

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**S.C. SUPREME COURT**

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Certiorari to Pickens County

Honorable R. Scott Sprouse, Circuit Court Judge

JASON ERVIN BLACK,

RESPONDENT-PETITIONER,

V.

STATE OF SOUTH CAROLINA,

PETITIONER-RESPONDENT.

APPELLATE CASE NO. 2021-000525

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PETITION FOR WRIT OF CERTIORARI  
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**ISSUE PRESENTED**

In the event this Court grants the State's petition for certiorari, it should also grant certiorari to consider the question of whether the PCR court erred in finding that trial counsel was not ineffective and preserved for appellate review whether the defense witness could be impeached with a remote conviction for throwing a deadly missile.

## STATEMENT

Respondent-petitioner Jason Black was tried in Pickens County before the Honorable John C. Few and a jury on June 25, 2007. App. 1. Peter Them represented the State and John DeJong represented Black. App. 1. The jury convicted Black of first-degree criminal sexual conduct with a minor and lewd act. App. 333, l. 10 – 18. Judge Few sentenced Black to concurrent terms of imprisonment of twenty years for the CSC charge and fifteen years for lewd act. App. 339, l. 8 – 13. On direct appeal, Black was represented by Joseph L. Savitz, III. App. 341. The Court of Appeals and this Court affirmed. App. 367. App. 420.

On July 2, 2013, Black filed a PCR application. App. 439. On March 4, 2021, a hearing was held before the Honorable R. Scott Sprouse. App. 483. Don A. Thompson represented Black and Lillian L. Meadows represented the State. App. 483. Judge Sprouse granted PCR relief. App. 530. The State and Black seek certiorari as described herein.

## ARGUMENT

In the event this Court grants the State's petition for certiorari, it should also grant certiorari to consider the question of whether the PCR court erred in finding that trial counsel was not ineffective and preserved for appellate review whether the defense witness could be impeached with a remote conviction for throwing a deadly missile.

The PCR court granted respondent-petitioner Jason Black ("Black") relief based on a finding of ineffective assistance of appellate counsel. App. 537-39. Implicit in the PCR court's ruling is that appellate counsel failed to raise a preserved issue. App. 537-39. Appellate counsel raised the admissibility of two out of three convictions used to impeach Black's witness, Richard Bush ("Bush"). App. 353.

Bush was impeached with two manslaughter convictions and a conviction for throwing a deadly missile. App. 289, 1. 9 – 290, 1. 3. All three convictions occurred on the same day. App. 289, 1. 9 – 290, 1. 3. Appellate counsel only raised the admissibility of the manslaughter convictions. App. 353. At the PCR hearing, appellate counsel testified that he did not believe the admissibility of the throwing a deadly missile conviction was preserved. App. 519, 1. 7 – 520, 1. 8. The PCR court found that trial counsel properly objected and preserved the issue of the admissibility of the deadly missile conviction. App. 537.

The State petitioned for certiorari on the grant of relief based on the deficiency of appellate counsel. Black submits that appellate counsel was deficient and will defend the ruling of the PCR court in his return to the State's petition.

Black submits, however, that he is entitled to relief even if this Court finds that appellate counsel was not ineffective because the issue was unpreserved. If the issue was unpreserved, then the fault lies at the feet of trial counsel. The prejudice analysis under Strickland v.

Washington, 466 U.S. 668 (1984) would be the same whether the deficient performance was at trial or on appeal.

The solicitor listed the deadly missile conviction along with the two manslaughter convictions during the discussion with the trial judge. App. 275, l. 17 – 276, l. 15. When trial counsel stated his objection, he did not refer specifically to the deadly missile conviction. App. 281, l. 10 – 285, l. 20. Nor did trial counsel refer specifically to the two manslaughter convictions. App. 281, l. 10 – 285, l. 20. He argued in general terms that the convictions were not probative and were inadmissible. App. 281, l. 10 – 285, l. 20.

When the solicitor began cross-examining Bush about his prior convictions, trial counsel made a single objection. App. 289, l. 4 – 290, l. 3. The solicitor asked Bush if he was in criminal court in Florida on the date of the convictions and trial counsel stated, “Objection, Your Honor, as previously stated.” App. 289, l. 9 – 290, l. 3. The trial judge overruled the objection. App. 289, l. 9 – 290, l. 3.

The solicitor then asked about the two manslaughter convictions. App. 289, l. 9 – 290, l. 3. Trial counsel made no further objection. App. 289, l. 9 – 290, l. 3. The solicitor then asked about the deadly missile conviction. App. 289, l. 9 – 290, l. 3. Trial counsel made no further objection. App. 289, l. 9 – 290, l. 3.

Either trial counsel or appellate counsel performed deficiently regarding the deadly missile conviction. See Stone v. State, 419 S.C. 370, 798 S.E.2d 561 (2017) (analyzing twin failures on related issue of trial and appellate counsel). As this Court made clear in its decision in Black’s direct appeal, appellate counsel did not raise the issue of the admissibility of the deadly missile conviction. This Court stated, “However, the State also impeached Petitioner’s witness with a 1987 conviction for shooting/throwing a deadly missile. This conviction occurred

at the same time as the manslaughter convictions and ostensibly arose from the same set of facts. Since Petitioner does not challenge the use of this conviction to impeach Bush's credibility, this ruling, right or wrong, becomes the law of the case.” State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012).

Trial counsel arguably failed to raise a sufficiently specific objection to the deadly missile conviction to preserve the issue for appeal. See State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) (holding that objections must be made with specificity to preserve issue for appellate review). It could also be argued that trial counsel failed to make a contemporaneous objection to the solicitor’s deadly missile conviction question. See State v. Hoffman, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994) (“A contemporaneous objection is required to properly preserve an error for appellate review.”). On direct appeal, the State argued trial counsel failed to preserve **any** objection regarding Bush’s prior convictions. App. 411-13. Therefore, in the event that appellate counsel Savitz and the State (during the direct appeal) were correct that trial counsel failed to preserve the issue, this Court should grant certiorari so that Black can have a Court examine the prejudice prong of Strickland—regardless of whether the prejudice flows from trial counsel’s error or appellate counsel’s error.

**CONCLUSION**

Respondent-petitioner Black submits that the PCR court's decision to grant relief was correct and the State's petition for certiorari should be denied, but in the event the State's petition is granted, Black's petition should also be granted for the reasons stated herein.

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This 3rd day of November, 2021.