

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Charleston County
The Honorable Bentley S. Price, Post-Conviction Relief Judge
The Honorable Clifton Newman, Trial Judge

Appellate Case No.: 2022-000028

ANTHONY MCCLAIN,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

REPLY TO RETURN PETITION FOR WRIT OF CERTIORARI

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S.C. SUPREME COURT

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ARGUMENT IN REPLY

I. The State’s analysis is preserved for Appellate Review as it was contemplated by the lower court and State at trial.

Respondent’s contention that the State’s analysis of Applicant’s LWOP eligibility is not preserved for review is without merit as carjacking and federal carjacking was contemplated by the trial court. As stated in our petition, we contend the PCR court erred as a matter of law in finding McClain’s defense attorney was constitutionally ineffective for failing to provide information regarding McClain’s risk for being sentenced to life without parole despite McClain being eligible for life without parole pursuant to S.C. Code §17-25-45.

While the burden is on the State to prove eligibility for life without parole¹, it is ultimately the decision of the trial judge to determine whether or not an individual’s prior out of state conviction would invoke life without parole pursuant to S.C. Code. §17-25-45. The State’s initial argument was that the federal aiding and abetting carjacking would be a most serious crime that would enhance any other most serious conviction that Respondent was convicted of. App. 49. Despite the pretrial judge’s uncertainty surrounding whether or not Respondent’s prior charges would enhance any new convictions, he declined to rule and rightfully deferred to the judge at sentencing. *Id.* Judge Newman, the trial judge, was adamant it would be his burden to determine whether the federal carjacking statute would be equivalent to *the South Carolina carjacking statute*, not armed robbery. App. 566-567. David Osborne, the solicitor, also agreed during sentencing that the carjacking offense is a most serious offense under state law. *Id.* This colloquy between the Court and the solicitor allows for this Court to determine whether or not counsel was

¹ *State v. Phillips*, 393 S.C. 407, 414. (“the State bears the burden of establishing the defendant’s prior convictions for serious or most serious offenses”)

deficient based upon the Court's determination that he would have to decide if federal carjacking was equivalent to state carjacking for the purposes of S.C. Code §17-25-45.

Furthermore, Petitioner's claims does not rely solely on whether or not trial counsel was deficient, as Respondent was not prejudiced by pleading guilty. As stated in our petition, "a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Strickland v. Washington*, , 466 U.S. 668, 697 (1984). In fact, a reviewing court ordinarily should dispose of an ineffective assistance of counsel claim on the grounds of lack of sufficient prejudice "[i]f it is easier" to do so. *Id.* In the instant case, Applicant cannot prove he was prejudiced by pleading guilty in exchange for the State's withdrawal of their life without parole notice. As evidenced by Judge Newman's determination that he would be faced with comparing the federal carjacking and state carjacking statutes, Applicant could have been facing life without parole despite any alleged "uncertainty" in the State's argument. As explained in our earlier petition, the two statutes are strikingly similar and could have been easily interpreted as most serious crime that would enhance any other most serious conviction. Applicant benefitted greatly from pleading guilty, and cannot prove that the results of being eligible for life without parole would not have been different but for trial counsel's alleged deficiency.

CONCLUSION

For all of the foregoing reasons, this Court should grant a writ of certiorari to review Petitioner's claims and reverse the PCR court's erroneous findings.

Respectfully submitted,

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