No. 24-6376

IN THE

SUPREME COURT OF THE UNITED STATES

Marion Bowman, Jr.,

Petitioner,

vs.

Bryan P. Stirling, Commissioner, South Carolina,
Department of Corrections, and The State of South Carolina,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF SOUTH CAROLINA

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

ARGUMENT IN REPLY

Despite the fact that Bowman clearly raised a federal constitutional claim, which the South Carolina Supreme Court addressed and denied based on a review of the record and legal arguments, Respondent maintains that this Court lacks jurisdiction to review that claim, asserting that the state court resolved an issue of state law only. This contention runs counter to both the South Carolina Supreme Court's treatment of Bowman's claim and this Court's precedent. Further, Respondent's assertion that the record does not support Bowman's claim is erroneous.

I. THIS COURT HAS JURISDICTION TO REVIEW BOWMAN'S CLAIM.

Respondent argues this Court does not have jurisdiction over Bowman's claim because the South Carolina Supreme Court noted the "procedural impropriety of the claim" and that this claim is nothing more than a "successive habeas petition" seeking to "bypass AEDPA." To the contrary, the South Carolina Supreme Court explicitly resolved this claim on the merits, discussing the federal constitutional amendments implicated, and thus conferring jurisdiction pursuant to 28 U.S.C. § 1257(a) to review the "[f]inal judgment . . . rendered by the highest court of the State."[1]

In addressing Bowman's claim of ineffective assistance of counsel, the South Carolina Supreme Court noted Bowman "argues his 'convictions and death sentence must be vacated under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution . . . due to the ineffective assistance of counsel . . ." Pet. App. A, 5a. The court then reviewed Bowman's factual

[1] Respondent improperly argues Bowman's petition falls under the AEDPA, not section 1257(a), asserting his claim is "tantamount to a second and successive habeas action." Br. in Opp'n, at 24–25. This misconstrues the Court's jurisdiction. Bowman squarely presented his federal ineffective assistance of counsel claim to the highest court in South Carolina. The State responded, and the South Carolina Supreme Court reviewed the parties' arguments. The court then issued a merits ruling on Bowman's claims, which he is appealing to this Court. This clearly invokes jurisdiction pursuant to 28 U.S.C. § 1257(a). Bowman, therefore, is not required to satisfy the procedural requirements of AEDPA.

contentions and disagreed. *Id.* (discussing the trial and post-conviction relief record and finding Bowman's factual assertions about trial counsel without merit). In doing so, the state court rested its decision on a merits review of Bowman's claim. Though the court also addressed procedural arguments raised by the State in its response to Bowman's petition, *id.*, the state court did not explicitly invoke any procedural bar as the basis of its decision. *See Raulerson v. Warden*, 928 F.3d 987, 1000–01 (11th Cir. 2019) (finding "no trouble concluding" the state court rejected a federal due process claim on the merits where it addressed the merits and referenced res judicata as a procedural bar). Accordingly, this Court has jurisdiction to review the merits decision rendered by the South Carolina Supreme Court.

Respondent cites the Fourth Circuit's decision in *Wilson v. Moore* as demonstrating the Supreme Court of South Carolina's denial of Bowman's habeas petition rests on state law procedural grounds. Br. in Opp'n, at 21–22 (citing *Wilson v. Moore*, 178 F.3d 266 (4th Cir. 1999)). *Wilson* is far from controlling, however, as it is both distinguishable from Bowman's case and wrongly decided. In *Wilson*, the petitioner sought relief in a writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court, presenting evidence that had never been presented in the state courts. 178 F.3d at 275-79. In a single sentence order, the Supreme Court of South Carolina denied her petition for habeas corpus. *Id.* at 269. The Fourth Circuit ruled that the single sentence denial was not a denial on the merits. *Id.* at 279.

Unlike *Wilson*, the South Carolina Supreme Court's denial of Bowman's habeas petition was a seven-page order, specifically addressing Bowman's ineffective assistance of counsel due to racial prejudice claim. In denying the claim, the court stated that "Bowman has fashioned a meritless narrative by taking trial counsel's testimony during the PCR hearing completely out of context." The state court further cited to *Watson v. State*, 634 S.E.2d 642, 644 (S.C. 2006)

(citing *Stokes v. State*, 419 S.E.2d 778 (S.C. 1992)). *Watson* and *Stokes* are cases involving claims of ineffective assistance of counsel, and in both cases the Supreme Court of South Carolina cited to federal case law in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), which clearly addresses a claim of ineffective assistance of counsel under the Sixth and Fourteenth Amendments. Review of relevant record evidence and case law clearly indicates the court ruled on the merits of Bowman's claims and not just under state law procedural arguments, unlike in *Wilson*.

Even if *Wilson* was not distinguishable, it was wrongly decided in light of this Court's decisions in *Harrington v. Richter*, 562 U.S. 86 (2011), and *Johnson v. Williams*, 568 U.S. 289 (2013), which held that state court summary denials and denials that do not explicitly mention federal law are decisions on the merits for purposes of federal review. This Court, therefore, has jurisdiction to review Bowman's claims.

II. BOWMAN'S CLAIM IS MERITORIOUS BASED ON A REVIEW OF THE STATE COURT RECORD.

Respondents make several arguments related to the merits of Bowman's racial prejudice claim, alleging that they cannot find any record citations by petitioner that demonstrate counsel presented his own racial arguments to the jury during trial. Br. In Opp'n, at 27. Respondents should read more carefully. As detailed in Bowman's Petition for a Writ of Certiorari, when trial counsel rose to give his closing argument in the guilt phase, there had been no mention of race during jury selection, the trial evidence, or the Solicitor's argument. Nonetheless, during trial counsel's argument, he asserted that if Ms. Martin had been afraid when a car of "white people" went by, as Gadson testified, then she would have flagged them down rather than jumping in the woods because she was "a young, white lady and she's out there with two young, black males." Pet. App. O, 49a. Bowman's counsel did not just "bracket in" "white" and "black" or racial arguments as Respondents allege. Br. in Opp'n, at 28 & n.10. This is what counsel said and argued. Respondent

next argues that trial counsel did not object to the DNA evidence introduced by the solicitor because trial counsel wanted to show petitioner "cared about Kandee…" Br. in Opp'n, App B. As already addressed in Bowman's petition, evidence of Bowman and Kandee Martin's friendship and how they were often seen together was introduced through multiple witnesses during trial, thus making the admittance of DNA evidence to show Bowman "cared" about Martin completely unnecessary and, if that was the misguided strategy, redundant. Pet. at 4 n.4, Pet. App. L, 27a-29a.

Respondent also asserts that Bowman's current counsel just imply that Bowman's second chair African-American attorney, who did very little in the courtroom throughout the trial proceedings, was arguing that Bowman and Martin had a consensual sexual relationship and were alone together in a bathroom earlier in the day while lead counsel wanted to avoid the topic all together. Br. In Opp'n, at 32. This is not implication or magically "bracketing in" something that was not said. Trial counsel said it: "I wanted to get off the topic quick." Pet. App. R, 180a.

Respondent additionally argues that in relation to the sexual conduct between Bowman and Martin, trial counsel "successfully excluded statements by Mr. Bowman regarding sex with victim's corpse." Br. in Opp'n, at 33. In statements made by Bowman, that were excluded from evidence by the trial judge prior to trial, due to involuntariness and coercion, Bowman stated Terry Kelly and James Gadson had sex with the victim's corpse. At no point did Bowman state that he had sex with the corpse. Br. in Opp'n, App C. Even though this evidence was suppressed, Respondent now argues that trial counsel was for some reason concerned that the excluded evidence would come into evidence by arguing that Bowman and Martin had a consensual sexual relationship in which she prostituted for drugs.

Next Respondent asserts that trial counsel had a legitimate strategy of not attacking the victim with drug use and prostitution, which would also disclose that Bowman was her "drug

dealer." Br. in Opp'n, at 36. As addressed more fully in the petition, Bowman is not arguing that Ms. Martin should have been attacked or slandered. Bowman is asserting that truthful evidence that she prostituted and pawned possessions for drugs could have provided a non-inculpatory explanation for why Bowman would have her watch in his pocket at the time of his arrest, or had been seen driving her car, or would be out with her late at night and in a secluded place with a purpose other than committing burglaries, robberies, or murder. And the record flatly rebuts Respondent's suggestion that trial counsel's strategy was to avoid telling the jury that Bowman was a "drug dealer." On the contrary, trial counsel directly presented this evidence in mitigation through Jeff Yungman, M.S.W. The jury was simply not given full and more exculpatory elements of the story: that Martin prostituted for drugs not just with Bowman but with other men, as well.

Finally, Respondent claims Bowman has "conveniently left out the admonishment that he received from making these same arguments to the South Carolina Supreme Court." Br. in Opp'n, at 37. The holding of the Supreme Court of South Carolina failed to see the racial prejudice that permeated throughout trial counsel's representation of Bowman. Instead, the Supreme Court of South Carolina took the approach that such behavior was a valid strategy decision of trial counsel, which did not violate Bowman's sixth amendment right to effective assistance of counsel. There was no "admonishment" in its holding. The holding was simply wrong, which is precisely why Bowman is seeking this Court's review--because it simply cannot be valid trial strategy to make arguments based on and invoking assumed racial biases and premises.

CONCLUSION

For these additional reasons, this Court should grant certiorari.

Respectfully submitted,

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January 29, 2025.