae* should a writ of *certiorari* be issued, and any other action that the Court may wish; and for such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

SOLICITOR CHRISTINA T. ADAMS
President, Solicitors' Association of South
Carolina, Inc.

SOLICITOR BARRY J. BARNETTE
Treasurer, Solicitors' Association of South
Carolina, Inc.

BY: 
COUNSEL FOR MOVANT

May 4, 2016

Spartanburg, South Carolina

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PROOF OF SERVICE

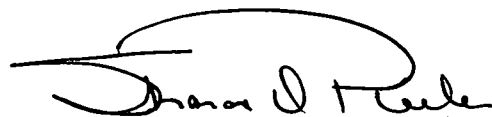
I certify that I have today served one copy of the Reply to Return to Motion for Leave to Participate as *Amicus Curiae* on Petitioner and Respondent by depositing such in the United States Mail, first class postage prepaid, addressed to counsel of record for both Petitioner and Respondent as follows.

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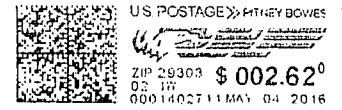


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May 4, 2016
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The Honorable Daniel E. Shearouse
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