

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

 ORIGINAL

On Writ of Certiorari to the Court of Appeals
Appeal from Lexington County
The Honorable Lawton McIntosh, Circuit Court Judge

Opinion No. 27785

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APR 13 2018

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

YANCY THOMPSON,

PETITIONER.

Appellate Case No. 2014-001611

RETURN TO PETITION FOR REHEARING

There was nothing wrong with this Court's opinion of March 21, 2018. Justice James wrote a very strong opinion which was unanimously decided by this Court. The Court did not even need to set the case for oral argument.

Petitioner was convicted in 2008 of first degree sexual conduct (CSC) with a minor, second degree CSC with a minor, and disseminating obscene material to a minor. Respective sentences of 25 years, 20 years, and 10 years were imposed.

In post-conviction relief, petitioner argues that trial counsel was ineffective in his representation of him at trial. The PCR court ruled that trial counsel was deficient in his representation of petitioner but that performance was not prejudicial!

This Court found that trial counsel failed to object to inadmissible hearsay testimony from DSS caseworker Elfening and a clinical psychologist, Dr. Benedetto. This Court also found that trial counsel failed to object to the testimony of Detective Barr and Dr. Benedetto that impermissibly bolstered the credibility of the victim.

Even when counsel's performance is deficient, respondent typically and slovenly makes the slithering rote argument that there was no prejudice because there was overwhelming evidence of guilt. This Court disposed of that issue as follows:

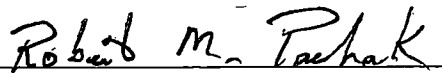
In this case, the State contends—and the PCR court seemingly concluded—that Petitioner was not prejudiced by trial counsel's deficient performance because properly admitted evidence overwhelmingly established Petitioner's guilt. In *Smalls v. State*, Op. No. 27764 (S.C. Sup. Ct. filed Feb. 7, 218) (Shearouse Adv. Sh. No. 6 at 43), we addressed the question of “overwhelming evidence” in the PCR setting by balancing the individual impact of trial counsel's error(s) against the strength of properly admitted evidence of a PCR applicant's guilt. As we explain below, the overall strength of the properly admitted evidence of Petitioner's guilt does not overcome the individual impact of each instance of trial counsel's deficient performance. Therefore, we conclude Petitioner has established there is a reasonable probability that, absent trial counsel's deficiencies, the outcome of his trial would have been different.

Yes, there was nothing wrong with this Court's opinion. It was well written and explained the case law precedent so even respondent should have been able to understand it.

CONCLUSION

Respondent's petition for rehearing should be denied.

Respectfully Submitted,



ROBERT M. PACHAK
Appellate Defender

This 13th day of April, 2018.

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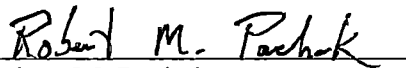
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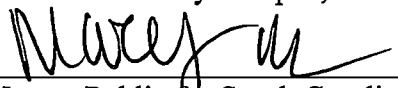
PETITIONER.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Return to Petition for Rehearing in the above-entitled case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Yancey Thompson, #330395, at Lieber Correctional Institution, P.O. Box 205., Ridgeville, SC 29472, this 13th day of April, 2018.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 13th day of April, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.