

**RECEIVED**

**Jul 03 2023**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

S.C. SUPREME COURT

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
The Honorable Edward W. Miller, Circuit Court Judge

---

Appellate Case No. 2022-001244

---

RAJERICK KNIGHT

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

---

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

---

ALAN WILSON  
Attorney General

JOSHUA A. EDWARDS  
Assistant Attorney General  
S.C. Bar No. 101188

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

ATTORNEYS FOR RESPONDENT

INDEX

STATEMENT OF THE CASE ..... 3

STANDARD OF REVIEW ..... 7

ARGUMENT..... 4

    I.    The PCR court made sufficient findings of fact and conclusions of law.  
          ..... 4

    II.   Evidence supports the PCR court's finding that trial counsel provided  
          effective assistance in utilizing an expert witness to aid his defense,  
          and Knight failed to establish prejudice. .... 4

    III.  Evidence supports the trial court's finding that trial counsel provided  
          effective assistance in eliciting evidence of the victim's prior  
          instances of violence and Knight failed to establish prejudice..... 8

    IV.  A permissive inference instruction was not required because the trial  
          court did not instruct the jury that malice can be inferred from the  
          use of a deadly weapon..... 9

CONCLUSION..... 12

## STATEMENT OF THE CASE

Petitioner Rajerick Knight was indicted by the October 2011 term of the Beaufort County Grand Jury for Murder and Possession of a Weapon During the Commission of a Violent Crime. Arie Bax, Esquire, represented him. On November 26, 2012, Knight proceeded to jury trial and was found guilty as indicted. The Honorable D. Craig Brown sentenced him to confinement for life for Murder and five years for Possession of a Weapon During the Commission of a Violent Crime. The sentences run consecutively.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California, 378 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Knight's convictions and sentences. State v. Knight, Unpublished Op. No. 2015-UP-170 (filed April 1, 2015). The Remittitur was issued on April 1, 2015.

Knight filed an application for post-conviction relief on September 25, 2018, and an amended application on September 3, 2019. An evidentiary hearing was convened via WebEx on November 17, 2020, before the Honorable Edward W. Miller, Circuit Court Judge. Knight testified and presented the testimony of Deshaunaka Allen, Dr. Donna Schwartz Maddox, and trial counsel Arie Bax. The PCR court denied relief in an order dated November 16, 2021. (App.918-39). Knight filed a 59(e) motion to alter or amend the order, which was denied on July 29, 2022. Knight filed writ of certiorari on March 2, 2023. This return follows.

## STANDARD OF REVIEW

The appellate court will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them, but will reverse if its decision is controlled by an error of law. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). A lower court's factual finding that a guilty plea was voluntarily and intelligently entered is binding upon the appellate court. Vickery v. State, 258 S.C. 33, 35, 186 S.E.2d 827, 827 (1972).

## ARGUMENT

### **I. The PCR court made sufficient findings of fact and conclusions of law.**

Knight asserts the PCR court erred by not making sufficient findings of fact and conclusions of law to support its decision. The State submits the PCR court made sufficient findings to support its decision, as the order demonstrates. Knight's 59(e) motion points to certain details that were not discussed in the order, and arguments the court allegedly did not address. However, the PCR court was not required to summarize every piece of testimony, nor was it required to exhaustively reject every nuance in Knight's arguments. The order clearly sets out in detail the basis for the court's ruling on each issue, and is sufficient to enable appellate review. Remand is not warranted and certiorari should be denied.

### **II. Evidence supports the PCR court's findings that trial counsel was not deficient regarding his choice of expert witnesses and that Knight was not prejudiced.**

Knight alleges trial counsel was ineffective in his utilization of an expert witness he retained for Knight's defense, psychiatrist Dr. Thomas Martin. Evidence supports the PCR court's finding that trial counsel provided effective assistance in this regard, and that Knight failed to demonstrate prejudice. Certiorari should be denied.

Trial counsel obtained indigent defense funds and retained Dr. Martin because he had worked with him many times in the past and respected his opinion. (App.809, 851). Trial counsel retained Dr. Martin to testify about Knight's "mental state" in relation to the victim, who was a "very scary guy . . ." (App.817). When

Dr. Martin concluded that Knight did not have "mental illness from the standpoint of criminal responsibility," trial counsel accepted his conclusions because that was Dr. Martin's profession, not his. (App.820). Trial counsel testified he had to "work with [Dr. Martin's] opinion." (App.821). He further testified that, because he was relying on indigent defense funds, he could not "expert shop" until he found a psychiatrist who would offer a more favorable opinion. (App. 852).

In order to prove counsel was ineffective, a PCR applicant must show counsel's performance was deficient and the applicant was prejudiced by the deficient performance. Strickland v. Washington, 466 U.S. 668, 687 (1984). Counsel's performance will be deemed deficient if it falls "outside the wide range of professionally competent assistance." Id. The applicant is prejudiced by the deficient performance if "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. "When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." Id. at 695.

"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." Id. at 689. "Judicial scrutiny of counsel's performance must be highly deferential." Id. at 689. In order to prove a claim of

ineffectiveness, “the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’” Id.

Counsel’s articulation of valid trial strategy defeats a claim of ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546; 419 S.E.2d 778 (1992). “Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). Strickland requires extreme deference to counsel’s strategic judgments that are adequately investigated; as Strickland explains: “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable. . . .” Strickland, 466 U.S. at 690 91.

In many cases, a range of hypothetical experts exist that a trial attorney could theoretically consult. However, a trial attorney is not expected to consult every conceivable type of expert possibly applicable to the case – such a task may turn distracting – instead counsel is entitled to formulate a focused strategy cognizant of the reasonable use of resources and time. See Harrington v. Richter, 562 U.S. 86 (2011). Trial counsel was “entitled to formulate a strategy that was reasonable at the time and to balance limited resources in accord with effective trial tactics and strategies.” Id. at 107.

Trial counsel testified he wanted to call Dr. Martin to testify because “Dr. Martin had something to offer that I could argue to the jury in the end. Dr. Martin

never gave me a specific mental illness, so his opinion was what it was. So, I had the option to not use him at all or use him and the thing was is that when you're defending a case like this . . . this was not a case that I looked at as being able to rest after the prosecution's case and then just argue that they hadn't proved their burden. Not when you have a video like that." (App. 826–27). While Dr. Martin's testimony was ultimately excluded as bolstering, trial counsel went to reasonable lengths to evaluate any mental health-related defenses available to Knight and attempted to offer Dr. Martin's testimony to support his argument that Knight acted in self-defense. Trial counsel's choice of experts was within his discretion in the exercise of reasonable professional judgment.

Furthermore, Knight failed to show prejudice. Dr. Maddox's evaluation of Knight did not drastically differ from that of Dr. Martin. Knight did not present a mental health defense, and Dr. Maddox's testimony did not support one. Dr. Maddox agreed that Knight was criminally responsible for his conduct, but that he had "diminished capacity" due to his constant "state of fear" related to PTSD. (App.782–83).

Even with Dr. Maddox's PTSD diagnosis, Knight's paranoia did not support a valid self-defense claim. Even if trial counsel had offered expert testimony similar to Dr. Maddox's, his self-defense claim would have been unsuccessful because he shot the unarmed victim in circumstances that did not give rise to a reasonable apprehension of imminent danger. Likewise, her testimony would not have supported a voluntary manslaughter charge because it did not establish Knight

acted in the sudden heat of passion. As Dr. Maddox testified, diminished capacity is not a defense. (App.790). She testified that Knight "knew what he was doing" and could have avoided using violence against the victim. (App.792–93). Furthermore, Knight's story that he wanted to "warn" the victim and merely intended to fire a "warning shot" was not credible. (App.793).

Knight's own trial testimony established he did not act in self-defense or the heat of passion, as he testified he chose to shoot the unarmed victim because he "took a son" from him. (App.501). He admitted on cross-examination that he could have avoided the conflict. (App.515). Finally, the surveillance video showing Knight shoot the victim was incredibly damaging, rendering evidence of his guilt overwhelming. The PCR correctly held that Knight failed to establish prejudice in relation to this allegation. Certiorari should be denied.

**III. Evidence supports the PCR court's finding that trial counsel was not deficient regarding his decision not to put up an additional witness regarding an alleged prior incident of violence by the victim against Knight's girlfriend, and that Knight was not prejudiced.**

Knight alleges counsel was ineffective for not presenting the testimony of Deshaunika Allen. Evidence supports the PCR court's finding that Knight failed to show deficiency or prejudice. Certiorari should be denied.

Trial counsel testified that "investigating [the victim] was a big part of this case." (App.808). He testified the victim was "a terror in the community." (App.809). He investigated a prior homicide case against the victim, obtaining the

public defender's case file pursuant to a court order even though the public defender's office opposed it. (App.809).

Specifically regarding the 2011 incident, trial counsel put up several witnesses to establish that they believed the victim was the person who shot into Knight's girlfriend's house causing her to miscarry. Most importantly, Knight himself testified that he was sure the victim did it. Trial counsel denied being aware of Deshaunaka Allen's claim that she actually saw the victim shoot, and testified that if he would have been aware of the statement, he would have offered it. (App.841). While Allen's testimony at the PCR hearing would have been marginally helpful if true, it was dubious. Evidence supports the PCR court's finding that Allen did not provide counsel with this information at the time of trial. (App.935). Knight failed to establish counsel was deficient in this regard.

Knight also failed to show prejudice. Allen's testimony was not as important as Knight's own testimony that he actually believed the victim was the person who carried out the shooting, as it was Knight's belief that impacted his right to act in self-defense. Allen testified she did not tell Knight she saw the victim commit the shooting. (App.760–61). The PCR court correctly found Allen's testimony was not important to the case. (App.935). Certiorari should be denied.

**IV. The PCR court correctly held a permissive inference charge was not warranted because the jury was not instructed that malice can be inferred from the use of a deadly weapon, and trial counsel was not deficient in not requesting the charge.**

Finally, Knight alleges trial counsel was ineffective because he did not request a "permissive inference" jury instruction related to malice. The PCR court

correctly held that such an instruction was not necessary because the trial court did not instruct the jury that malice can be implied from the use of a deadly weapon, the harm that the "permissive inference" instruction is designed to remedy. Certiorari should be denied.

The PCR court's order of dismissal explains why this claim is meritless. (App.936–37). The court correctly noted that State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), and State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019), are not applicable in this case. The problematic instruction in those cases was that malice can be implied from the use of a deadly weapon. That instruction was not given at Knight's trial.

The trial court's malice instruction in this case accurately stated the law. As transcribed by the court reporter, the court instructed the jury:

Malice, ladies and gentlemen, is hatred, ill will, or hostility towards another person. It is intentional doing [sic] of a wrongful act without just cause or excuse and with an intent to inflict or injure or under circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act. Malice aforethought may be expressed or inferred. These terms express and inferred do not mean different kinds of malice, but merely the manner in which malice may be shown to exist, that is either direct evidence or by inference from the facts and circumstances which are proved. Express malice is shown when a person speaks words which express hatred or ill will for another person or when the person prepared beforehand to do the act, which was later accomplished. For example, lying in wait for a person or any other acts of preparation going to show that the deed was within the

defendant's mind would be express malice. Malice may be from conduct showing a total disregard for human life.<sup>1</sup>

The court's instruction was a proper statement of law, and counsel was not ineffective by not requesting a "permissive inference" instruction. Even assuming a future appellate court determines such a charge is proper, trial counsel is not required to be clairvoyant in anticipating changes to the law. Thornes v. State, 310 S.C. 306, 310, 426 S.E.2d 764, 766 (1993). The PCR court correctly held trial counsel was not ineffective. Certiorari should be denied.

---

<sup>1</sup> The last sentence of the instruction may have been incorrectly transcribed by the court reporter, as the typical charge given is that malice "may be *inferred* from conduct showing a total disregard for human life." Either way, the result is the same.


CONCLUSION

For all the foregoing reasons, this Court should deny certiorari.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOSHUA A. EDWARDS  
Assistant Attorney General

By:  \_\_\_\_\_  
Joshua A. Edwards  
Bar # 101188

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

ATTORNEYS FOR RESPONDENT

July 3, 2023