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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Greenville County

The Honorable Edward W. Miller, Plea Judge
The Honorable Eugene C. Griffith, Jr., PCR Judge

Appellate Case No. 2022-001571

ANGELO HORACE TAYLOR,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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ISSUE ON CERTIORARI

Did the PCR court err in finding that Taylor proved that plea counsel was constitutionally ineffective for giving inaccurate advice about Taylor's parole eligibility when the court found that Taylor satisfied his burden merely because his testimony was not contradicted, which constituted a legal error and improperly shifted the burden to the State?

STATEMENT OF THE CASE

Respondent Angelo Horace Taylor is presently imprisoned in the South Carolina Department of Corrections ("SCDC"). The Greenville County Grand Jury indicted him during its February of 2018 term for murder (2016-GS-23-002378), possession of a weapon during the commission of a violent crime (2016-GS-23-002378), and attempted armed robbery (2016-GS-23-002379). On September 18-19, 2018, Taylor proceeded to a jury trial, with the Honorable Edward W. Miller ("the plea court") presiding. He was represented at that trial by C. Carlyle Steele ("plea counsel"). Elizabeth Coble Major ("the solicitor"), at that time of the Thirteenth Circuit Solicitor's Office, represented the State. While the jury was deliberating, Taylor entered guilty pleas pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to involuntary manslaughter, a lesser-included offense of murder, and as indicted to attempted armed robbery. In accordance with the plea agreement, the solicitor dismissed the charge of possession of a weapon during the commission of a violent crime. The solicitor asked the plea court to impose a sentence of twenty-five years' imprisonment. Plea counsel requested that the plea court sentence Taylor to time served and probation, as he indicated that Taylor had been in custody for over 1,000 days by the time of trial. The plea court sentenced Taylor to imprisonment for twenty years for attempted armed robbery and for five years for involuntary manslaughter, with both sentences running consecutively, and with credit for time served. Taylor did not appeal his convictions or sentences.

Taylor filed his pro se application for post-conviction relief on August 9, 2017, raising multiple claims. His appointed lawyer later filed an amendment to the application, which also raised multiple claims. The parties appeared before the Honorable Eugene C. Griffith, Jr. ("the

PCR court"), by WebEx on March 21, 2022, for an evidentiary hearing on the application. At the start of that hearing, Taylor clarified that it was his position that he was entitled to PCR because he lacked a full understanding of the maximum sentence that he could face by pleading guilty. At the end of that hearing, the PCR court took the matter under advisement and later issued an order on August 17, 2022, granting PCR, vacating the "sentence and convictions," and remanding to the court of general sessions. That order was filed with the Greenville County Clerk of Court on September 14, 2022, and hand-delivered to the parties by the Clerk on that same day. On September 21, 2022, the State served a motion to alter or amend the judgment, pursuant to Rule 59(e), SCRCP, requesting that the PCR court alter or amend its findings as to the deficiency and prejudice prongs of *Strickland v. Washington*, 466 U.S. 668 (1984), and reverse its grant of relief to Taylor. The PCR court denied the motion in an order issued on October 1, 2022. This appeal followed.

STATEMENT OF FACTS

Michael Rosemond was working as the security guard supervisor at a registration desk at a hospital in Greenville County on December 5, 2015, and helped Jermaine Cureton ("the victim") from the front passenger seat of a red Dodge sedan and into the emergency room. App. 10, 20-21, 23-26, 142. The victim had been shot twice on his left side and had a shallow abrasion to the right side of his head. App. 171, 188. A light-skinned black man in his early twenties who he thought weighed about 140 pounds had run inside and yelled for help getting his friend, the victim inside; the man said that the victim had been shot. App. 21-22. The victim had also been accompanied by a dark-skinned black man in his early to mid-twenties who he thought weighed about 215 pounds. App. 22. Rosemond stayed outside with the two men to get more information from them while others took the victim inside the hospital. App. 22. The light-skinned man appeared to be concerned about the victim's welfare, but the dark-skinned one appeared nonchalant and instructed his light-skinned companion to "[s]hut the [fuck] up." App. 23. Rosemond called dispatch to report the matter and then saw medical professionals stop performing chest compressions on the victim and then call his time of death. App. 24. The victim's cause of death was ultimately ruled a homicide by gunshots. App. 199. The two men left the hospital to get others and then later returned with some of the victim's family members. App. 25. Rosemond thought that the events took place before midnight and remembered that it had been dark outside at the time. App. 25.

Jermaine McCombs, who was in prison at the time of trial for a probation violation, testified that he had known victim since 2008 and that they had been friends. App. 28-30. McCombs went by the nickname "Little Mane" and the victim went by "Big Mane." App. 29.

On the night of December 4 or the early morning of December 5, the victim picked up McCombs from his home in Greenville because they were going to go to buy liquor and because the victim wanted to sell marijuana to Devashio Brown, who went by the nickname "Doodoo." App. 31, 39. The victim was driving his red Dodge sedan. App. 32. When they arrived at the West View apartment complex at which Brown lived, it was late and dark outside. App. 31. Brown got in the car and bought marijuana, and then left to get more cash because he was short. App. 32. Two men, one of whom was Taylor, walked up to the car, and Taylor pointed a firearm at the victim. App. 32-35. McCombs recognized Taylor because he already knew him and Taylor was not covering his face. App. 35-37. He gave Taylor's nickname as "A-Lo." App. 60. Taylor instructed the victim to "give it up." App. 36-37. McCombs did not know if the second robber was pointing a firearm, but he saw the victim and Taylor wrestle over Taylor's weapon. App. 36. When McCombs was trying to flee from the car, he heard at least two gunshots. App. 38.

McCombs testified that he pushed the victim from the driver's seat into the passenger's seat so that they could go to the hospital. App. 38. Brown came out to help and rode in the backseat of the car while McCombs drove. App. 38.[1] McCombs and Brown dropped the victim off at the hospital and then left to alert the victim's family members. App. 38-40. He removed the marijuana and a firearm from the victim's center console while at the victim's family members' home, although he testified that the victim had not had the weapon with him during the robbery and shooting. App. 40-41, 55. He testified that he identified Taylor as the shooter while speaking with a law enforcement officer that night, but backtracked on cross-examination to say that he told the officer that he was unable to make an identification because the shooter's

[1] McCombs also testified that Brown was the person driving them to the hospital. App. 39.

face was covered and admitted that his testimony on direct that he had told the officer that Taylor was the shooter had been false. App. 42-45. He explained that he only told the officer that on the night of the shooting because the victim's family members had told him not to tell officers what happened because they wanted to mete out extra-judicial justice on Taylor. App. 44, 52, 55, 60. He testified that the officers had to "drag" the information out of him because they do not "tell on people" where he is from. App. 49. He also denied that he had killed the victim. App. 49. On re-direct, McCombs testified that he identified Taylor as the shooter when viewing photographs at the law enforcement center that night. App. 60. He reiterated that "bad" things happen to people who give information to officers and said that he had been assaulted in the county jail just before coming to testify but said that Taylor had not been the one who had assaulted him. App. 62-64.

Ashley Bohannon, who had had a child with the victim, testified that she had been with the victim on the night of his death. App. 65. The victim, whose nickname she said was "Mane," dropped her off at her home and left in his red Dodge Avenger after he received a phone call. App. 67. McCombs and Brown showed up later that night and told her that the victim had been shot. App. 67. Brown did all the talking because McCombs was quiet and looked as if he had been crying. App. 67.

Taylor's mother Angelina Williams testified at trial that Taylor had been living with her at the time of the shooting, but that he had not been home on the early morning hours of

December 5. App. 71-72. Taylor only arrived home at about 6:00 a.m. that day and then left again in a blue Mercedes with a man and a woman at about 11:00 a.m. App. 72-73.[2]

Daishonique Lewis, who was in jail at the time of trial for unrelated and still-pending charges, testified that she used to date Eric Hill, who was Taylor's friend, and that she knew Taylor and knew that his nickname was "A-Lo." App. 79-82. Lewis received a Facebook message from Taylor at about 6:00 or 7:00 a.m. on December 5, in which he asked her to come pick him up. App. 82. Taylor's cousin Alexis Smith was with her at the time. App. 83. Lewis testified that she dropped Taylor off at her home, picked up her boyfriend from work, and then returned to her home. App. 83-84. Taylor spent the whole day at her home and told her boyfriend that he had killed someone and needed to hide a gun. App. 84. She testified that Taylor took a grocery bag from her kitchen and then went outside, after which he said that he had hide his firearm in the woods and that he had washed his hands with a scrubbing kitchen pad to get rid of any trace of gunpowder. App. 85-86. Lewis testified that she heard the water running when Taylor was in her kitchen. App. 86.

On cross-examination, plea counsel elicited testimony from Lewis that she had written letters to an employee at the Solicitor's Office, in which he wrote that she would say anything to get out of jail, that she wanted a plea deal, that she would "flip" Taylor's case "around," that she would instead help Taylor if the Department of Social Services took her baby from her, that she said that she would do whatever it took and begged for a deal, that she said that she would give the beset testimony ever, and that she was happy that Taylor was in jail. App. 89-98. On re-

[2] Williams testified outside of the jury's presence that the victim's mother had told her that she knew that Taylor did not kill her son. The plea court ruled that that testimony from Williams was inadmissible as hearsay. App. 75-77.

direct, Lewis testified that she had not yet been charged with anything when Taylor was arrested and that she gave a statement to officers on the night of Taylor's arrest saying that she had heard Taylor confess and that Taylor had hidden the firearm. App. 104-05. She testified that she wrote the letters because she was upset and did not want to give birth while in jail. App. 106-07.

Justus Robinson testified that Taylor's nickname was "A-Lo," and that he knew him from the streets. App. 113-114. Robinson lived in the West View apartment complex and saw the victim in the parking lot in his red Dodge Avenger, with "Little Mane" in the car, too. App. 114-117, 119. He testified that he knew that the victim dealt in marijuana and that he heard "give it up" while he had turned his back on the victim to get cash to buy marijuana from the victim.[3] App. 117. He testified that he ran away without looking back and thought that the victim was trying to rob him when he heard gunshots. App. 117. He testified that he had not seen Taylor but recognized the voice as Taylor's. App. 117, 131, 133. When asked about a previous statement that he had given, he testified that he had seen Taylor walking around the victim's car—with his face uncovered—just as he had been turning his back on the victim. App. 118-19, 131. He saw Taylor walk up the driver's side of the car and stand beside him while he talked with the victim. App. 135-36. He did not see Taylor shoot anyone and estimated that there had been two to three minutes between his seeing Taylor and hearing the shots. App. 131, 135. Robinson testified that he ran inside and then watched the victim's car drive away; he did not tell anyone at the time about what he had witnessed because he feared getting into trouble himself. App. 120. When officers later arrested him for the victim's murder, he told them what had really happened and then pleaded guilty to misprision of a felony and is now on probation. App. 122-126. He

[3] Robinson had drunk alcohol and smoked marijuana that night. App. 115, 121.

admitted under cross-examination that he had originally given false information to officers. App. 127, 136.

David Paul Garrison, a detective at the Greenville Police Department, responded to the hospital on the night of the shooting. App. 140. Det. Garrison testified that McCombs told officers initially that the robbers' faces had been covered, but then identified Taylor as the shooter; the victim's mother also named Taylor as the shooter. App. 144-145, 172, 176, 181. McCombs had accurately described Taylor's physical appearance before Det. Garrison showed Taylor's photograph to him. App. 151-52. McCombs identified Taylor as the shooter after Det. Garrison showed Taylor's photograph to McCombs and had already done so before seeing the photograph. App. 152, 165. Officers could not locate Taylor at his mother's home that day, but she gave them information about his use of social media that they were able to use to locate him and arrest him at Lewis's home. App. 155-56, 167, 182-84, 232-34. Officers arrested Robinson based on information given to them by McCombs and Robinson denied that he had been at the scene at the time of the shooting, but Robinson later admitted that he had been there and said that he had seen Taylor shoot the victim. App. 158-59, 164-65. They charged Brown with misprision to a felony because he had not come forward with information about the crime. App. 160. Officers were able to locate a firearm behind Lewis's home wrapped up in a grocery bag but were unable to get DNA or prints from it, but they did match the projectiles from the victim's body to the weapon. App. 161, 166-67, 171, 237, 263. McCombs' fingerprints were found on the exterior of the driver's side of the victim's car, but Taylor's were not. App. 172, 213-14.

Taylor testified in his own defense at trial. He admitted that he had been present at the apartment complex when the victim was shot. App. 274. He testified that he saw the victim and

McCombs in the car and that McCombs pulled him aside and asked for him to return a firearm that McCombs had previously lent to him. App. 274-75. He testified that McCombs tried to enlist his help in robbing the victim because McCombs felt that the victim was not looking out for him financially; Taylor testified that he declined McCombs' offer. App. 275-76. He testified that McCombs put the gun to the victim's head and told him to "give it up," which the victim did not take seriously. App. 276-77. He testified that he saw the victim and McCombs struggle over the gun and that Robinson shot into the car with his .357 magnum, and that McCombs shot twice, too. App. 277. He testified that he followed Robinson into Robinson's apartment and that he saw Robinson with the .32 caliber and the .357 magnum weapons. App. 278. Because Robinson, who he alleged was involved with gangs, threatened him and his mother and told him to get rid of the gun, he went to a friend's home and got a bag for the gun, went to his own home, then went to Lewis's home, where he ditched the gun outside. App. 279, 294, 299. He alleged that McCombs and Robinson had ambushed the victim because they thought that the robbery would be easy to carry out. App. 289-90. He testified that McCombs took the victim to the hospital after the shooting because he had been friends with the victim. App. 293. He denied that he had told Lewis that he had committed the crimes and explained that he had told her that others were saying that he had killed someone; he also denied that he washed his hands at Lewis's home. App. 298-99.

Before the jury came back with its verdicts, Taylor entered *Alford* pleas to involuntary

manslaughter and to attempted armed robbery. App. 359. Taylor said as follows at sentencing:

> That night, nobody intended for none of that to happen. I want to apologize to the family of the victim cause I didn't – I didn't kill nobody, but I understand how the law works.

App. 363. The plea court sentenced him to consecutive terms of five years for involuntary manslaughter and twenty years on attempted armed robbery. App. 363.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); *Smalls*, at 180-81, 810 S.E.2d at 839-40 (citations omitted). However, pure questions of law will be reviewed de novo without deference to the lower court. *Id.* Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

The PCR court erred in finding that Taylor proved that plea counsel was constitutionally ineffective for giving inaccurate advice about Taylor's parole eligibility because the court found that Taylor satisfied his burden merely because his testimony was not contradicted, which constituted a legal error and improperly shifted the burden to the State.

The PCR court found that Taylor met his requisite burden of proof to establish that plea counsel was constitutionally ineffective for incorrectly advising Taylor that he would "max[] out" his sentence after serving only 65% of it in the South Carolina Department of Corrections ("SCDC") and that he would not have pleaded guilty but for the incorrect advice. App. 430-33. The PCR erred in finding that plea counsel gave incorrect advice to Taylor because the PCR court's ruling was premised on the error of law that it must accept Taylor's testimony as true and dispositive simply because, in the PCR court's view, it was "not contradict[ed]" by plea counsel's. This amounts to an error of law and warrants this Court's review and ultimate reversal.

All defendants have a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. *Strickland*. A post-conviction relief applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that his lawyer was constitutionally ineffective, he must prove that the conduct of his lawyer "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in *Strickland*. First, the applicant must prove that the performance of his lawyer was deficient. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting *Strickland*). Under this prong, the court measures an attorney's performance by its "reasonableness under

prevailing professional norms." *Cherry*, at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). For a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, he must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Id.* (citations omitted). The "preeminent authority for all" courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

> [I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable . . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting *Strickland*). An applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. "The burden of rebutting this presumption rests squarely on the defendant, and it should go without saying that the absence of evidence cannot overcome it. In fact, even if there is reason to think that counsel's conduct was far from exemplary, a court still may not grant relief if the record does not reveal that counsel took an approach that no competent lawyer would have chosen." *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (quotation omitted).

The PCR court's finding that Taylor's testimony was "convincing" simply because plea

counsel did not contradict it was erroneous as a matter of law.[4] The burden was on Taylor to prove that plea counsel's advice to him "[cannot] be relied upon as having produced a just result." *Strickland,* 466 U.S. at 686. The burden was on Taylor to prove that plea counsel made such an error that he "was not functioning as the 'counsel' guaranteed by the Sixth Amendment." *Butler*. The burden of overcoming the presumption that plea counsel's performance was reasonable under prevailing professional norms was "squarely" on Taylor such that the burden could not be overcome merely by "the absence of evidence." *Dunn,* 141 S. Ct. at 2410. The PCR court relieved Taylor of the burden of proving that plea counsel incorrectly advised him of his parole eligibility, which is a burden imposed on Taylor by *Strickland,* by finding simply that Taylor satisfied the first prong of *Strickland* because plea counsel's testimony did not contradict Taylor's. The State does not have to *disprove* a PCR applicant's testimony, and a defense lawyer's inability to remember certain things about his representation of an applicant does not relieve the applicant of his burden under *Strickland*. *See United States v. Shamsid-Deen,* No. 20-11877 (11th Cir. 2023) (reversing the district court's order suppressing Shamsid-Deen's motion to suppress evidence of a prior conviction because Shamsid-Deen had the burden of persuasion and the evidence was unclear or evenly balanced, or the inferences that could be drawn from the evidence were ambiguous) (citations omitted); *Romine v. Head,* 235 F.3d 1349 (11th Cir. 2001) (stating that when a defense lawyer could not remember his reason for not doing something at

[4] As argued in the motion to alter or amend the judgment, the PCR court's finding that plea counsel's testimony did not contradict Taylor's testimony about plea counsel's advice was an inaccurate assessment of the testimony from the PCR hearing. Plea counsel's testimony did, contrary to the PCR court's findings, contradict Taylor's testimony because, rather than agreeing that he had incorrectly advised Taylor on parole eligibility, plea counsel testified that he did not think that he had ever discussed the topic with Taylor; furthermore, plea counsel was able to explain his testimony on that point by the fact that Taylor had been insistent upon going to trial and their discussions focused on trial preparation.

trial due to the passage of time, the reviewing court considering the habeas corpus claims should presume that the lawyer did what he should have done and that he exercised reasonable professional judgment) (citing *Williams v. Head*, 185 F.3d 1223 (11th Cir. 1999)). The PCR court was not required to accept Taylor's testimony as true, even if his testimony was not contradicted by plea counsel's.[5] *See Black v. Hodge*, 306 S.C. 196, 198, 410 S.E.2d 595, 596 (Ct. App. 1991) ("[M]ust a trier of fact always believe uncontradicted testimony? The answer to the question is, plainly, no. The fact that testimony is no contradicted directly does not render it undisputed. There remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation.") (citing *Terwilliger v. Marion*, 222 S.C. 185, 72 S.E.2d 165 (1952)). By finding that Taylor had met his burden in proving that plea counsel gave him incorrect advice about parole eligibility merely

[5] Similarly, the PCR court was not required to accept as credible Taylor's testimony regarding the role of plea counsel's advice in his decision to plead guilty. *See Frierson v. State*, 417 S.C. 287, 298-99, 789 S.E.2d 762, 768 (Ct. Ap. 2016) (affirming the PCR court's finding that the applicant had failed to prove prejudice when the PCR court based the finding upon another finding that the applicant's testimony that he would have proceeded to trial but for his lawyer's deficiency was "wholly incredible"), *aff'd as modified*, *Frierson v. State*, 423 S.C. 257, 263, 815 S.E.2d 433, 436 (2018) (vacating the portion of the Court of Appeals' opinion concerning the overwhelming evidence of the applicant's guilt but affirming as to, among other things, the Court of Appeals' finding on the PCR court's prejudice findings); *Goins v. State*, 397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012) (upholding the PCR court's finding that the applicant failed to prove prejudice because, although the applicant's lawyer did not properly advise him on the law, the PCR court found that the applicant's testimony that he would have gone to trial but for the deficiency was not credible); *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592 (stating that United States Supreme Court precedent "makes clear that this prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not pled but would have gone to trial."). And there was ample reason for the PCR court to reject as ridiculous Taylor's testimony that he would not have pleaded guilty but for plea counsel's advice.

because Taylor's testimony was not contradicted by plea counsel's, the PCR court turned the Strickland standard on its head, which is a legal error. This Court should grant this petition and reverse the PCR court's deficiency finding.

CONCLUSION

For the foregoing reasons, this Court should grant a writ of certiorari and reverse the PCR court's erroneous finding that Taylor satisfied the first prong of *Strickland*, thereby reversing the grant of PCR.

Respectfully submitted,

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