

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2017

No. 17 - 9449

Luzenski Allen Cottrell,

Petitioner,

-vs.-

State of South Carolina,

Respondent.

PETITIONER'S REPLY BRIEF

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ARGUMENT IN REPLY

The decision of the South Carolina Supreme Court challenged in Cottrell’s petition for a writ of certiorari specified a single basis for upholding the trial court’s removal of both of his capital defense lawyers three weeks before trial: That because one of those lawyers “admitted on the record that he believed Cottrell would likely prevail on PCR based on the[] allegations,” the trial court had “little choice but to remove the attorneys.” *State v. Cottrell*, 809 S.E.2d 423, 431 (S.C. 2017). As explained in detail in the petition, the lower courts’ response to counsel’s conclusory remark was not backed by an evidentiary record or reviewable factual findings, and had no support in the settled law of ineffective assistance of counsel, in the rules discernable from this Court’s cases addressing the right to counsel of choice, or in the guidelines adopted by other states governing dissolution of attorney-client relationships . Simply put, in both the rule it announced and the result it reached, the South Carolina Supreme Court made itself an outlier on a critical matter of law that violated Cottrell’s Sixth Amendment right to counsel and threatens that right in any number of future cases. *Cf. Holmes v. South Carolina*, 547 U.S. 319, 327-328 (2006) (explaining that South Carolina’s third-party guilt rule began as one within the “widely accepted” mainstream before “the South Carolina Supreme Court radically changed” it and prompted this Court’s intervention).

The State’s Brief in Opposition (BIO) does not suggest otherwise. In fact, it fails even to acknowledge, let alone attempt to defend, the explicit rationale of the South Carolina Supreme Court. Instead, the State devotes its submission to the different, though no less vague, contention that the unspecified and undeveloped allegations of “unethical conduct” reported by the prosecutors authorized – or perhaps compelled – the trial judge, over objection, to dissolve Cottrell’s defense team wholesale. BIO at 7; *see also* BIO at ii (“serious ethical misconduct”); *id.* at 12 (“serious

accusations of unethical and unprofessional conduct”); *id.* at 18 (“unethical or unprofessional conduct”). That argument, however, has no more merit than the one embraced by the courts below. Both arguments are devoid of a factual record or findings to support them, and neither comes close to justifying the destruction of an established attorney client relationship under any rule articulated by this Court or the courts of other states.¹

The State’s secondary contention – which undergoes no real development in the BIO – is that Cottrell “has failed to suggest any formula” for the assertedly “fact-specific inquiry” faced by the lower courts. BIO at 7. That, too, is incorrect. This Court need not announce a “formula” in response to the South Carolina courts’ mistakes. Rather, as expressed through Cottrell’s Question Presented, the guidance necessary to both cure the violation in this case and prevent future violations invited by the South Carolina Supreme Court’s decision below can be accomplished with an authoritative articulation of the principles this Court’s decisions already suggest: That the Sixth Amendment does not permit dissolution of an established attorney-client relationship absent specific findings demonstrating legal disqualification or other extreme circumstances not curable through a less drastic remedy. *See United States v. Gonzalez-Lopez*, 548 U.S. 140, 152 (2006).

¹It is also far from clear that the “ethical” concerns cited by the State had any substance at all. While the BIO repeatedly declares that the trial judge had a “duty to report to disciplinary counsel,” BIO at ii, 7, 12 & 19, it cites nothing demonstrating that any such report was ever made. Moreover, a search of the South Carolina Supreme Court’s orders in attorney discipline cases yields nothing to indicate that either of the lawyers summarily dismissed by the trial judge in this case was subsequently found to have committed any actual professional misconduct.

CONCLUSION

WHEREFORE, for these additional reasons, this Court should grant certiorari.

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