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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2019-001499

WILLIAM O. DICKERSON, Jr.....Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

**REPLY TO RESPONDENT'S RETURN TO
PETITION FOR WRIT OF CERTIORARI**

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ARGUMENTS

Counsel respectfully briefly replies to the following arguments.

- I. **Trial counsel rendered ineffective assistance of counsel in violation of the Sixth Amendment to the federal Constitution and *Strickland v. Washington*, 466 U.S. 668 (1984) by failing to advance a comparative juror analysis under the third prong of *Batson* when he raised his *Batson* challenge.**

Respectfully, Petitioner submits that his trial counsel rendered ineffective assistance of counsel by failing to urge the trial court judge to conduct a comparative juror analysis because the Solicitor's reasons for removing two jurors were pretextual. Petitioner's inclusion of additional information supporting the claim of pretextual strikes is offered to lend additional support to the claim—but this evidence is not necessary to prove it. As the United States Supreme Court has reiterated in its recent opinion, *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019), “the *Batson* Court held that a criminal defendant could show “purposeful discrimination in selection of the petit jury solely on evidence concerning the prosecutor's exercise of peremptory *at the defendant's trial.*” *Id.* at 2241 (emphasis in original) (quoting *Batson*, 476 U.S. at 95).

Regarding Respondent's claim that Petitioner had ample opportunity to question the Solicitor about her questioning of jurors during her deposition or PCR testimony, Petitioner addressed this issue in his petition for writ of certiorari. Petition, p. 38-39.

Petitioner also contests Respondent's claim that the defense counsel's notes from trial “indicated general support for a concern for Juror #101's work

commitments, and also a note of “backs up” about sentencing—facts which supported the reason for the strike as outlined at trial.” Respondent’s Brief, p. 14. Respondent’s citations are to the judge’s order denying relief, and drafted by the Attorney General’s Office. But even if defense counsel’s notes noted that this juror may have had to be at work at 1:00pm, that does not cure any error, especially in light of her testimony on the issue or the Solicitor’s other purported reasons that were not supported by the record.

Respondent generally avers that the statistical study presented by professors from Michigan State College of Law is unpersuasive because “broad statistics” show “a limited persuasive force.” Respondent’s Brief p. 24. The United States Supreme Court in *Flowers* has unequivocally rejected this claim. The Court cited with approval a number of factors that a trial court judge may consider to support a claim that a prosecutor’s peremptory strikes were made on the basis of race, including “relevant history of the State’s peremptory strikes in past cases . . .” *Id.* at 2243. *See Foster v. Chatman*, 578 U.S.____, 136 S. Ct. 1737; *Snyder v. Louisiana*, 552 U.S. 472, 128 S. Ct. 1203; *Miller-El v. Dretke*, 545 U.S. 231, 125 S. Ct. 2317; *Batson*, 476 U.S. 79, 106 S. Ct. 1712. The Court also found that “after *Batson*, the trial judge may still consider historical evidence of the State’s discriminatory strikes from past trials in the jurisdiction, just as *Swain* had allowed. . . . A defendant may rely on “all relevant circumstances.”” *Flowers* at 2245 (quoting *Batson*, 476 U.S. at 96-97). If anything, the Michigan State University study has even more weight in light of the High

Court's recent opinion which has made clear, once again, that for purposes of *Batson*, there has been no judicial retreat.

Despite Respondent's argument, it is relevant to this Court's consideration of Petitioner's claims that, in a study of 20 proceedings from this particular Solicitor, from 2002 to 2013, a statistical disparity exists at a magnitude of more than 5 to 1, and that the "robustness" of those findings along a variety of analyses provides "powerful evidence" that race was a "substantial factor" in prosecutorial decisions in the 20 proceedings in Charleston County. App. 7369. Respectfully, Petitioner asks this Court to grant his petition for a writ of certiorari.

- 3) **Trial counsel rendered ineffective assistance of counsel when they failed to uncover and present evidence of Applicant's significant neurological deficits and when that evidence would have been highly mitigating.**

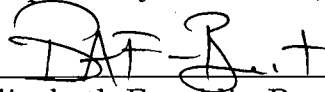
Respondent avers that trial counsel conducted an adequate investigation and therefore cannot be faulted for failing to uncover and present evidence related to Dickerson's exposure to lead poisoning. In assessing this claim, this Court should consider (as the PCR court did not) that Dr. Needleman, trial counsel's expert on this lead poisoning issue, requested additional information from trial counsel which trial counsel had in its possession but simply did not forward to Dr. Needleman. Trial counsel did not forward Dr. Needleman Armon Dickerson's blood level reports, or information about the prevalence of lead paint in the inner-city housing projects. An internal defense memorandum—which could have been forwarded to Dr. Needleman—noted that Charleston's lead levels were medically unacceptable by 2008 standards. App. 5842-43; 5870-72; 6913-17; 6991-7003. Had trial counsel done

so, trial counsel would have been able to present to the jury the full implications of lead poisoning on William Dickerson's development. This testimony, presented through Dr. Canfield at the PCR hearing, would have been highly mitigating, and trial counsel rendered ineffective assistance of counsel by failing to develop and then present this evidence. Respectfully, Petitioner asks this Court to grant certiorari.

CONCLUSION

Respectfully, Petitioner asks this Court to grant his petition for a writ of certiorari.

Respectfully submitted,



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