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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ Certiorari to the Court of Appeals
APPEAL FROM SPARTANBURG COUNTY
The Honorable Lee S. Alford, Circuit Court Judge

THE STATE,.....RESPONDENT

v.

AMY N. TAYLOR,.....PETITIONER

RETURN TO PETITION FOR WRIT OF CERTIORARI
Appellate Case No. 2019-001117

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ARGUMENTS

1. The Court of Appeals did not err in their decision to deny Petitioner parole eligibility due to the fact the trial court based their decision pursuant to Section 16-25-90 of the South Carolina Code of Laws whereby the Petitioner failed to prove her case by a preponderance of the evidence. The fact that the trial court did not consider her a “household member” until they began a relationship was irrelevant because this was not a reason for the trial court’s decision. The trial court thought the Petitioner was not credible, so she failed to meet her burden of proof which is necessary to receive parole eligibility.....13

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PETITIONER'S QUESTION PRESENTED

1. Did the Court of Appeals err in finding that the circuit court did not abuse its discretion when it redefined the term household member under the domestic violence statute which drastically narrowed the time frame that the circuit court considered in determining whether Petitioner showed a “long-term history” of domestic abuse sufficient to satisfy the standard required by S.C. Code Ann. §16-25-90 and where the ruling of the circuit court was not supported by the evidence?

RESPONDENT'S COUNTER STATEMENT OF QUESTIONS PRESENTED

1. Did the Court of Appeals err in deciding to affirm the decision of the trial court due to the fact the trial court decided to not grant parole eligibility due to a failure of the Petitioner to prove her case by a preponderance of the evidence, and not due to the fact the trial court did not consider the Petitioner a "household member" until she and the victim started a more open and public relationship?

STATEMENT OF THE CASE

On June 7, 2019, the Spartanburg County Grand Jury indicted Petitioner for one count of murder and one count of possession of a weapon during the commission of a violent crime. This case was called for trial on June 24, 2019, before the Honorable Lee S. Alford. Present before the trial court was the Petitioner along with her counsel Assistant Public Defender Ms. Beverly Jones. Representing the State of South Carolina were Assistant Solicitors Eddie James and Hope Coleman-Hicks of the Seventh Circuit Solicitor's Office.

After four days of testimony Petitioner decided to enter a guilty plea. At the conclusion of this guilty plea, Petitioner was sentenced to a forty-five-year period of incarceration. (R. p. 59 l. 24 – p. 60 l. 3). After sentencing the Petitioner decided to make a motion before the trial court for a determination as to long term domestic abuse in order to obtain parole eligibility pursuant to Section 16-25-90 of the South Carolina Code of Laws. The trial court decided to allow this hearing to be scheduled.

A sentencing hearing was held for the Petitioner to present evidence of long-term domestic abuse in order to obtain parole eligibility. At the conclusion of this hearing the trial court decided that Petitioner failed to prove her case beyond a preponderance of the evidence; however, upon a motion made by Petitioner the trial court decided to reduce the sentence from forty-five to thirty-five years. On July 8, 2019, while serving her sentence Petitioner filed a timely notice of appeal before the South Carolina Court of Appeals.

On May 12, 2022, all parties appeared before the Judges H. Bruce Williams, Aphrodite K. Konduros and Jerry D. Vinson, Jr. of the South Carolina Court of Appeals for a hearing on the notice of appeal filed by Petitioner. Before the Court of Appeals Petitioner argued that the trial court abused discretion because she proved by a preponderance of the evidence that she suffered

a history of criminal domestic violence. Petitioner also argued that the trial court abused its discretion by determining she was only considered a household member a short time because relationship with the victim was not publicly known mere months prior to the incident. Petitioner also argued that the trial court abused its discretion by determining that she should only be considered a household member only when her relationship with the victim became more public only months prior to the incident.

On August 17, 2022, the Court of Appeals filed an unpublished opinion unanimously affirming the decision of the trial court. *State v. Taylor*, 2022 WL 3440839. Within this opinion the Court of Appeals determined that the trial court did not err in deciding that the Petitioner failed to prove by a preponderance of the evidence that she suffered a history of domestic violence.

Petitioner now presents this petition for writ of certiorari seeking review from this Honorable Court. The State will argue that the decision of the Court of Appeals does not fall within the parameters found in South Carolina Appellate Court Rule 242. This return presented by the State supporting their argument follows.

WHY CERTIORARI SHOULD BE DENIED

The Supreme Court reviews Court of Appeals by writ of certiorari only where special reasons justify the exercise of that power. *Douglas v. State*, 369 S.C. 213, 631 S.E.2d 542, 544 (2000). Pursuant to rule 242 of the South Carolina rules of the Appellate Court, “a writ of certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court’s discretion or power to grant review in general, indicates the character of reasons which will be considered:

1. Where there are novel questions of law;
2. Where there is a dissent in the decision of the Court of Appeals;
3. Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court;
4. Where substantial constitutional issues are directly involved;
5. Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Rule 242 SCACR.

In reviewing the present case none of these criteria apply. The Court of Appeals properly and unanimously affirmed the decision of the trial court. This decision should not be subject to any review.

There have been several Supreme Court decisions regarding the domestic violence review for possible parole eligibility. The decision made by the Court of Appeals was correct. When seeking parole eligibility due to long term domestic abuse the burden falls on the Petitioner. The Petitioner is obliged to prove that this abuse occurred by a preponderance of the evidence. *State v. Grooms*, 343 S.C. 248 (2000). The trial court decided that the Petitioner failed to meet that burden

so there exists no error. The Court of Appeals had to affirm the decision of the trial court. “In criminal cases the appellate court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown.” *State v. Blackwell-Selim*, 392 S.C. 1, 3, 707 S.E.2d 426, 427 (2011). This is hardly a novel question of law.

There were also no Constitutional questions, no dissenting opinion by any member of the Court of Appeals; and no federal question that is in conflict with a prior decision made by the United States Supreme Court. The Court of Appeals’ decision was lawful, so their opinion should not be subject to review.

STATEMENT OF FACTS

On March 4, 2017, Amy N. Taylor (Petitioner), shot her then live-in boyfriend James Sprouse (victim). Petitioner shot the victim three times as he lay in his bed sleeping. The victim was shot twice in the back and once in his side. (R. p. 55 l. 24 – p. 56 l. 4). As the victim lay dying the Petitioner called her eighteen-year-old daughter Destiny Lyda (Destiny). Petitioner informed Destiny that she shot the victim in self-defense. During this call Destiny informed the Petitioner that she should call the police immediately. (R. p. 36 l. 17 – p. 37 l. 13). Destiny told the Appellant that since it was self-defense it would be better if she notified the police. Petitioner told Destiny that she was going to call the police. (R. p. 39 l. 18). Petitioner however never called for law enforcement; she allowed the victim to lay dying from ten to twenty-five minutes. (R. p. 56 l. 5-7).

Destiny was later picked up from school by her boyfriend Anthony Fowler (Anthony), and brought back to her home. Once they arrived Petitioner lied telling them she did contact law enforcement, who informed her that the since the coroner was busy he would not be able to retrieve the body until later. She informed Destiny and Anthony that she was told to wrap up the victim's body in a tarp and place it into the woods. (R. p. 3 l. 12-16). It was later discovered on video that Petitioner, Destiny and Anthony bought tarp, bungee cord, and duct tape at a local store. (R. p. 29 l. 12-19).

When they return home they wrapped the victim's body into that tarp taping it together with duct tape. They placed the victim's body into the woods, and placed the bloody mattress into the back yard with the "peppa pig" pillow that was used by the Petitioner to muffle the gun sound when she shot the victim. (R. p. 14 l. 3-12; p. 15 l. 21). As they were cleaning up and hiding evidence Anthony called his father, informing him that his girlfriend's mother just shot the victim

and that there was blood everywhere. (R. p. 3 l. 10-12). Anthony asked his father to call the police, who then made a call to the Spartanburg County Sheriff's Department. (R. p. 2 l. 15 – p. 3 l. 5). Sheriff's deputies responded to the home. (R. p. 3 l. 21-22).

Once deputies arrived they spoke to the Petitioner who informed them that the victim was at his mother's house. (R. p. 6 l. 12-14). Deputies asked Petitioner if they could enter the residence, Petitioner gave deputies consent to enter. Once inside, deputies observed fresh spackling on the walls and a box spring on its side in the bedroom. (R. p. 8 l. 17-22). They also observed what appeared to be blood on the floor, cleaning supplies, and trash bags with bedding inside. (R. p. 8 l. 23 – p. 9 l. 2). They also checked around the house and found a mattress in the back yard with blood all over it. (R. p. 14 l. 3-12). At that time Petitioner, Destiny and Anthony were brought in for questioning.

During questioning the Petitioner informed law enforcement that she just had a miscarriage which explained the blood all over the mattress. She informed the officers that after the miscarriage she and the victim got into an argument, and the victim left to go to his mother's house. (R. p. 16 l. 4-7). At that time deputies confronted her with the statements from Destiny and Anthony, Petitioner then decided to change her story. Petitioner then told deputies that while in the bathroom the victim came in with a gun and pointed it at her behind a pillow. Petitioner stated that the victim fired, however, because he did not have on his glasses he ended up shooting himself, then almost dropped the gun. Petitioner stated she grabbed the gun and shot the victim in the shoulder. (R. p. 24 l. 8-15). She told law enforcement that after the victim died she rolled him into a tarp, placed him in the back of a truck and drove him down to the back of the property. (R. p. 24 l. 21-25). Petitioner told law enforcement that she acted alone, however, once again she was confronted by the statements of Destiny and Anthony. Petitioner finally confessed that they assisted her in

removing the victim's body. (R. p. 25 l. 1-8). Petitioner was eventually arrested and charged with the offense of murder and possession of a weapon during the commission of a violent crime. Destiny and Anthony were arrested and charged with accessory after the fact to murder.

Law enforcement went back to the house and found the victim's body in the back wrapped in a tarp and taped with duct tape. (R. p. 11 l. 16-18). The victim's body was then transported to the coroner's office. Once it was unwrapped at first it was believed that he was shot five times.¹ (R. p. 26 l. 5-13). Law enforcement also confiscated everyone's cell phone including the victim's mother. (R. p. 27 l. 15-22; p. 28 l. 4-7).

During trial the Assistant Solicitor's offered into evidence video from Fred's discount store of the Petitioner along with the co-defendants purchasing tarp, bungee cord, and duct tape. Ms. Lindsey McGraw a computer forensics investigator for the Spartanburg County Sheriff's Department also testified as to the contents of the Appellant's phone. Investigator McGraw testified that while searching through Petitioner's phone she found searches for, "Does lime help decompose dead animals?", "What can you pour on dead animals to hurry up to make them disappear?", "A handgun when red is showing on the side, does it mean its on safety or off?", "Undetectable poisons in autopsy?", "What is a way you can poison someone without it being traceable in blood stream?" , and on a message board the question, "What do I do with a dead body?" (R. p. 30 l. 10 – p. 34 l. 13).

After the Petitioner's guilty plea, a motion was made before the trial court for a hearing in order to prove that she was a victim of long-term domestic abuse, thereby, allowing her to receive

¹ Later they discovered that the victim was only shot 3 times, the other wounds were exit wounds.

parole eligibility. The trial court decided to allow the Petitioner to present evidence in order to satisfy her burden of proof.

During this hearing Petitioner testified that she was only fourteen when she first met the victim, who was twenty years older. (R. p. 102 l. 14-15; p. 103 l. 2). Petitioner met the victim while he was working with her first husband at a garage. (R. p. 102 l. 16-18). She later had a daughter with that husband, and later got divorced. Petitioner then married another individual Mr. Kenny Taylor. The Petitioner and Mr. Taylor had two more children. Falling upon hard times they moved their entire family into the house the victim shared with his wife. (R. p. 104 l. 21-24). They lived with the victim and his wife for a short period of time and then moved out, only to return in 2014. (R. p. 106 l. 24 – p. 207 l. 1). During this second stay, victim and Petitioner began having an affair. After two months living in the house Mr. Taylor moved out, (R. p. 107 l. 14-17) victim's wife later moved out in 2016. (R. p. 108 l. 3-4). Petitioner and victim then starting having a more open relationship.

During this hearing Petitioner testified to the abuse she suffered at the hands of the victim. She testified that the first occasion occurred when he threw her up against a wall in 2016. (R. p. 117 l. 21-24). She testified about another incident that occurred in August of 2016. Petitioner testified that the victim hit her while they were in the bedroom. (R. p. 120 l. 14-17). She testified that the victim had a temper and constantly threatened to shoot her and the children if they moved out. Victim supposedly threatened to shoot Mr. Taylor and other individuals. Petitioner stated that the day before the incident the victim shot in the air above her head, and that night he was pacing and mumbling to himself about killing her and the kids. (R. p. 127 l. 14 – p. 129 l. 2). Petitioner testified that the next day as the victim lie in bed she thought that he reached over for his gun, she grabbed it first and shot him. (R. p. 130 l. 7-13).

On cross-examination Petitioner admitted that since the first incident in 2016 she never called the police, and never told any authority figure at her kids' school about the abuse. (R. p. 132 l. 2-14). Petitioner also admitted to all of the lies she told to the police prior to getting arrested, and the fact she did not tell law enforcement about these incidents of abuse even when they asked her. She told law enforcement only one time that the Petitioner slapped her. (R. p. 134 l. 12 – p. 135 l. 5).

A neighbor by the name of Virginia Lee Teague testified that she knew the Petitioner for about ten years before this incident. (R. p. 62 l. 3). Ms. Teague testified that Petitioner and her were not friends Petitioner was more like an acquaintance. (R. p. 63 l. 10-12). Ms. Teague testified that the Petitioner sold her prescription pills. (R. p. 63 l. 13-22). She stated that once she saw the Petitioner with a broken toe and bruising on her face. (R. p. 64 l. 12-13). Ms. Teague also stated that about a week before the murder Petitioner told her, “if she end up dead you know who did it.” (R. p. 65 l. 6-7). However, Ms. Teague also testified that the victim seemed like a nice guy, that she never saw anything to believe that he would have done anything ugly. (R. p. 72 l. 4-9).

Dr. Lois Veronen, clinical psychologist who specializes in the impact of violence or traumatic events on the functioning of women also testified on the Petitioner's behalf. Dr. Veronen testified that due to the abuse, Petitioner shot the victim while in a high state of fear and anxiety for herself and her children. (R. p. 175 l. 23 – p. 176 l. 2). Dr. Veronen stated that the Petitioner met the criteria for substance abuse disorder, major depressant disorder, and post-traumatic stress disorder. (R. p. 205 l. 7-9). On cross-examination Dr. Veronen admitted that the only person she interviewed was the Petitioner. (R. p. 182 l. 3-15).

During this hearing both Petitioner's daughters testified, one on behalf of the State the other on behalf of the Petitioner. First, was the Petitioner's then nineteen old daughter Destiny Lyda.

She testified that her boyfriend Anthony was staying in a camper in the yard. (R. p. 74 l. 17-19). She testified that the victim would threaten to kick them out so they would have nowhere to stay. The victim would brag about his guns and would threaten to shoot people. (R. p. 80 l. 19-21). Destiny would also testify that she once saw Petitioner get into the shower with bruises on her breast and side. Petitioner told her that they came from falling against a table, and she did not want to talk about it. (R. p. 83 l. 19-24). Destiny testified that she never personally saw the victim hit Petitioner but heard them talking about it. (R. p. 94 l. 9-10).

Assistant Solicitor then called to the stand the Petitioner's fourteen-year-old daughter Kelsey Taylor (Kelsey). Kelsey testified that she had seen the victim angry, however, he never took it out on the Petitioner, nor has she ever seen him hit or verbally abuse the Petitioner. (R. p. 209 l. 7-18). Kelsey testified that she saw what appeared to be bruises on the Petitioner, however, she thought they were not real because after she got out of the shower they were gone. (R. p. 210 l. 20 – p. 211 l. 1). Kelsey thought Petitioner in the past frequently faked injuries by putting on makeup to look like injuries because she is an attention seeker. (R. p. 213 l. 23 – p. 214 l. 3). Kelsey testified that in three years of living with the victim she never saw any violence perpetrated against her or the Petitioner. (R. p. 212 l. 14-17).

At the conclusion of this hearing the trial court made it known that he was not convinced by the Petitioner's testimony. Despite the fact shots were fired in the house a day before the incident, there was no evidence provided revealing that the victim was shooting at the Petitioner. There were no 911 calls, no police record of any prior abuse, and the police were never called to the residence. The court also doubted the Petitioner's credibility due to her numerous lies told to law enforcement. The trial court determined that the Petitioner is just not credible.

The trial court went on to address the fact that the Petitioner had more resources than the average battered spouse. The Petitioner had access to an automobile and was collecting one-thousand eight hundred (\$1,800.00) dollars per month in child support and alimony. The Petitioner ex-husband also visited the kids regularly and would have probably kept the two youngest kids until she found a new residence.

The trial court finally decided that according to Section 16-25-90 of the South Carolina Code of Laws, Petitioner was required to produce credible evidence revealing a history of criminal domestic violence. There also must be some evidence of “long term” abuse which the trial court ruled did not exist. In the opinion of the trial court, they became household members when the victim’s wife left the residence in August of 2016. The trial court ruled that this does not equate to “long term” abuse when they had only been household members for a few months. The trial court found that the standard is credible evidence, and there exists no credible evidence of domestic violence at the hands of the victim. So, the trial court decided to deny the Petitioner’s motion to allow the Petitioner parole eligibility due to the existence of long-term domestic abuse.

ARGUMENT

- 1. The Court of Appeals did not err in their decision to deny Petitioner parole eligibility due to the fact the trial court based their decision pursuant to Section 16-25-90 of the South Carolina Code of Laws whereby the Petitioner failed to prove her case by a preponderance of the evidence. The fact that the trial court did not consider her a “household member” until they began a relationship was irrelevant because this was not a reason for the trial court’s decision. The trial court thought the Petitioner was not credible, so she failed to meet her burden of proof which is necessary to receive parole eligibility.**

Relevant Facts

The Petitioner requested a hearing for the trial court to determine whether she could be considered a person who had endured long term domestic violence at the hands of the victim. At the conclusion of this hearing the trial court first determined that the Petitioner and victim were

only household members for the course of seven months so that should not be considered long term. However, the trial court made their ruling based on the Petitioner failing to satisfy her burden of proof. Petitioner claims that the trial court erred in deciding that the Petitioner can only considered a household member for about months when they were in a more open relationship. However, this was not the basis for the Court's decision. The trial court denied the Petitioner's request for parole eligibility due to her failure to present credible evidence proving that she was a victim of long-term domestic abuse, which is required by statute.

Standard of Review

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827 (2001). In criminal cases, the appellate court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown. *State v. Blackwell-Selim*, 392 S.C. 1, 3, 707 S.E.2d 426, 427 (2011). The appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence. *State v. Winkler*, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010). A defendant must prove by a preponderance of the evidence a history of domestic violence from the victim in order to be eligible for statutory early parole. *State v. Grooms*, 343 S.C. 248, 540 S.E.2d 99 (2000).

Discussion

The Petitioner argues that the Court of Appeals erred in affirming trial court's decision that she did not prove her case by a preponderance of the evidence. The Petitioner argues that the trial court abuse its discretion in miscalculating when the Petitioner became a "household member." The State argues that the Court of Appeals was correct in their assessment of the trial court's decision. The trial court made their decision based on the total lack of evidence that was presented

failing to prove Petitioner was ever a victim of domestic violence. The determination of when she was a “household member” had absolutely no bearing on the trial court’s final decision.

Upon being sentenced after pleading guilty the Petitioner requested that the court decide she was a victim with a history of criminal domestic violence in order to receive parole eligibility.

Section 16-25-90 of the South Carolina Code of Laws specifically state:

Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one-fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post-conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16-25-20, suffered at the hands of the household member.

S.C. Code Ann. §16-25-90 (2004).

In order for the Petitioner to be granted parole eligibility she must have proven a history of domestic abuse at the hands of the victim by a preponderance of the evidence. A preponderance of the evidence is evidence which convinces as to its truth. *Gorecki v. Gorecki*, 387 S.C. 626, 633, 693 S.E.2d 419, 422 (2010).

Petitioner is of the opinion that since she got on the stand and said she suffered abuse that was sufficient to receive parole eligibility. However, the statute states that the evidence must be credible. The mere production of evidence does not automatically result in earlier parole eligibility; instead, the defendant must persuade the judge by presenting proof which leads the trier of fact to find that the existence of the contested fact is more probable than it is nonexistent. *Blackwell-Selim*, 392 S.C. at 4, 707 S.E.2d at 428.

The circuit court must make specific findings in ruling on parole eligibility or ineligibility under §16-26-90. *Id.* Prior to the trial court’s decision the trial court stated specific reasons why the Petitioner is not entitled to parole eligibility. And although the court he did state that they were

not household member until their relationship became public, this was not the reasoning he gave in denying parole eligibility. In his final decision the trial court specifically stated,

“I’m not convinced of the credibility of that and the truthfulness of it. And the reason is there’s no other evidence of it except – and she has told no one about it and no one else knows about it. And the first time anybody’s heard about it. And her credibility is certainly in question because she hasn’t been truthful about anything to be honest with you. And so, I discount that. I don’t think it should be considered at all.” (R. p. 249 l. 15-25).

The trial court has the ability to judge the credibility of witnesses. Credibility findings are treated like factual findings, and therefore, the appellate inquiry is limited to reviewing whether the trial court’s factual findings are supported by any evidence in the record. *State v. Banda*, 371 S.C. 245, 639 S.E.2d 36, 39 (2006). This determination of the lack of credibility is supported in the record.

The Petitioner gave three different stories to law enforcement about the incident. First, she told them that she had a miscarriage, that the victim got angry and drove to his mother’s house. (R. p. 16 l. 4-7). Second, she told them that she was in the bathroom and the victim came at her with a gun pointed behind a pillow, and that due to the fact he did not have on his glasses he accidentally shot himself. She then got the gun and shot the victim in the shoulder. (R. p. 20 lines 11-12). During the sentencing hearing she told her third story, that the victim was mumbling under his breath all night that he was going to kill her. The next morning while he was in bed, while the gun was on the bedroom dresser as he rolled over she thought he was going to reach for the gun, so she grabbed the gun and shot him. (R. p. 130 l. 7-9). The Petitioner not only lied to law enforcement, she lied to her daughter and her boyfriend. When her daughter begged her to call the police, she informed her that she did call the police and they informed her that the coroner could not get there, that they had to wrap the body themselves and take it out back into the woods. Through these lies, the Petitioner’s daughter and her boyfriend were brought into this situation causing them to receive charges for accessory to murder.

The trial court correctly did not take into consideration the initial stories of abuse given by the Petitioner. These events supposedly occurred prior to the time the victim and Petitioner's spouses had moved out of the residence. Allegedly, the first incident occurred in 2016 months before the murder. (R. p. 117 l. 23-24). Even though they were household members there exists no evidence of "long term" abuse. In *State v. Hawes*, 411 S.C. 188, 767 S.E.2d 707 (2015), this Court decided that "the legislative history of section 16-25-90 indicates that the statute was intended to confer that early parole eligibility only to **long-term** victims of repeated abuse at the hands of a household member." *Hawes*, 411 S.C. at 708, 767 S.E.2d at 190 n.2(emphasis added). The trial court was correct in determining that if there was any abuse it occurred not long before the event occurred so it cannot be considered "long-term" so the Petitioner cannot be given parole eligibility.

The Petitioner continues to raise as an argument that the trial court misapplied the term household member, thereby, narrowing the window of the abuse. The Petitioner contends that this abuse was going on prior to the time they became exclusive in 2016. The Petitioner is of the belief that she can just allege some possible abuse without any corroborating evidence and the trial court will automatically grant parole eligibility. In *State v. Grooms* this court decided:

Moreover, we find the legislature did not intend the mere production of evidence to automatically result in earlier parole eligibility. If that were the case, as appellant suggest, then all individuals who are convicted of an offense against household members would be eligible for parole after service of one-fourth of their prison term simply by testifying they suffered a history of criminal domestic violence at the hands of their own victims. Instead by enacting §16-25-90, the legislature intended a defendant who presents credible evidence of a history of criminal domestic violence, at the hands of her victim... to be eligible for parole after the service of one-fourth of her prison term.

Grooms, 343 S.C. at 253, 540 S.E.2d at 101.

The Petitioner failed to present any evidence corroborating these allegations of abuse. The trial judge simply did not find her credible. The trial judge certainly has that right. The decision was

never an abuse of discretion, it is the ability given to the Circuit Court by the legislature. The Court of Appeals made the proper determination regarding the review obligations of an appellate court. The appellate court is bound by factual findings of the trial court unless an abuse of discretion is shown. *State v. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006).

The determination of the denial of parole eligibility was not determined by the fact the trial court did not define the Petitioner as a household member when the Petitioner believes he should have. The determination of the trial court was due to the lack of credibility. The trial court did not find the Petitioner credible, so the Court did not believe that the initial instances of domestic violence actually occurred. The trial court believed that if any abuse occurred, it started when they determined themselves exclusively a couple in 2016, only a matter of months prior to the incident date. The Petitioner argued that they were household members at the time they lived together in 2014. Petitioner testified that in early 2016 the victim slapped her off a chair in the garage, knocking out her tooth. (T. p. 117 l. 23 – p. 119 l. 16). There are no reports, nor hospital or dental records of this incident occurring. The trial court outwardly expressed its lack of belief in these incidents due to the lack of proof and the Petitioner's lack of credibility. During the hearing the trial court plainly stated, "I don't believe anything she said. She told so many stories to the police and made up so much stuff and everything. She's very good at that. But I just can't believe anything she said. She has no credibility with the court whatsoever." (R. p. 259 l. 11-15).

There was also evidence that was presented during the trial that the trial court rightfully took into consideration. With this evidence the trial court believed this murder was premeditated. During the trial, Investigator Lindsey McGraw, a computer forensics investigator for the Spartanburg Sheriff's Department, testified regarding certain searches that were found in the Petitioner's phone. The Investigator found within the Petitioner's phone searches for, "Does lime

help decompose dead animals?”, “What can you pour on dead animals to hurry up and make them disappear?”, “On a handgun when red is showing on the side, does it mean it’s on safety or off?”, “Undetectable poisons in autopsy”, “What is a way you can poison someone without it being traceable in blood stream?”, and “What do I do with a dead body?” (R. p. 30 l. 10 – p. 34 l. 13). These searches led the trial court to believe that this murder was premediated. When reciting his reasons for his decision the trial court stated:

“Now, on this – but she was, to a certain extent, this killing is premediated and in my opinion done with malice because she searched – I don’t know why she couldn’t realize with that phone, that they were going to be able to check it. I guess she didn’t think that far ahead. She was trying to find a way to kill him without it being detected. She wanted to get poison. How do I – how can I get poison, what poison can I get to kill somebody so it can’t be detected by a coroner or somebody? So that was premeditated. She was looking to kill him.:” (R. p. 257 l. 19 – p. 258 l. 4).

At the conclusion of the hearing the trial court issued its final decision. With this decision pursuant to *Grooms* the trial court made specific findings in ruling that the Petitioner is not entitled to parole eligibility. In his final decision the trial court ruled:

“So, I know why the statute is there, and I think it’s there for a good purpose. And if you look at the legislative history and intent, it was designed to help people who were victims of long-term repeated abuse at the hands of a household member.”

“And I don’t find credible evidence of any long-term domestic abuse by a partner who was able to put them in them in the home. I just don’t find it. There may be a little. There maybe some. The best example being somebody firing off a gun. There’s a question about how that was done.”

“It looks like he hit the safe in there, which was metal, and it wouldn’t – one of them went through. The rest of them bounced the wall and ricocheted out. There was none in the ceiling. Certainly, that would be evidence of, of domestic violence and cause somebody, somebody some fear. I would agree with that part of it. But that’s the only credible part that – in what she’s presented. And I don’t think it meets the test for long-term domestic abuse.”

“For that reason, I’m gonna deny your motion for early parole. And I think I’ve had time to dwell on it well enough to know. I’ve exercised all the discretion I have.” (R. p. 261 l. 5 – p. 262 l. 4).

The Petitioner argues that the Court of Appeals failed to consider her argument regarding the misinterpretation of the term “household member.” The Court of Appeals instead determined that the trial court did not err due to the fact they made a reasonable decision regarding the credibility of the Petitioner. The Court of Appeals determined that the trial court did not err due to the fact the trial court has the ability to look at the evidence presented and determine if a witness is not credible, and if the Petitioner met her burden of proof. If the trial court determines that the burden of proof was not met then that court has the right to deny parole eligibility. This decision is not an abuse of discretion, so it is not reversible by the Court of Appeals.

The Petitioner argues that the Court of Appeals failed to address their argument regarding the trial court's interpretation of household member. The Court of Appeals made a fair assessment of this case and made a determination from information that came directly from the record. The trial court made this decision due to the lack of credibility of the Petitioner. The decision of the trial court regarding when the Petitioner became a household member has no bearing on the final decision. The Court of Appeals rightfully did not address this since it had no bearing on the trial court's final decision. The Court of Appeals only addressed issues the trial court considered when making its final decision. The Court of Appeals rightfully affirmed the decision of the trial court. The appellate court may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the Record on Appeal. Rule 220(c) SCACR.

The Court of Appeals made the correct decision affirming the decision of the trial court. This decision is proven in prior case law; therefore, the decision of the Court of Appeals should not be subject to review by this Court.

CONCLUSION

Based on the forgoing reasons, the State submits Petitioner has failed to show that the questions presented warrants certiorari review. This Court should deny this petition for writ of certiorari and let stand the final decision of the Court of Appeals.

Respectfully submitted,

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