

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III Circuit Court Judge
Appellate Case No. 2010-178866

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SC Court of Appeals

DARRELL EFIRD

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR REHEARING

I.

On August 3, 2016, this Court issued an opinion in this case in which it affirmed the post-conviction relief (PCR) judge's order dismissing the underlying PCR matter. Darrell Efird v. State, Unpublished Opinion No. 2016-UP-395 (S.C. Ct. App. filed August 3, 2016). Petitioner submitted a petition for rehearing dated August 18, 2016. This Court did not misapprehend or overlook relevant facts of this case and the applicable law. Accordingly, pursuant to Rule 221(a), SCACR, the Court should deny the petition for rehearing.

II.

Petitioner Darrell Efird was convicted of incest, assault and battery of a high and aggravated nature, second degree criminal sexual conduct, and two counts of second degree criminal sexual conduct with a minor, and sentenced to imprisonment for a period of thirty years. Petitioner's sentences were affirmed on direct appeal. See State v. Efird, Unpublished Op. No. 2009-UP-248 (Ct. App. May 28, 2009). Petitioner filed a PCR action on August 31, 2010, and

after a hearing was held on September 2, 2010, before Judge John C. Hayes, III, an Order of Dismissal dated September 20, 2010, was issued in the case. Petitioner appealed. This Court granted petitioner's petition for writ of certiorari on the question of whether counsel erred in failing to object to numerous improper closing arguments made by the solicitor at trial and on the question of whether trial counsel erred in failing to object to portions of the sex expert's testimony that constituted impermissible corroboration with respect to the sex abuse claims. After full briefing, this Court upheld the PCR judge's denial of PCR relief to petitioner in Darrell Efirid v. State, Unpublished Opinion No. 2016-UP-395 (S.C. Ct. App. Filed August 3, 2016).

III.

Aside from reasserting its arguments from the Brief of Petitioner, Petitioner asserts that the Court overlooked the doctrine of cumulative error in finding that no prejudice resulted from trial counsel's conduct. The State relies on its Final Brief of Respondent for any further discussion of the issues because all issues raised in the Petition for Rehearing have been previously addressed in total by the State in its Final Brief.

First, South Carolina courts have consistently declined to apply a cumulative error analysis in PCR actions. See, e.g., Green v. State, 351 S.C. 184, 196-97, 569 S.E.2d 318, 324-25 (2002) (declining to address whether applicant was entitled to relief based on supposed cumulative effect of counsel's alleged errors); Simpson v. Moore, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006) (finding PCR court did not err in failing to conduct a cumulative error analysis where only one allegation had merit and the "record simply did not contain 'several errors' for the judge to cumulatively assess"). In addition, a number of other jurisdictions, including the Fourth Circuit Court of Appeals, have held a cumulative effect analysis is inappropriate and that the appropriate analysis focuses upon each individual allegation of ineffective assistance. See Fisher

v. Angelone, 163 F.3d 835, 852-53 (4th Cir. 1998); Wainwright v. Lockhart, 80 F.3d 1226 (8th Cir. 1996); Jones v. Sotts, 59 F.3d 143, 147 (10th Cir. 1995).

Respondent submits that the Court had no reason to apply the cumulative error analysis therefore did not overlook this issue. Rather, the Court adequately addressed all issues before it, and found that Applicant failed to satisfy his burden of proving ineffective assistance on any issue. Therefore, this Court should deny the Petition for Rehearing.

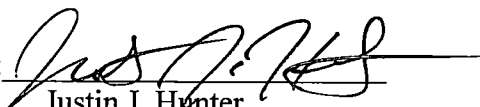
CONCLUSION

For all of the foregoing reasons, the State requests the panel deny the petition for rehearing.

Respectfully submitted,

ALAN WILSON
Attorney General

Justin J. Hunter
Assistant Attorney General

BY: 
Justin J. Hunter
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-5844

ATTORNEYS FOR RESPONDENT

September 1, 2016

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STATE OF SOUTH CAROLINA,

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PROOF OF SERVICE

I, Jocelyn Baker, certify that I have served the within Return to Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda Carter, Esquire
Comm. On Indigent Def. Appellate Div.
PO Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 1st day of September, 2016.

Jocelyn Baker
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211

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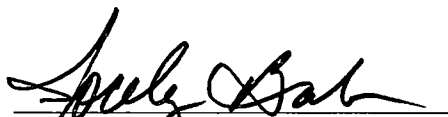
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Jocelyn Baker
Legal Assistant
Office of Attorney General
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Columbia, SC 29211



ALAN WILSON
ATTORNEY GENERAL

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September 1, 2016

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Darrell Efird v. The State
Appellate Case No. 2010-178866

Dear Counsel:

Please find enclosed for filing the original and six (6) copies of the Return to Petition for Rehearing, with proof of service, in the above-referenced case.

Sincerely,

Justin J. Hunter
Deputy Assistant Attorney General

Enclosures

cc: Victim's Services (without enclosures)

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South Carolina Attorney General's Office
Justin J. Hunter, Assistant Attorney General
PO Box 11549
Columbia, SC 29211

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629