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**JUN -3 2016**

**SC SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Pickens County

Perry H. Gravely, Circuit Court Judge

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NORMAN KEITH BURGESS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000143

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether trial counsel was ineffective in failing to object to the State's expert witness who bolstered the victim's case?

## STATEMENT

Petitioner was convicted of lewd act on a child, second degree criminal sexual conduct (CSC), and third degree CSC with a minor after a jury trial held before the Honorable G. Edward Welmaker on December 19, 2012, in Pickens County. Consecutive respective sentences of 150 months, 200 months, and 100 months were imposed. John Abdalla, Esquire was trial counsel. Sam Tooker, Esquire was the solicitor. (App. p. 1 – p. 427)

Petitioner appealed his convictions and the appeal was dismissed by the court of appeals on June 25, 2014, pursuant to Anders v. California, 386, S.C. 738, 87 S. Ct. 1396 (1967). Petitioner filed an application for post-conviction relief on July 29, 2014. (App. p. 428 – p. 435) Respondent filed a return dated January 8, 2015. (App. p. 436 – 440) An evidentiary hearing was held on December 16, 2015, before the Honorable Perry H. Gravely. Petitioner was present and represented by Mills Arial, Esquire. Respondent was represented by Karen Ratigan, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing. (App. p. 441 – p. 470) On January 14, 2016, Judge Gravely issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 471 – 477)

This petition follows.

## ARGUMENT

Trial counsel was ineffective in failing to object to the State's expert witness who bolstered the victim's case.

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466, U.S. 668, 104 S.Ct. 2052 (1984). To prove prejudice, petitioner must show that there was a reasonable probability that but for counsel's errors, the result of proceeding would be different. Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989). A "reasonable probability" is simply a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In addition, "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995). Trial counsel can be found ineffective for failing to object to an improper jury instruction or in failing to request a jury instruction that should have been given. He can be held ineffective for failing to object to the improper admission of character evidence, or prior bad acts, or illegally obtained statements, confessions, or improper searches. Failing to move for a continuance may also constitute ineffective assistance of counsel. Morris v. State, 371 S.C. 278, 639 S.E.2d 53 (2006).

At the evidentiary hearing petitioner testified that trial counsel should have objected to an expert witness testifying about child sexual abuse because she knew nothing about his case. (App. p. 450, line 25 – p. 451, line 23) The expert testified about delayed disclosure in abuse cases. (App. p. 454, ll. 16-24)

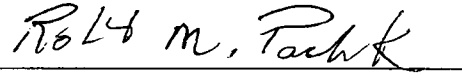
The expert who testified at trial was Shauna Galloway-Williams (“Williams”). She was the executive director of a forensic interviewing center. (App. p. 174, line 18 – p. 175, line 11) She said she never spoke to the alleged victim and never saw any of her written or video statements or any of the evidence related to the case. (App. p. 180, ll. 12-20) Even though she knew nothing about the case, Williams testified regarding what she claimed were general characteristics in child abuse cases and delayed disclosure. (App. p. 181, line 19 – p. 182, line 1)

Trial counsel was ineffective in failing to object to Williams being qualified as an expert in petitioner’s case. State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). Williams’ subsequent testimony which mirrored exactly the claims of the complainant was an attempted end-run around this Court’s decision in Kromah and its predecessor cases. See State v. Douglas, 380 S.C. 499, 500, 671 S.E.2d 606 (2009); State v. McKerley, 397 S.C. 461, 464, 735 S.E.2d 139, 141 (Ct. App. 2012). The only purpose of Williams’ testimony was the improper invasion of the province of the jury. Kromah at 358, 737 S.E.2d at 499-500. The only inference to be drawn from Williams’ testimony was that the complainant was telling the truth. It was error to allow this testimony. Id. It impermissibly bolstered the State’s case.

CONCLUSION

Petitioner should be granted a new trial.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 3rd day of June, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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CERTIORARI TO PICKENS COUNTY  
PERRY H. GRAVELY, CIRCUIT COURT JUDGE

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NORMAN KEITH BURGESS,

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PETITION TO BE RELIEVED AS COUNSEL

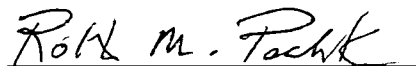
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Counsel for Norman Keith Burgess states:

1. He is an Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on December 16, 2015. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Norman Keith Burgess.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 3<sup>rd</sup> day of June, 2016

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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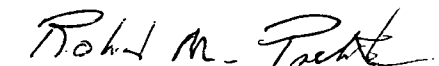
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CERTIFICATE OF SERVICE

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I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Karen Ratigan, Esquire and Norman Keith Burgess, #353672, at Broad River Correctional Institution this 3rd day of June, 2016.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 3<sup>rd</sup> day  
of June, 2016.

Christian Ford (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2026.