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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

HONORABLE WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE

APPELLATE CASE No. 2019-001104

RON O'NEAL FINKLEA, SK6025..... RESPONDENT,

v.

STATE OF SOUTH CAROLINA..... PETITIONER.

RESPONDENT'S NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to Rule 208(b)(7), SCACR, Respondent Ronald O'Neal Finklea files this notice of supplemental authority.

On June 15, 2020, the Supreme Court of the United States issued its opinion in *Andrus v. Texas*, 140 S. Ct. 1875, 1881 (2020), which held that "Andrus' counsel provided constitutionally deficient performance under *Strickland*." Both the Court's reasoning and result in *Andrus* are directly relevant to Finklea's case. The underlying claims are virtually identical: both Andrus and Finklea alleged that trial counsel's mitigation investigations were unreasonable in scope which deprived the jury of significant mitigating evidence of severe childhood trauma perpetrated by their mothers. *Id.* at 1882; Return at 2. After a reasonable investigation was conducted in state post-conviction proceedings, both Andrus and Finklea were determined by mental health

professionals to suffer from profound psychological distress, including post-traumatic stress disorder, resulting from the trauma. 140 S. Ct. at 1883; Return at 5.

In *Andrus*, the Court found “counsel ‘ignored pertinent avenues for investigation of which he should have been aware,’ and indeed was aware.” 140 S. Ct. at 1882. While Andrus’s trial counsel stated his cursory investigation did not reveal any obvious mental-health issues, information gathered by an investigator did provide some clues that counsel failed to follow up on. *Id.* The same is true in Finklea’s case; trial counsel did not reasonably pursue indications of childhood trauma, abuse, or how the trauma affected his mental health at the time of the murder. Return at 8.

The Court concluded in *Andrus* that “the known evidence would [have] le[d] a reasonable attorney to investigate further.” 140 S. Ct. at 1883 (quoting *Wiggins v. Smith*, 539 U.S. 510, 527 (2003)). Despite having knowledge of family abuse and neglect, Andrus’s counsel failed to take obvious and reasonable next steps. *Id.* Thus, in the Supreme Court’s view, “counsel disregarded, rather than explored, the multiple red flags.” *Id.* As discussed in Respondent’s Return to the State’s petition, trial counsel in Finklea’s case also ignored multiple red flags which would have led a reasonable attorney to continue the investigations. Return at 8-10.

Finally, in both cases, trial counsel were convinced their clients would be found guilty and the case would proceed to the penalty phase. The Supreme Court in *Andrus* noted that trial counsel’s failure to conduct a thorough investigation is “all the more alarming given that counsel’s purported strategy was to concede guilt and focus on mitigation.” 140 S. Ct. at 1883. Finklea made an analogous argument in his submission to this Court. Return at 20.

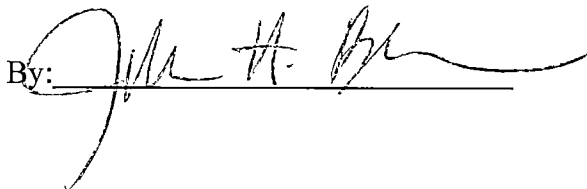
For these additional reasons, the State’s petition for writ of certiorari should be denied.

Respectfully submitted,

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August 3, 2020