

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Greenville County  
Honorable John C. Hayes, Circuit Court Judge

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MILLANYO A. WOODY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000158

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JOHNSON PETITION FOR WRIT OF CERTIORARI

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Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

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**ISSUE PRESENTED**

Whether trial counsel was ineffective in failing to object to Dr. Henderson's testimony that bolstered the child victim's testimony?

## STATEMENT

Petitioner was convicted of lewd act upon a child and criminal sexual conduct with a minor in the second degree after a jury trial held before the Honorable G. Edward Welmaker on October 14, 2013, in Greenville County. A total sentence of fourteen years and nine months was imposed. Dorothy Manigault, Esq. was trial counsel. Judy Munson, Esq. was the assistant solicitor. (App. p. 1-p.261)

Petitioner appealed his conviction and the appeal was dismissed after a review pursuant to Anders v. California, 378 U.S. 738, 87 S.Ct. 1396 (1967). State v. Woody, Op. No. 2015-UP-056 (filed January 28, 2015). (App. p. 302)

Petitioner filed an application for post-conviction relief on September 17, 2015. (App. p. 262- p. 268). Respondent filed a return dated July 1, 2016. (App. p. 301- p. 307). An evidentiary hearing was held on December 9, 2016 before the Honorable John C. Hayes, III. Petitioner was present and was represented by R. Mills Ariail, Jr., Esq. Respondent was represented by Patrick Schmeckpeper, Assistant Attorney General. Both petitioner and trial counsel testified at the hearing. (App. p. 308- p. 360). On January 13, 2017, Judge Hayes issued an order denying and dismissing petitioner's application for post-conviction relief. (App. p. 361- p. 371).

This petition follows.

## ARGUMENT

Trial counsel was ineffective in failing to object to Dr. Henderson's testimony when it bolstered the child victim's testimony.

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).

In some instances counsel may be held ineffective without a showing of prejudice when he fails to subject the prosecution's case to a meaningful adversarial testing. In such cases prejudice is presumed. Nance v. Ozmit, 367 S.C. 547, 626 S.E.2d 878 (2006).

In this case petitioner claimed the following testimony of Dr. Henderson should have been objected to:

Q. Okay. So based on -- let me ask you this first. Do you have an opinion about how Minor got that injury?

A. Well, I think based on the history that she had shared with me and the findings on her exam, including the lab work that we did, that this was due to a penetrating injury, and I felt it was consistent with the disclosure that she had made.

Q. Of penile vaginal penetration?

A. Yes, ma'am.

(App. p. 174, lines 6-14).

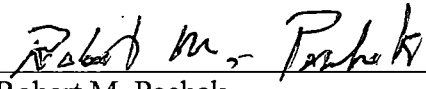
Petitioner testified at the evidentiary hearing that the above testimony that was brought out by the solicitor was used for Dr. Henderson to bolster the victim's testimony that she was sexually assaulted. There was no objection to this line of questioning by defense counsel. (App. p. 323, line 8- p. 324, line 21).

All defense counsel could say at the PCR hearing was that she did not object because she did not think it was bolstering. She did not, however, explain why she did not think it was bolstering. (App. p.347, lines 12-23).

In State v. Kromah, 401 S.C. 340, 737 S.E. 2d 490 (2013) the court wrote that "it is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter." Similarly, an expert should not be able to testify about a "compelling finding" of sexual abuse. 401 S.C. at 358-359, 737 S.E. 2d at 500. When Dr. Henderson said her findings were consistent with what the victim told her, it was no different than saying it was a "compelling finding."

**CONCLUSION**

Trial counsel should be held ineffective for failing to object to Dr. Henderson's testimony that bolstered the testimony of the victim.

  
Robert M. Pachak  
Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of June, 2017.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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MILLANYO A. WOODY,

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Millanyo Antonio Woody states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.
2. He has reviewed the record of petitioner's trial before Judge John C. Hayes, which was held on December 9, 2016, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process. Therefore, counsel requests that the Court relieve him as counsel for Millanyo Antonio Woody.

Respectfully Submitted,

*Robert M. Pachak*

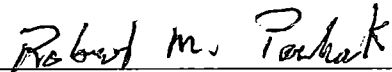
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Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

This 6th day of June, 2017.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of his ability this Johnson Petition for Writ of Certiorari complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

  
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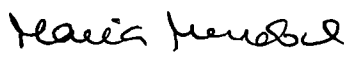
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CERTIFICATE OF SERVICE  
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The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon DeShawn H. Mitchell, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Millanyo Antonio Woody, #227810, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 6th day of June, 2017.



Robert M. Pachak  
Appellate Defender  
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me  
this 6th day of June, 2017.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023