

RECEIVED

Dec 09 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Certiorari to Beaufort County
Court of Common Pleas
The Honorable Diane Schafer Goodstein, Post-Conviction Relief Judge
The Honorable J. Derham Cole, Trial Judge

Appellate Case No. 2018-000002

ANDRE GREEN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

SAMANTHA J. WEIDAUER
S.C. Bar No. 104833
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

STATEMENTS OF ISSUES ON CERTIORARI.....1

STATEMENT OF THE CASE..... 2

STATEMENT OF FACTS..... 4

STANDARD OF REVIEW.....9

ARGUMENT.....10

The post-conviction relief court correctly found Petitioner was not prejudiced by counsel’s failure to object to a portion of a recorded interview between law enforcement and Petitioner in which law enforcement questioned Petitioner about a statement made by co-defendant Brandon Parker because probative evidence supports the PCR court’s finding where admissions were made by Petitioner during an interview with law enforcement that corroborated the evidence presented by Victim, where Victim identified Petitioner in a lineup as one of the two carjackers, and where Petitioner admitted to Victim he was one of the two carjackers.....10

CONCLUSION..... 16

TABLE OF AUTHORITIES

<u>Cases:</u>	Page(s)
<i>Anders v. California</i> , 386 U.S. 738 (1967)	2
<i>Butler v. State</i> , 286 S.C. 441, 334 S.E.2d 813 (1985)	9, 11, 12
<i>Caprood v. State</i> , 338 S.C. 103, 525 S.E.2d 514 (2000)	9
<i>Cherry v. State</i> , 300 S.C. 115, 386 S.E.2d 624 (1989)	11, 12
<i>Dempsey v. State</i> , 363 S.C. 365, 610 S.E.2d 812 (2005)	9
<i>Goins v. State</i> , 397 S.C. 568, 726 S.E.2d 1 (2012)	9
<i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010)	11
<i>Pierce v. State</i> , 338 S.C. 139, 526 S.E.2d 222 (2000)	9
<i>Smalls v. State</i> , 422 S.C. 174, 810 S.E.2d 836 (2018)	9
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S.Ct. 2052 (1984)	11, 12, 15
<u>South Carolina Rules and Statutes:</u>	
Rule 71.1(e), SCRPC	9, 11
Rule 243(l), SCACR	3

STATEMENTS OF ISSUE ON CERTIORARI

Petitioner's Statement of Issue of Certiorari

Whether the PCR Court erred in denying Petitioner relief, where deficiency was found following trial counsel's failure to object to a question by law enforcement to Petitioner asking why a non-testifying codefendant indicated that Petitioner committed the crimes for which both men were charged?

Respondent's Counterstatement of Issue of Certiorari

Did the post-conviction relief court correctly find Petitioner was not prejudiced by counsel's failure to object to a portion of a recorded interview between law enforcement and Petitioner in which law enforcement questioned Petitioner about a statement made by co-defendant Brandon Parker where probative evidence supports the PCR court's finding because admissions were made by Petitioner during an interview with law enforcement that corroborated the evidence presented by Victim, because Victim identified Petitioner in a lineup as one of the two carjackers, and because Petitioner admitted to Victim he was one of the two carjackers?

STATEMENT OF THE CASE

Petitioner Andre Green is presently confined in the South Carolina Department of Corrections. During its December 2011 term, the Beaufort County Grand Jury indicted Petitioner for kidnapping (2011-GS-07-2109) and carjacking (2011-GS-07-2111)¹. Donald Colongeli, Esquire, represented Petitioner. Assistant Solicitor Patrick Hall and Jeffrey Stephens of the Fourteenth Circuit Solicitor's Office prosecuted the case. On April 23-25, 2012, Petitioner proceeded to a jury trial before the Honorable J. Derham Cole, circuit court judge. At the conclusion of trial, the jury found Petitioner guilty of kidnapping and carjacking. Judge Cole sentenced Petitioner to concurrent terms of imprisonment of thirty years suspended upon the service of twelve years and probation for five years for the kidnapping charge and twelve years for the carjacking charge.

Petitioner filed a notice of appeal and was represented on appeal by Appellate Defender Carmen Ganjehsan (Appellate Counsel) of the South Carolina Commission on Indigent Defense. Appellate Counsel filed a brief pursuant to *Anders*² on Petitioner's behalf and a petition to be relieved as counsel. On appeal, Petitioner raised two issues:

- 1) The trial court erred in admitting witness intimidation evidence where the State did not link such evidence to [Petitioner] Green and
- 2) [Petitioner] Green was entitled to a new trial where the trial court admitted into evidence a statement implicating Green made by a non-testifying alleged accomplice.

On April 4, 2017, the Court of Appeals dismissed Petitioner's appeal and granted Appellate Counsel's motion to be relieved. *State v. Green*, 2014-UP-152 (S.C. Ct. App. filed April 4, 2017).

The remittitur was issued on April 18, 2014.

¹ Applicant was also indicted for armed robbery and unlawful carrying of a pistol. At trial, Applicant was found not guilty of those charges.

² *Anders v. California*, 386 U.S. 738 (1967).

On February 17, 2014, Petitioner filed an application for post-conviction relief, alleging multiple instances of ineffective assistance of counsel. The State filed a Return on September 8, 2014. On June 5, 2017, an evidentiary hearing was held in Beaufort County before the Honorable Diane S. Goodstein. Tristan Shaffer, Esquire, represented Petitioner. By Order of Dismissal filed November 21, 2017, Judge Goodstein denied post-conviction relief and dismissed the action with prejudice.

Petitioner filed his Petition for Writ of Certiorari on October 10, 2018. Respondent filed its Return to Petition for Writ of Certiorari on March 7, 2019. On March 19, 2019, the Supreme Court of South Carolina transferred the case to the South Carolina Court of Appeals pursuant to Rule 243(l), SCACR. Thereafter, the Court of Appeals granted certiorari and requested further briefing on Issue I raised in Petitioner's Petition for Writ of Certiorari. Petitioner filed his Brief of Petitioner. This brief follows.

STATEMENT OF FACTS

On June 9, 2011, Monica Wiser was driving with her son when she saw a man roll out of the trunk of a car and onto the pavement. Two cars swerved around the man. Ms. Wiser came to a stop and called 911 while the man, Dennis Boskey, (Victim) stood next to the passenger side of her vehicle. (App. pp. 99-102). Victim had cuts on his hands described as open wounds³. (App. pp. 101-02). At trial, Master Sergeant Communications Coordinator, Melanie Smith, authenticated the recording of the 911 call made by witness Monica Wiser, as well as a recording of a 911 call from Victim, who later called 911. When asked during his 911 call who put him in the trunk of the car, victim stated he did not want to get into that. (App. p. 109).

Victim testified that on the date of the incident, he was at the Spanish Trace Apartments where he was visiting his child's grandmother and picking up \$20 owed to him. (App. p. 111). Victim testified that while at the Apartments he saw Brandon Parker (Parker), who asked him for a ride. Victim agreed to give Parker a ride and testified a second black male also entered the vehicle and sat in the back seat directly behind him. Victim testified he drove both Parker and the other man to Casablanca Park and he stopped by a basketball court to let the men out. Victim testified Parker did not want to get out where Victim had originally stopped the car because he was in trouble; Parker requested Victim drive to another, more secluded, location within Casablanca Park. Victim testified he moved the car to a different location and as he put the vehicle in reverse, the man in the back seat put a gun to the back of

³ Victim testified he was injured on his leg, knee, hand, elbow, and had broken his glasses when he rolled out of the vehicle. Victim testified he declined medical attention for his injuries. (App. p. 117).

his head and told Victim to “run through [his] pockets”. (App. pp. 111-113).

The prosecutor asked Victim how he knew it was a gun placed to the back of his head. Victim testified, "I mean, I felt of a gun. I'm not that -- I'm pretty smart to know what a gun is." (App. p. 113, line 22 - p. 114, line 2). Victim agreed he "could feel" the object was a gun. (App. p 114, lines 3-4)⁴.

Victim explained the second man told him to stand in front of his car and he complied while the man "went through the car." Victim testified he then walked to the left side of the car and a struggle ensued with Parker. The other man ran over and pointed a gun at Victim and asked Victim if he wanted to die. Then the other man ran back over to the other side. Victim testified the carjackers had some difficulty popping the car trunk open, but once they did, the man holding the gun ordered Victim in the trunk. (App. p. 114, lines 7-23).

Victim was then made to get in the trunk of his own vehicle. Victim testified that while in the small space of the trunk he briefly panicked before getting his bearings and pulling the latch inside the trunk and jumping out of the car while the car was still moving. When Victim jumped out of the trunk, he was on the McTeer Bridge. The aforementioned witness, Monica Wisner, stopped and called 911 on his behalf. (App. 111-16). Victim testified there were still two people in the car as it drove away, including Parker. (App. p. 116).

Victim then left the scene and went to an automotive parts store where he called 911

⁴ Perhaps this testimony, in which Victim admitted he did not see a gun during this initial robbery, might explain why Petitioner was acquitted of armed robbery, which requires the use (or representation) of a weapon and the weapons charge. Indications from later cross-examination were that Victim had trouble describing the gun. (App. p. 162, line 14- p. 163, line 3).

and met responding deputies. (App. pp. 117-18). At trial, Victim agreed he picked a person out of the photographic lineup without hesitation. (App. p. 119; p. 121, lines 1-13). Victim further agreed he picked out photograph Number 2, and when asked who the person was to this case, Victim answered, "To the case he is, I believe the - what you call it? Um, pros - you all prosecuting him, I believe, in the case." (App. p. 119, lines 9-25). When asked if the picture resembles the person sitting at the table, Victim answered, "At this particular time, it looks like- it could be, very well." (App. p. 121, lines 10-13).

Victim also agreed he had contact with Petitioner following the incident when Petitioner visited him at his fiance's apartment. Victim further admitted he received a couple of phone calls after the incident from a number with an Atlanta area code although he vacillated as to whether they were threatening phone calls. (App. pp. 121-25). He agreed Petitioner did not call him from the Atlanta numbers and testified he had erased the phone numbers from his phone. (App. pp. 151-52; pp. 153-54).

On cross-examination, Victim was asked if he told officers he felt intimidated about his meeting with Petitioner. Victim replied that he told officers, "I was more concerned about my kids if anything else, Sir." (App. p. 153, lines 10-15). Victim admitted he went to the police station both because of his concerns regarding his ability to identify Petitioner and his concerns regarding his daughter's safety. (App. p. 151).

Victim contended he should have the right not to go through with the trial. (App. p. 144). On cross-examination he admitted he was at trial only because of the subpoena issued by the State. Victim further stated he signed a notarized statement with the bondsman seeking to have the charges against Petitioner dismissed. (App. pp. 143-44; p. 147). On redirect,

Victim agreed that the two people in the car that day were the people that robbed him. (App. p. 173).

Sergeant Andre Massey, the investigator on the case, also testified at trial. While Victim knew Parker, Sergeant Massey explained Victim said he only knew the other perpetrator as "Arnie." Law enforcement was informed Petitioner was called "Arnie" and Sergeant Massey placed him in a photographic lineup. Victim immediately identified Petitioner from this photographic lineup. (App. pp. 185-86).

On cross-examination, Sergeant Massey admitted the threats from the Atlanta phone numbers could have been from anybody. (App. pp. 207-08). Sergeant Massey's audio-recorded interview with Petitioner was published to the jury. (State's Exhibit No. 4; Applicant's Exhibit No. 1 – PCR Hearing). In that interview, Petitioner admitted he and Parker received a ride from Victim, but claimed Victim let him out by the basketball courts and he was not part of the subsequent crimes. He also admitted he was called "Arnie." (State's Exhibit No. 4; Applicant's Exhibit No. 1 – PCR Hearing, 14:45-15:00). Additionally, he admitted he went to Victim's house and spoke with him. He claimed Victim did not even know who he was when he visited Victim. (State's Exhibit No. 4; Applicant's Exhibit No. 1 – PCR Hearing, 9:30-10:45).

Sergeant Massey interviewed Victim shortly after his interview with Petitioner. This also was recorded. (State's Exhibit No. 1 – PCR Hearing). Victim initially claimed he was not sure if Petitioner was the other robber or not. He then complained the police would not really be able to protect him. He admitted people came to his house, and that got to the point he did not like. Then he said he did not know "the guy." Sergeant Massey then told Victim he

interviewed Petitioner the day before and Petitioner said he visited Victim. Victim verified that he really was robbed and kidnapped by two people. He said at some point after he identified Petitioner as one of the carjackers, Petitioner and two other people came to the house and spoke with Victim outside while they circled around him. Victim's daughter and son were outside, and Victim told them to go up the steps to safety, but the children were not listening. (State's Exhibit No. 1 – PCR Hearing).

During the interview, Victim recounted Petitioner asked him if he was sure the person who robbed him was Petitioner. Victim replied how he could ask that when "you did wrong." Victim told Petitioner he was trying to get away with something he did. Petitioner informed Victim he knew where Victim lived, and Victim told Petitioner it was between him and the police. Petitioner apologized and said Parker put him up to the robbery and said Victim was a drug dealer. He found out later that Victim was a "good dude" and said he was sorry he did it. (State's Exhibit No. 1 – PCR Hearing).

Victim also said during the interview that he received two phone calls about two weeks later saying he needed to drop the charges against Petitioner. In the second call, the caller threatened drive-by shootings. Victim stated he received another call the day before the interview saying he needed to drop the charges. Victim stated he deleted the messages. He admitted Petitioner was picking at his patience. (State's Exhibit No. 1 – PCR Hearing).

STANDARD OF REVIEW

The standard of review for PCR matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Overall, reviewing courts “give [] great deference to the post-conviction relief court’s findings of fact and conclusions of law”, *Dempsey v. State*, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005), with the applicant shouldering the burden of proof. Rule 71.1(e), SCRPC; *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Further, a PCR court’s findings will be upheld if there is “any evidence of probative value sufficient to support them.” *Id.* Reversal of the lower court’s findings occurs when there is no probative evidence to support the initial finding. *Pierce v. State*, 338 S.C. 139, 526 S.E.2d 222 (2000). Courts must conduct a de novo review only evaluating questions of law. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40; *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The post-conviction relief court correctly found Petitioner was not prejudiced by counsel's failure to object to a portion of a recorded interview between law enforcement and Petitioner in which law enforcement questioned Petitioner about a statement made by co-defendant Brandon Parker because probative evidence supports the PCR court's finding where admissions were made by Petitioner during an interview with law enforcement that corroborated the evidence presented by Victim, where Victim identified Petitioner in a lineup as one of the two carjackers, and where Petitioner admitted to Victim he was one of the two carjackers.

Petitioner contends trial counsel's failure to object to part of a redacted, recorded interview between law enforcement and Petitioner "magnified the credibility of Petitioner's co-defendant, thereby leveling improper accusations at [Petitioner] through the lens of a cop's words" and prejudiced Petitioner such that this Court should remand this matter for a new trial. (Brief of Petitioner, pp. 5, 15). Petitioner asserts a question posed by Sergeant Andre Massey, an employee of the Port Royal Police, to Petitioner during the interview played before the jury, where Sergeant Massey asks Petitioner why co-defendant Brandon Parker would have said Petitioner was with him and "the one who done these things, if he hadn't done it" "reinforced the credibility of [Victim]." (Brief of Petitioner, pp. 5, 8; State's Exhibit No. 4; Applicant's Exhibit No. 1 – PCR Hearing). Petitioner further alleges that without the remark made in the video, the jury would only have had [Victim's] testimony, "sans bolstering." (Brief of Petitioner, p. 8). However, this assertion is false, and the post-conviction relief court properly rejected Petitioner's argument, finding trial counsel's failure to object was not so prejudicial that it would create a reasonable probability the result of the trial would be different. (App. pp. 377-378). Consequently, this Court should affirm the PCR court's findings in full.

*Strickland*⁵ Standard and Burden of Proof

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCPP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* at 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases.

⁵ *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984).

Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* At 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." *Id.* at 693 (emphasis added).

The performance and prejudice standards, however, "do not establish mechanical rules . . . [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. The 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. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Petitioner Failed to Prove He Was Prejudiced and Failed to Prove A Reasonable Likelihood the Outcome of His Trial Would Have Been Different Had Trial Counsel Objected to a Portion of the Redacted Audio Interview between Sergeant Andre Massey and Petitioner

Petitioner asserts he was prejudiced by trial counsel's failure to object to a question posed by Sergeant Massey to him during a recorded interview that was played before the jury. Specifically, during the redacted, recorded interview, Sergeant Massey asked Petitioner why co-defendant Brandon Parker said Petitioner was with him during the incident and "the one who done these things, if he hadn't done it". (Brief of Petitioner, p. 5; State's Exhibit No. 4; Applicant's Exhibit No. 1 – PCR Hearing). However, as the post-conviction relief court correctly found, the question posed to Petitioner by Sergeant Massey was not so prejudicial that its exclusion or admission would create a reasonable probability the result of the trial would be different. (App. p. 378). Notwithstanding the question posed to Petitioner by law enforcement regarding the alleged statement by his co-defendant, and despite trial counsel's post-trial motions regarding the objection he believed he should have made at trial⁶ as referenced in Petitioner's Brief of Petitioner, ample probative evidence supports the post-conviction relief court's finding Petitioner was not prejudiced by counsel's failure to object. (App. pp. 290 – 302; Brief of Petitioner pp. 6-7).

The subject statement in the recorded interview is cumulative to Victim's testimony that the passengers he drove from the Spanish Trace Apartments to Casablanca Park both participated in the kidnapping and carjacking. (App. pp. 112-113). Specifically, Victim testified that after driving Brandon Parker and the other male to Casablanca Park, Parker requested Victim move the car to a different location within the park. (App. pp. 112-113). Victim testified that, "[a]s soon as

⁶ Specifically, during the post-trial motions hearing, trial counsel indicated to the court he believed he had failed to make an objection to the subject portion of the recorded interview between law enforcement and Petitioner and suggested the trial court "would agree that was an error". (App. p. 293, lines 18-23).

[he] pulled up past some shrubs, the gentleman that was behind [him]... pulled out a gun and put in the back of [his] head.” (App. p. 113, lines 16-20). Victim testified that after he jumped out of the trunk of his vehicle which he had been put in at gunpoint, there were still two parties in the car. (App. p. 116). Additionally, Victim testified he viewed a series of photos at the Port Royal Police Department following the incident and immediately picked out Petitioner from the lineup as the second person involved in this incident other than Brandon Parker. (App. pp. 118-121). Though Victim denied seeing Andre Green in the courtroom, he conceded the person he had previously picked out of a lineup resembled Petitioner. (App. pp. 119-121). Importantly, Petitioner admitted during an interview he had received a ride from Victim on the date of the incident. (State's Exhibit No. 4; Applicant's Exhibit No. 1 – PCR Hearing). Despite Petitioner's assertion during the same interview that he exited the vehicle prior to the carjacking, Victim had let him out, and he was not part of the subsequent crimes, Victim testified during cross-examination that the persons he observed and who were involved in the incident were Brandon Parker and the individual he had picked out of the lineup previously. (App. 132-133).

Though Victim testified in agreement that he had picked the person who carjacked him out of the photographic lineup without hesitation and agreed he had had contact with Petitioner following the incident, Victim did not identify Petitioner specifically at trial. Nonetheless, Sergeant Massey explained that Victim only knew the other perpetrator as “Arnie”. (App. pp. 185-186). In Petitioner's interview with law enforcement, he admitted he was called “Arnie”. (State's Exhibit No. 4; Applicant's Exhibit No. 1 – PCR Hearing, 14:45-15:00).

Most notably, Victim indicated during an interview with Sergeant Massey that Petitioner had confessed to the crime and identified his co-defendant as Brandon Parker. As the post-conviction relief court found, Petitioner's confession to Victim and statement

“inculcating Parker as his co-defendant severely minimizes the prejudicial significance” of the unredacted comment from Sergeant Massey to Petitioner. (App. p. 378). Petitioner’s apology to Victim and self-proclaimed association with perpetrator Parker as his co-defendant are probative evidence of Petitioner’s guilt and the failure of trial counsel to object to the question posed by Sergeant Massey to Petitioner was not so prejudicial as to create a reasonable probability of a different result at trial.

Given the abundant evidence establishing Petitioner’s involvement in the crime, redaction of the hearsay statement made in the course of the interview with Petitioner would not have created a reasonable probability of a different result under *Strickland*. Far more damaging to Petitioner’s case, was Petitioner’s admission he received a ride from Victim and was taken to Casablanca Park by Victim. This admission was corroborated by Victim’s statement to law enforcement that he knew Petitioner as “Arnie”. Petitioner also admitted he was called “Arnie”. Moreover, Victim testified that after he jumped out of the trunk of his vehicle which he had been put in at gunpoint, there were still two parties in the car (the same two parties he drove to Casablanca Park). Victim subsequently identified Petitioner as the perpetrator in a lineup. Furthermore, Petitioner later admitted and apologized to Victim for his participation in the crimes.

Accordingly, Petitioner has failed to show counsel’s failure to object was so prejudicial that it would create a reasonable probability the result of the trial would be different. Therefore, this Court should find the post-conviction relief court properly rejected Petitioner’s argument and deny relief.

CONCLUSION

For the reasons stated above, this Court should affirm the PCR Court's findings in full.

Respectfully submitted,

ALAN WILSON
Attorney General

SAMANTHA J. WEIDAUER
S.C. Bar No. 104833
Assistant Attorney General

By: *s/ Samantha J. Weidauer*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

December 9, 2022