

STATE OF SOUTH CAROLINA
In the Supreme Court

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JAN 17 2019

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2018-001498
Lower Court Case No. 2015-CP-42-0996

JAMES BENJAMIN IRBY, #352507,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

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INDEX

INDEX1

QUESTION PRESENTED2

STATEMENT OF THE CASE.....3

STATEMENT OF FACTS ADDUCED AT TRIAL.....4

ARGUMENT7

CONCLUSION.....17

QUESTION PRESENTED

I.

Whether the PCR court erred in concluding that defense counsel was not ineffective for failing to utilize the services of a false confession expert, with whom defense counsel had consulted, at trial?

STATEMENT OF THE CASE

The Petitioner, James Benjamin Irby, was charged in Spartanburg County for criminal sexual conduct with a minor in the second degree. On November 18-19, 2012, the Petitioner proceeded to trial on this charge. The Petitioner was represented at this proceeding by Christopher Brough, Esquire. At the conclusion of the trial, the jury found the Petitioner guilty as charged. The Honorable J. Derham Cole, presiding circuit judge, sentenced the Petitioner to eighteen years' imprisonment.

The Petitioner timely appealed his conviction and sentence to the South Carolina Court of Appeals. He was represented on appeal by Robert Michael Dudek, Chief Appellate Defender. In an unpublished opinion, the Court of Appeals affirmed the Petitioner's conviction and sentence. State v. Irby, 2015-UP-021 (S.C. Ct. App. filed January 14, 2015). The Petitioner did not pursue a further appeal in this Court.

On March 9, 2015, the Petitioner filed an Application for Post-Conviction Relief with the Spartanburg County Clerk of Court. An evidentiary hearing into the matter was convened on November 16-17, 2017, before the Honorable G. Thomas Cooper, Jr., presiding circuit judge. On June 4, 2018, the PCR court filed an Order of Dismissal which denied relief on all of the Petitioner's claims.

The Petitioner filed a Rule 59(e), SCRCPP, motion to alter or amend the Order of Dismissal on June 12, 2018. On June 25, 2018, the PCR court filed an Order Denying Applicant's Motion to Alter or Amend. The Petitioner served his Notice of Appeal from both of the PCR court's orders on August 5, 2018, with counsel noting that she had not received the order denying the Rule 59(e) motion until July 16, 2018.

Notice of appeal was timely served and filed. The Petitioner now seeks a writ of certiorari.

STATEMENT OF FACTS ADDUCED AT TRIAL

The Petitioner and the victim's mother Danette Lillian Collins were married and lived together with Collins' three children: the victim, a preteen daughter; a five-year-old daughter; and a seventeen-year-old son.¹ The allegations in this case arose out of the victim's assertion that the Petitioner sexually assaulted her in various ways for a period of approximately eighteen months. Specifically, at trial, the victim testified that the Petitioner digitally penetrated her on one occasion. App. p. 152, lines 1-13. She further testified that the Petitioner would come into her room where she slept with her sister, take off her clothes, and touch her legs. App. p. 153, line 6-p. 154, line 7. The final assault occurred in November 2007 when the Petitioner came into her room, pulled her clothing off, and had sexual intercourse with her. App. p. 155, lines 6-25. The victim called her aunt in the days following the final assault and was removed from the home the next week. App. pp. 156-157.

The Petitioner was interviewed on numerous occasions by various investigators. He was first interviewed on November 14, 2007, by Brenda Sparks Izarra, a child abuse investigator for the Department of Social Services, who testified that the Petitioner denied the allegations. App. pp. 173-175. Instead, the Petitioner stated that the victim's allegations arose out of a dispute with the victim, who was upset about potentially losing the opportunity to go on a field trip with school. App. pp. 174-175.

The Petitioner was further interviewed on December 5, 2007, by Detective Tanya Aldridge of the Spartanburg County Sheriff's Office. During that interview, the Petitioner wrote a statement and denied the victim's allegations. App. pp. 184-185. He did, however, mention that the victim

¹ Out of an abundance of caution, the victim's siblings names have been redacted as well from the record. Her brother is referred to as "Minor 4" and her sister is referred to as "Minor 5."

had asked him to “smell her cookies,” which he took to mean a euphemism for a sexual interaction. App. pp. 186-187.

The Petitioner was next interviewed by Detective Danny Morgan, also on December 5, 2007, following a polygraph examination conducted by Detective Morgan. During the course of this interview, the Petitioner admitted to the following sexual interactions with the victim:

- On one occasion, he had fallen asleep on the couch and awoke to find the victim performing oral sex on him; App. p. 225, lines 2-19;
- On another occasion, he had also fallen asleep on the couch while naked and had awoken to find the victim engaging in sexual intercourse with him; App. p. 226, lines 2-14; and
- On a final occasion, the victim had asked him in the summer of 2007 if she wanted him to perform oral sex on him, which he allowed to occur for a couple of minutes before he stopped it; App. p. 239, lines 2-15.

Prior to the Petitioner making the first disclosure, Detective Morgan told the Petitioner: (1) that he had failed the polygraph examination (App. p. 904);² (2) that he didn’t want the Petitioner to be thrown to the wolves over the allegation (App. p. 915); and (3) that the Petitioner had engaged in sexual contact with the victim (App. p. 916). See also App. p. 248, lines 1-21 (testimony of Detective Morgan admitting to the second and third statements to the Petitioner). Prior to the Petitioner making the second disclosure, Detective Morgan told the Petitioner that he knew of an individual who refused to admit what he had done initially and then had received a sixty-year sentence. App. p. 923. The total amount of time Detective Morgan spent with the Petitioner came to approximately six hours. App. p. 242, line 22-p. 243, line 16.

² A rough transcript of Detective Morgan’s interrogation of the Petitioner was admitted as an exhibit at the PCR hearing, and is contained in the Appendix at pp. 836-976.

The prosecution's case rested on the victim's testimony, the Petitioner's statements to Detective Morgan, and the witnesses who testified that the victim had disclosed sexual abuse to them. See App. p. 165, lines 1-15 (testimony of the victim's aunt Jennifer Turner); p. 169, line 17-p. 170, line 6 (testimony of Izarra); p. 202, line 24-p. 203, line 12 (testimony of forensic evaluator Lynn McMillian); p. 212, line 12-p. 213, line 5 (testimony of Dr. Nancy Henderson). The Petitioner testified in his own defense that he did not engage in sexual contact with the victim. App. p. 274, lines 14-20. The Petitioner also presented the testimony of Collins, his wife, who testified that the victim had disclosed abuse to her, see App. p. 266, line 17-p. 267, line 3; p. 270, lines 4-9, but also that the victim had stated three times, while with a therapist, that nothing occurred between the victim and the Petitioner. App. p. 264, line 18-p. 265, line 24. There was no forensic evidence that the Petitioner committed the assaults.

Following the charge to the jury, the jury requested that they be permitted to rehear the Petitioner's testimony. App. p. 346, lines 2-6. Approximately twelve minutes after they reheard the testimony, they returned a guilty verdict. App. p. 346, lines 10-21.

ARGUMENT

Standard of Review

The Sixth and Fourteenth Amendments to the United States Constitution guarantee every criminal defendant the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In order to prove a claim of ineffective assistance of trial counsel, the moving party must show that defense counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Id. In other words, the petitioning party must show that but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Id.

On appeal, a PCR court's factual findings will be upheld if there is any evidence of probative value supporting them. Cherry v. State, 300 S.C. 155, 386 S.E.2d 624 (1989). A PCR court's legal findings are afforded no deference and questions of law are reviewed *de novo*. Smalls v. State, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839-840 (2018). "The appellate court will reverse the PCR court only where there is either no probative evidence to support the decision or the decision was controlled by an error of law." Edwards v. State, 392 S.C. 449, 455, 710 S.E.2d 60, 64 (2011).

I. The PCR court erred in concluding that defense counsel was not ineffective for failing to call an expert witness in false confessions at trial.

A. How the Issue Arose Below

In a pretrial hearing held January 29, 2011, the Petitioner moved to suppress his statements given to Detective Morgan. The crux of the Petitioner's argument was that

[W]e have implied promises that are made that Mr. Irby needs to come forward or he was going to be thrown to the wolves, that if he makes the choice this way versus that way, if he goes this way, you know, and he tells everything all at once he might be dealt with impliedly better and less harshly, because given Detective Morgan's experience people that he had dealt with in the past that didn't come forward and had to have it dragged out of them received the maximum sentence.

And I think that when you look at that case you can see that there was a threat that was made here.

App. p. 95, lines 4-14. However, during that hearing, defense counsel did not call an expert witness on false confessions. Defense counsel did not call such an expert witness during trial either. At the outset of trial, the trial judge denied the motion without further explanation. App. p. 104, lines 3-9.

In his Amendment to Application for Post-Conviction Relief, the Petitioner alleged that defense counsel was ineffective for failing to utilize a false confession expert "at the suppression and trial stages." App. p. 446. In support of that allegation, the Petitioner called Dr. Richard Leo, an expert in police interrogations, psychological coercion, and false confessions, at his PCR hearing. Dr. Leo testified that he had been consulted by defense counsel long before trial and that it was his opinion that he had several concerns about the method of interrogation utilized by Detective Morgan. App. p. 629, lines 1-9. He was specifically concerned that: (1) the interrogation was presumptive and accusatory; (2) that Detective Morgan had utilized interrogative techniques that are known to increase the risk of false confessions; (3) that Detective Morgan's questioning

was psychologically coercive; and (4) that the nature of the questioning and the information conveyed by Detective Morgan moved the Petitioner from denying the allegations to admitting sexual misconduct. App. pp. 634-636; see also pp. 718-722. He could not, however, definitively testify that the Petitioner gave a false confession as he could never give that opinion in any case. App. p. 638, lines 8-16. With asked why he was not called as a witness at trial, Dr. Leo testified that he believed that there was an issue regarding payment of his fee for trial. App. p. 629, lines 10-17.

Defense counsel testified that he had consulted with Dr. Leo but could not call him as a witness at trial because the Petitioner and his family could not pay Dr. Leo's fee. App. p. 541, line 4-p. 542, line 2. He did, however, attempt to schedule the Petitioner's trial around Dr. Leo's availability on multiple occasions and even filed a motion for a continuance to request a date certain because "Mr. Leo's testimony is critical in order for the defendant to have a fair trial." App. p. 833.

The PCR court denied relief on this issue, concluding that

Counsel was not deficient for not calling Dr. Leo to testify, but finds Counsel's performance by consulting with him was reasonable – and more than what is required by prevailing professional norms. To find Counsel ineffective for failing to utilize a false confession expert in this case would require a different standard be applied to Counsel than that which Strickland requires. If Counsel's performance is analyzed based on a reasonable standard in light of prevailing professional norms, calling false confession experts to testify in cases where there is a confession would have to be the accepted and prevailing norm. This is not the case.

Notwithstanding, Counsel went beyond expectations by consulting with Dr. Leo, and he also had valid reasons for not further retaining him to testify. First, although Applicant could afford to retain Counsel and pay Dr. Leo \$2,500 to "consult," he and his family could not afford to hire Dr. Leo to testify. Secondly, Counsel discussed the case with Dr. Leo who advised Counsel of what he could testify to at trial. Counsel did not believe his testimony would sway the Court in the suppression hearing, or the jury in the trial. Thirdly, Dr. Leo could not testify to the ultimate conclusion that

Applicant's statements were false or coerced. Dr. Leo's testimony would criticize Detective Morgan's performance based on the indicators he saw present in the interview, rather than identify which of Applicant's statements were untrue. Lastly, Applicant never recanted to Counsel. These are legitimate concerns. This Court finds Counsel's decision was reasonable.

App. pp. 1071-1072. In the Petitioner's Rule 59(e), SCRCP, motion, the Petitioner requested that the PCR court reconsider its finding on this claim and specifically requested that the PCR court "reconsider the finding that utilization of a false confession expert is not a 'professional norm.'" App. p. 1085. The PCR court denied this motion as well. App. p. 1110.

The Petitioner now contends that the PCR court's rulings on this issue were erroneous and that certiorari should be granted to review them.

B. Discussion

As a general rule, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, *supra*, 446 U.S. at 691. Both this Court and the Court of Appeals have recognized that the failure to investigate and to present favorable expert witness testimony at trial constitutes ineffective assistance of counsel. See McKnight v. State, 378 S.C. 33, 661 S.E.2d 354 (2008); Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).

The Petitioner submits that the PCR court's findings on this issue are unsupported by any probative evidence and are controlled by an error of law with regard to Strickland's performance prong. Beginning with that prong, the Petitioner contends that the PCR court was manifestly incorrect as a matter of law when it found that it could not find defense counsel deficient without also concluding that defense attorneys consult with false confession experts whenever there is a confession. "The accepted and prevailing norm," App. p. 1071, is that a defense attorney must investigate the evidence against the defendant, consult with experts when the evidence requires defense counsel to do so, and present those expert witnesses at trial if their testimony would be

favorable. See McKnight, supra; see also Rompilla v. Beard, 545 U.S. 374, 394 (2005) (O'Connor, J., concurring) (concluding that the defense attorneys' performance was deficient for failing to investigate a matter that "would be at the very heart of the *prosecution's* case") (emphasis in original). The circumstances of most confessions, as the PCR court surely knew, do not lead themselves to the suspicion that a defendant may have given a false confession. Where, as here, however, a defendant gives a confession (1) that does not match any of the victim's allegations; (2) after he was interrogated for several hours; and (3) after being told he would be thrown to the wolves if he did not confess, then defense counsel's consultation with a false confession expert would be both prudent and necessary. Stated differently, not every case requires consultation with, and presentation of, an expert witness, but this one did. The Petitioner certainly acknowledges that defense counsel consulted with Dr. Leo. It is with the subsequent abandonment of Dr. Leo, however, where defense counsel's performance fell below professional norms. Consequently, the PCR court applied the wrong standard of review for defense counsel's conduct and should be reversed.

The PCR court gave four reasons why defense counsel was not deficient for failing to call Dr. Leo to testify at trial: (1) the Petitioner could not pay for Dr. Leo to testify; (2) defense counsel did not believe that Dr. Leo would be beneficial; (3) Dr. Leo could not testify to the ultimate conclusion that the Petitioner's statements were coerced; and (4) the Petitioner never recanted to defense counsel. See App. p. 1072. The Petitioner respectfully submits that these findings are unsupported by any probative evidence, and with regard to the first and third findings, are erroneous as a matter of law. The Petitioner will address each finding in turn.

Beginning with the payment finding, the fact that the Petitioner could not pay for Dr. Leo's testimony does not obviate defense counsel's obligation to the Petitioner. "A defendant's inability to pay for necessary experts is not a trial tactic or strategy, and cannot be used to justify defense

counsel's failure to consult with or call such experts as witnesses.” State v. Schoonmaker, 143 N.M. 373, 382, 176 P.3d 1105, 1114 (N.M. 2008); see also Ex parte Briggs, 187 S.W.3d 458, 467 (Tex. Crim. App. 2005) (“There is no suggestion that trial counsel declined to fully investigate [the victim]’s medical records because he made a strategic decision that such an investigation was unnecessary or likely to be fruitless or counterproductive. ... The decision was made because he had not been paid for experts”). In Briggs, the Texas Court of Criminal Appeals held that retained counsel is under an obligation to take steps to protect a client’s interests if the client is unable to provide funding for the expert, including, but not limited to:

If counsel was convinced that applicant could not pay for experts to assist him in preparation for trial or to provide expert testimony, [he could] withdraw from the case, explaining to the court that applicant was now indigent, prove that indigency ... and request appointment of new counsel; ... [or] [r]emain as counsel with the payment of a reduced fee, but request investigatory and expert witness fees from the trial court for a now-indigent client pursuant to Ake v. Oklahoma[, 470 U.S. 68 (1985)].

187 S.W.3d at 468 (footnotes omitted). Moreover, the South Carolina Court of Appeals has concluded, under very similar circumstances, that where a defendant is indigent and cannot pay for an expert, then “the South Carolina Office of Indigent Defense could have provided the funds needed to secure an expert witness.” Reeves, 415 S.C. at 377, 782 S.E.2d at 753 (footnote 5). It is clear that, in this case, defense counsel took no action beyond asking the Petitioner to provide the funds. His decision to not take further action cannot be described as strategic. Id. He was under an obligation to do more, and the PCR court’s failure to recognize that constitutional obligation was erroneous as a matter of law.

Turning to the finding that Dr. Leo would not have been beneficial, this conclusion is undermined both by defense counsel’s actions taken when he believed that he could utilize Dr. Leo at trial and had not yet been definitively told that the Petitioner could not pay for Dr. Leo’s testimony as well as defense counsel’s arguments at trial. Defense counsel specifically stated that

“Mr. Leo’s testimony is critical in order for the defendant to have a fair trial” in a continuance motion requesting a date certain for trial on April 13, 2009. App. p. 833. Furthermore, when the trial did not take place that week, defense counsel further requested a date certain the week of May 31, 2009, in order to accommodate Dr. Leo’s schedule. App. pp. 824-826. These are not the actions or statements of a defense attorney who believed that Dr. Leo was going to be a useless witness. Instead, they are the actions of a defense attorney who thought he was going to have funding to pay for Dr. Leo to testify and who thought that Dr. Leo was going to be a critical defense witness at trial.

Additionally, defense counsel’s arguments at trial, both as to the suppression of the Petitioner’s statements as well as to the ultimate issue of guilt or innocence centered on Detective Morgan’s coercion of the Petitioner and his assertion that the Petitioner was telling the truth when he denied the allegations before Detective Morgan’s interrogation as well as during his testimony at trial. During the pretrial motion hearing on the admissibility of the Petitioner’s statements, defense counsel argued that the coercive nature of Detective Morgan’s questioning resulted in an involuntary statement. See App. p. 95, lines 4-14. Dr. Leo’s testimony would have gone to the heart of that argument, and given it the vital support that it needed to prevail. Even if Dr. Leo could not have convinced the trial court to suppress the Petitioner’s statement, then he certainly could have buttressed defense counsel’s closing argument that:

[T]he one thing I find very interesting about this statements [sic] is, if you recall Detective Morgan while he was on the stand and Miss Reese was asking questions, *indicated that the reason that you don’t tell people what you know is because it could result in a false confession. False confessions exist.*

Now, the thing that speaks volumes to me is nothing in any of those confessions, or alleged confessions, matches Victim’s story. None of it adds up. None of those statements match what she said on the stand. None of those statements match the information Detective Morgan had when he was interviewing Mr. Irby. That is why he went back and kept him another hour to get yet another statement

which still didn't match. He wanted a confession because without it there is not any real evidence that this occurred. Not anything that is critical. That is where we are.

App. p. 298, lines 4-23 (emphasis added). In other words, the contention that the Petitioner had given a false confession was central to the defense's case. Furthermore, Dr. Leo's testimony on false confessions would have given defense counsel's argument the imprimatur of an expert witness, instead of leaving defense counsel with an argument that he had to make on his own without the benefit of an actual witness to support it.

Given all of the above, Dr. Leo could have provided the foundation upon which defense counsel made his arguments to the trial judge and jury at trial. Defense counsel knew that, which is why he went to such lengths to schedule the trial around Dr. Leo's schedule. It was only after the Petitioner could not pay for Dr. Leo that defense counsel decided *post hoc* that Dr. Leo would not have been beneficial at all. This is particular true since defense counsel is the one who erred in taking no further action to secure funding for Dr. Leo. Accordingly, the PCR court's finding that defense counsel was not deficient because Dr. Leo would not have been helpful is directly controverted by the evidence presented at trial and the PCR hearing, as well as the arguments made by defense counsel during trial. As a result, they are unsupported by any probative evidence.

Next, turning to the PCR court's finding that Dr. Leo could not have given an opinion on the ultimate issue at trial, and thus defense counsel could not have been ineffective for failing to call him as a witness, the Petitioner respectfully asserts that this conclusion is erroneous as a matter of law. The purpose of an expert witness is not always to testify about the ultimate issue, though it is permissible for an expert witness to do so. See Rule 704, SCRE. Instead, an expert witness is necessary when "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." Rule 702, SCRE. These are much broader categories where an expert witness may be beneficial, and certainly Dr. Leo's testimony would

have fit within these categories had he been presented as a witness at trial. Specifically, Dr. Leo's "specialized knowledge" would have helped the jury—"the trier of fact"—to understand why the Petitioner gave his statements to Dr. Morgan, and why those statements may have been false. Rule 702, SCRE. That is the basis by which an expert witness' value is judged, and the PCR court's finding that expert witnesses be necessary only when they meet the heightened requirements of Rule 704, SCRE, is simply contradicted by the South Carolina Rules of Evidence.

Finally, with regard to the PCR court's finding that defense counsel was not deficient because the Petitioner never recanted to him, this finding is clearly unsupported by any probative evidence. This conclusion was based, presumably, on defense counsel's testimony at the PCR hearing that the Petitioner had made an admission to him that he had engaged in some sexual contact with the victim. See App. p. 530, line 22-p. 531, line 9. It is axiomatic, however, that a defense attorney make arguments and present witnesses that are favorable for the defendant even if the defense attorney knows or has reason to believe that the defendant is guilty. This axiom is borne out by the fact that defense counsel did precisely what the law requires he do during the trial when he argued that the Petitioner gave a false confession to Detective Morgan, that the Petitioner was telling the truth when he denied the allegations, and when he knowingly presented the Petitioner's testimony that no sexual contact occurred with the victim. Consequently, defense counsel's displeasure with the Petitioner was not a reason to not present a full defense for the Petitioner at trial, and the PCR court's conclusion to the contrary should be reversed.

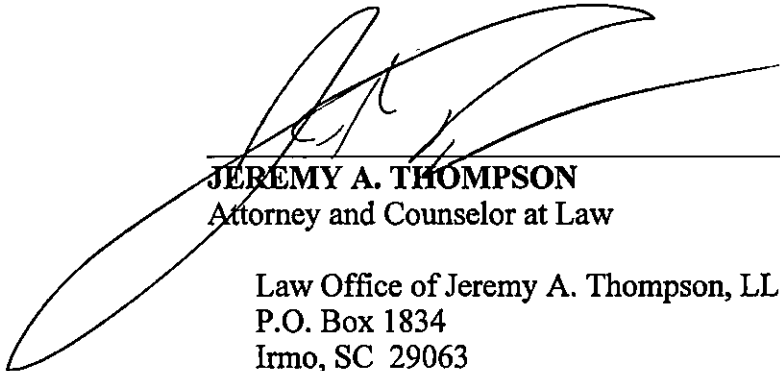
In sum, defense counsel consulted with a false confession expert that he knew to be exceedingly helpful to the defense. He failed to call Dr. Leo as a witness at trial because the Petitioner could not pay for him without exhausting all available options for securing Dr. Leo's testimony. This failure constituted deficient performance, and the PCR court's findings to the contrary are either unsupported by any probative evidence or controlled by an error of law.

With regard to Strickland's prejudice prong, the Petitioner contends that this inquiry is easily satisfied. As an initial matter, it is difficult to know what legal reasoning formed the basis of the trial court's denial of the Petitioner's motion to suppress given the summary nature of the ruling, but that motion would have been immeasurably buttressed by Dr. Leo's testimony on the numerous coercive techniques used by Detective Morgan. The Petitioner submits that there is certainly a reasonable likelihood that the result at trial, or on appeal where the coercion claim was pressed again, see App. pp. 354-398, would have been different had the Petitioner's statements to Detective Morgan been suppressed. Even if the statements had not been suppressed, Dr. Leo's testimony, as outlined above, would have been extremely beneficial to the defense. There was not much evidence presented at trial by the State aside from the victim's testimony, and if the jury believed that the Petitioner gave a false confession due to Dr. Leo's testimony, then they would have likely believed that he was telling the truth in his denials made before his interview with Detective Morgan as well as during his testimony at trial. No forensic evidence proved that any sexual contact occurred. Accordingly, the PCR court's conclusions with regard to Strickland's prejudice prong are also unsupported by any probative evidence. The Petitioner respectfully submits that this Court should grant certiorari and that the appropriate remedy is a new trial.

CONCLUSION

For the reasons stated, the Petitioner asks this Court to grant the petition and to allow full briefing on these issues.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. Thompson', is written over a horizontal line.

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This 14th day of January, 2019.

STATE OF SOUTH CAROLINA
In the Supreme Court

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JAN 17 2019

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

S.C. SUPREME COURT

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JAMES B. IRBY, #352507,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

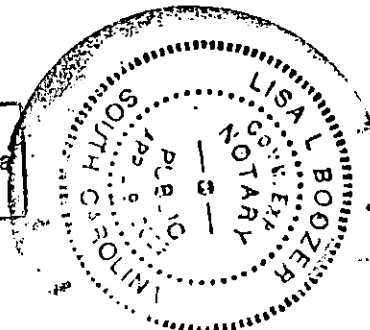
The undersigned hereby certifies that two copies of the Petition for Writ of Certiorari in the above-captioned action have been served upon opposing counsel, Jordan Cox, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 14th day of January, 2019.


JEREMY A. THOMPSON
ATTORNEY FOR PETITIONER

SWORN TO BEFORE me this 14th day
of January, 2019.

 (L.S.)
Notary Public for South Carolina
My Commission Expires:

LISA L. BOOZER
Notary Public - State of South Carolina
My Commission Expires April 9, 2023





LAW OFFICE OF
JEREMY A. THOMPSON
LLC

January 14, 2019

RECEIVED

JAN 17 2019

S.C. SUPREME COURT

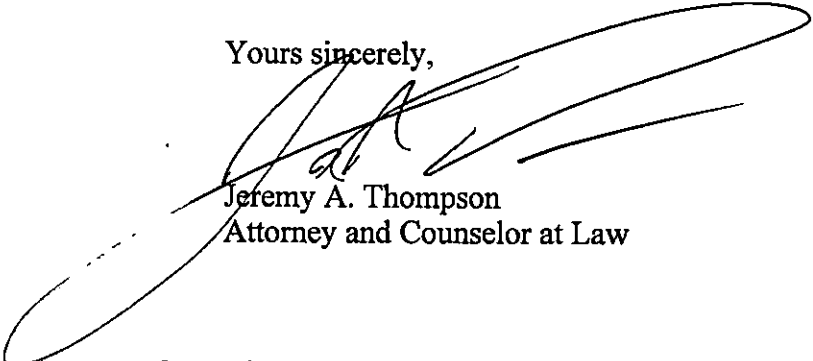
The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330

RE: James B. Irby, #352507 v. State of South Carolina; 2018-001498

Dear Mr. Shearouse:

Enclosed for filing please find the original and seven copies of my Petition for Writ of Certiorari in the above-named matter. I would appreciate your filing the original and six copies of the petition, clocking the remaining copy, and returning the clocked copy to me in the enclosed self-addressed, stamped envelope. With my thanks for the Court's assistance in this matter, and my best regards, I am,

Yours sincerely,



Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures

cc: Jordan Cox, Assistant Attorney General (w/ enclosures)
James B. Irby, #352507 (w/ enclosures)
Marian Irby (w/ enclosures)

on



The Honorable Daniel E. Shearouse
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