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**Oct 12 2023**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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On Writ of Certiorari to Horry County  
Honorable H. Steven DeBerry, IV, Circuit Court Judge  
Appellate Case No. 2023-001577

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JUSTIN TYLER YOUNG,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

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**PETITION FOR WRIT OF CERTIORARI**

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## STATEMENT OF ISSUE ON CERTIORARI

Did the post-conviction relief judge reversibly err by finding—in a legally-erroneous manner and without factual support—probation counsel was constitutionally ineffective for failing to clarify to the probation revocation judge that Young would receive a fifteen-year term of imprisonment if his probation was revoked in full when the record conclusively demonstrated the probation revocation judge was indeed fully aware of that fact and expressly intended to require Young to serve a fifteen-year term of imprisonment for violating his probation, which meant Young could not have been prejudiced by the purported deficiency under the circumstances involved?

## STATEMENT OF THE CASE

### **Combined Procedural and Factual History**

In June of 2006, the Spartanburg County Grand Jury indicted Respondent Justin Tyler Young for one count of first-degree burglary, three counts of armed robbery, and one count of grand larceny in an amount greater than \$5,000. (App’x pp. 1-10). On May 7, 2007, Young appeared before the Honorable J. Cordell Maddox, Jr., circuit court judge, in the Spartanburg County Court of General Sessions and entered guilty pleas to all five indicted offenses. (App’x pp. 11-15). The plea judge accepted Young’s guilty pleas and imposed the following sentences: (1) a twenty-year term of imprisonment suspended to a fifteen-year term of imprisonment to be followed by five years of probation for the first-degree burglary conviction; (2) three concurrent fifteen-year terms of imprisonment that were suspended to five-year terms of probation for the armed robbery convictions; and (3) a concurrent ten-year term of imprisonment that was suspended to a five-year term of probation for grand larceny. (App’x pp. 11-15). Based on the sentences imposed, Young was committed to the South Carolina Department of Corrections to serve the unsuspended fifteen-year portion of his first-degree burglary sentence. (App’x pp. 16-21; p. 33).

Subsequently, upon completing the required portion of his sentence, Young was released from custody. (App’x pp. 16-21; p. 33). Following his release, Young began serving the terms of probation to which he had been sentenced on all five charges along with the mandatory period of community supervision he was required to serve following his release on the first-degree burglary charge. (App’x p. 32). Thereafter, two sets of arrest warrants were issued—one set in May of 2020 and another in February of 2021—for Young based on his repeated failure to

comply with the conditions of his probation, and those warrants were respectively served upon him in June of 2020 and October of 2021. (App'x pp. 24-33).

On October 18, 2021, a hearing was conducted before the Honorable Steven H. John, circuit court judge, in the Horry County Court of General Sessions to address Young's multiple violations of the terms of his probation along with his violation of the terms of the community supervision program. (App'x p. 30; p. 32). At the outset of that hearing, the probation agent recounted the details of Young's aggregate sentence—including his fifteen-year suspended sentences for the armed robbery convictions—along with the grounds for his probation violations. (App'x pp. 32-33). Following that, Young's probation counsel spoke on Young's behalf and acknowledged Young admitted he had violated the terms of his probation based on his out-of-state arrests and convictions. (App'x p. 33). Probation counsel further noted Young had served approximately thirteen years of his "initial" sentence already. (App'x p. 33). He then asked Judge John to consider continuing Young on probation while ordering him to obtain drug and alcohol treatment as a special condition or, in the alternative, to revoke his probation for a period shorter than the full remaining sentence. (App'x p. 33). However, based on the violations presented, Judge John indicated he did not believe Young was a "good candidate for probation" and ultimately "revoke[d] the rest of [Young's] sentence" with a recommendation for Young to be placed in the addiction treatment unit. (App'x pp. 33-34). Notably, on the same date, Judge John issued written orders that confirmed his orally-pronounced ruling and expressly indicated he was fully revoking Young's remaining suspended sentence for each count of armed robbery in the specific amount of fifteen years and for grand larceny in the specific amount of ten years. (App'x pp. 36-39).

Subsequent to that, Young did not initiate an appeal. (App’x p. 42). Instead, on July 8, 2022, Young filed a pro se application for post-conviction relief (“PCR”). (App’x pp. 41-47). Through that application, Young sought relief solely from the revocation of his probation and alleged he was being held unlawfully based on a single ground. (App’x pp. 41-43). Specifically, Young stated: “The judge sentenced me to ATU, but I’m serving 15 years.” (App’x p. 43). As support for that particular allegation, Young further averred: “The judge sentenced me to ATU, but SCDC has me doing 15 years and they say the court is to blame.” (App’x p. 43). Meanwhile, Young indicated he was seeking the following relief: “For my sentence to be corrected and applied.” (App’x p. 45).

On October 12, 2022, the State served its return and requested an evidentiary hearing be convened. (App’x pp. 48-53). Following that, an evidentiary hearing was conducted on November 28, 2022, in the Horry County Court of Common Pleas with the Honorable H. Steven DeBerry, IV, circuit court judge, presiding. (App’x pp. 54-93).

During the course of that hearing, Young testified on his own behalf. (App’x p. 58). Through his testimony, Young expressed a desire for a new probation revocation hearing, and he confirmed his problem was not with the underlying judgment in his case but with the probation revocation hearing itself. (App’x p. 58; p. 61). Young further explained he believed he had only been sentenced to “ATU,” which he interpreted as meaning he merely had to complete a six-month drug treatment program in the “Advanced Treatment Unit,” as a result of the probation revocation but was now being required to serve a fifteen-year sentence instead, which he suggested was improper because he supposedly had *only* been sentenced to probation for the first-degree burglary conviction alone. (App’x pp. 61-63). Meanwhile, Young repeatedly maintained none of his sentences for the armed robbery convictions had been suspended. (App’x

pp. 69-70; p. 78). Additionally, Young stated he “underst[oo]d the sentencing they gave [him] was fair” but asserted his concern was probation counsel did not communicate with him well and should have done “[s]omething” to communicate with him better. (App’x p. 63). Furthermore, Young indicated he believed he was entitled to credit for time he served in Georgia prior to being returned to SCDC custody and for the time he had served in connection to the unsuspended portion of his first-degree burglary conviction. (App’x pp. 63-64; pp. 73-75). Beyond that, Young acknowledged he heard Judge John state he was revoking his probation in full, but Young asserted “revoked” in that context did not mean he was required to serve out the rest of his sentence based on his personal research into the definition of the word. (App’x pp. 80-81).

In addition to Young’s testimony, the State tendered testimony from Young’s probation counsel. (App’x p. 83). Through his testimony, probation counsel indicated he did not understand at the time of the probation revocation hearing Young had “15 years hanging over his head” and, instead, mistakenly assumed Young’s maximum exposure was only seven years. (App’x pp. 84-86; p. 90). However, probation counsel explained his current understanding was a full revocation of Young’s probation would mean Young had to serve a fifteen-year term of imprisonment. (App’x pp. 84-85). Furthermore, probation counsel explained there was no question going into the hearing Young’s probation was going to be revoked because he had no defenses to the violations being alleged. (App’x p. 85).

Following the presentation of that testimony, PCR counsel did not make any arguments or closing statements on Young’s behalf. (App’x p. 90). Conversely, counsel for the State noted any issue with the sentencing credits Young had received was not a cognizable claim in the venue of PCR while any issue with Young’s sentence was not currently before the Court, which

meant the scope of the matter actually before the Court was narrow.<sup>1</sup> (App’x p. 90). As to that narrow-in-scope matter, counsel for the State argued Young had not met his burden of establishing he was entitled to any relief because he did not establish anything done or not done by probation counsel would have impacted Judge John’s decision to revoke Young’s probation in full. (App’x pp. 90-91).

Toward the conclusion of the PCR evidentiary hearing, the PCR judge expressed concern “it was not clear from *the transcript* that Judge John actually knew that by revoking in full he was, essentially, giving [Young] an extra 15-year sentence, one of which he just finished serving.” (App’x p. 91) (emphasis added). Accordingly, the PCR judge found justice required a new probation revocation hearing be granted to ensure the judge presiding over the hearing understood and considered the fact Young was potentially facing a sentence of up to fifteen years. (App’x p. 91). In awarding such relief, the PCR judge specifically noted it would certainly be a decision for that judge to decide whether a revocation of fifteen years was warranted. (App’x p. 92).

Subsequently, through an order filed on July 17, 2023, the PCR judge confirmed the ruling orally announced at the end of the evidentiary hearing. (App’x p. 94). In that order, the PCR judge found probation counsel was “proven ineffective as legal counsel pursuant to” the applicable standard. (App’x p. 94). More specifically, the PCR judge ruled probation counsel “failed to make clear to the presiding Judge that [Young] would receive an active sentence of 15 years in the South Carolina Department of Correction . . . if [Young]’s probation was revoked.”

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<sup>1</sup> In *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000), this Court explained “aside from two non-collateral matters specifically listed in the PCR Act, PCR is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence* as authorized by Section 17–27–20(a).” (emphasis added). Furthermore, this Court indicated “[a] claim regarding sentence-related credits” did not constitute such an attack. *Id.*

(App'x p. 94). Furthermore, the PCR judge concluded that was prejudicial to Young without further explanation. (App'x p. 94). For those reasons, the PCR judge held Young met his burden of establishing probation counsel provided ineffective assistance of counsel, and, therefore, the PCR judge granted Young's PCR application and remanded the matter to the court of general sessions for a new probation revocation hearing. (App'x p. 94).

Following that, the State timely filed a motion to reconsider, alter, or amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. (App'x pp. 95-109). However, through an order filed on September 5, 2023, the PCR judge summarily denied the State's motion without a hearing. (App'x p. 110). The State then timely filed a notice of appeal.

## ARGUMENT

**The post-conviction relief judge reversibly erred by finding—in a legally-erroneous manner and without factual support—probation counsel was constitutionally ineffective for failing to clarify to the probation revocation judge that Young would receive a fifteen-year term of imprisonment if his probation was revoked in full because the record conclusively demonstrated the probation revocation judge was indeed fully aware of that fact and expressly intended to require Young to serve a fifteen-year term of imprisonment for violating his probation, which meant Young could not have been and was not prejudiced by the purported deficiency under the circumstances involved.**

In the case sub judice, the PCR judge concluded probation counsel was constitutionally ineffective for failing to clarify to Judge John a full revocation of Young’s probation would result in Young being required to serve a fifteen-year term of imprisonment. Importantly though, Judge John was—as demonstrated by the written order he issued on the same date he revoked Young’s probation—fully aware of the potential term of imprisonment Young would have to serve as a result of the probation revocation and expressly intended for Young to be required to serve an additional fifteen-year sentence. In light of that, there was no reasonable probability the result of the proceeding would have been different but for probation counsel’s failure to make sure Judge John knew something he did indeed already know even without receiving any additional clarification from probation counsel. As a result, the PCR judge erred as a matter of law by finding probation counsel was constitutionally ineffective, and his ruling was legally erroneous and without factual support. The State’s petition for a writ of certiorari should be granted, and the PCR judge’s grant of relief should be reversed.

### **Standard of Review**

In post-conviction relief cases, the standard of review to be applied on appeal is directly dependent on the specific issues raised. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing a PCR judge’s factual findings on appeal, the appellate court will defer to those findings and uphold them if they are supported by any evidence of probative value

appearing in the record. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); see Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018) (“Under the proper standard of review, the appellate court’s ‘view’ must be limited to whether there is probative evidence to support the PCR court’s factual findings.”). Meanwhile, when reviewing a pure question of law, an appellate court will consider such a matter de novo and is not required to give deference to the PCR judge’s rulings. Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014). Ultimately, if the PCR judge’s decision is controlled by an error of law, an appellate court will reverse that decision on appeal. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

#### **Law Applicable to Ineffective Assistance of Counsel Claims**

In every criminal case tried in South Carolina, the defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001); see State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000) (“The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors.”). Pursuant to that right, the defendant is entitled to effective assistance of trial counsel. McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970); see Strickland v. Washington, 466 U.S. 668, 685 (1984) (“An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.”). Significantly though, effective assistance of trial counsel does not mean perfect or mistake-free representation. Weaver v. Massachusetts, 582 U.S. 286, 300 (2017); see Burt v. Titlow, 571 U.S. 12, 24 (2013) (“[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. Strickland, 466 U.S. at 687-688. Meanwhile, trial counsel’s assistance is considered to be constitutionally ineffective only when

“counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Id. at 686; see Harrington v. Richter, 562 U.S. 86, 110 (2011) (“Representation is constitutionally ineffective only if it so undermined the proper functioning of the adversarial process that the defendant was denied a fair trial.” (citation and internal quotations omitted)).

When faced with a claim of ineffective assistance of trial counsel, a reviewing court must conduct a two-pronged analysis. Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001). Pursuant to that two-pronged analysis, an applicant raising an ineffective assistance of trial counsel claim must establish: (1) counsel’s representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel’s deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005). Thus, the applicant has the heavy burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); see Stone v. State, 419 S.C. 370, 380, 798 S.E.2d 561, 566 (2017) (instructing “the law requires [a reviewing court to] presume counsel rendered adequate assistance and exercised reasonable professional judgment” and only find to the contrary when the applicant has overcome that presumption by establishing both deficiency and prejudice); see also Weaver, 582 U.S. at 303 (explaining “the rules governing ineffective-assistance claims must be applied with scrupulous care” (citation and internal quotations omitted)).

Regarding the deficiency prong of the analysis, the proper measure of performance is whether counsel provided representation within the objectively reasonable range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); see Richter, 562 U.S. at 110 (instructing the proper analysis “calls for an inquiry into the objective

reasonableness of counsel’s performance, not counsel’s subjective state of mind”). When analyzing counsel’s performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for overcoming that presumption. Butler, 286 S.C. at 442, 334 S.E.2d at 814; see Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Furthermore, the reviewing court will scrutinize counsel’s performance in a highly deferential manner, will make every effort “to eliminate the distorting effects of hindsight,” and will “evaluate the conduct from counsel’s perspective at the time” in light of the then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel’s performance was deficient, the applicant must demonstrate “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 687. Thus, counsel’s performance will be considered to be deficient only when it objectively amounted to incompetence under prevailing professional norms and not when it simply “deviated from best practices or most common custom.” Richter, 562 U.S. at 105.

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.”<sup>2</sup> Strickland, 466 U.S. at 691. For that burden to be met, counsel’s deficient performance must have prejudiced the applicant to such an

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<sup>2</sup> Notably, “a court need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies.” Strickland, 466 U.S. at 697. In fact, a reviewing court ordinarily should dispose of an ineffective assistance of counsel claim on the grounds of lack of sufficient prejudice “[i]f it is easier” to do so. Id.

extent there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989); see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be substantial, not just conceivable." Richter, 562 U.S. at 112; see Strickland, 466 U.S. at 694 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome.").

Relatedly, any individual charged with a probation violation in South Carolina has a right to counsel. Turner v. State, 384 S.C. 451, 454, 682 S.E.2d 792, 793 (2009); see Barlet v. State, 288 S.C. 481, 483, 343 S.E.2d 620, 622 (1986) (recognizing the right to counsel in probation revocation hearings in South Carolina). Accordingly, the same analysis for evaluating claims of ineffective assistance of trial counsel is applicable in South Carolina to claims of ineffective assistance of probation counsel. See Turner, 384 S.C. at 455, 682 S.E.2d at 694 ("[B]ecause a probationer has a right to counsel, albeit not a Sixth Amendment right, the same analysis for ineffectiveness that applies in other PCR proceedings involving claims against counsel should, by analogy, apply in PCR proceedings involving claims against probation counsel."). Pursuant to that analysis, the applicant bears the burden of proving both deficiency and prejudice in order to be entitled to a grant of relief. Id. at 453, 682 S.E.2d at 793.

#### **Application of the Relevant Law to Young's Case**

In granting relief to Young, the PCR judge—while referencing the probation revocation hearing transcript—found probation counsel was proven to have been constitutionally ineffective

because he did not make clear to Judge John a fifteen-year sentence would result if Young's probation was revoked and, thus, it was not clear Judge John actually understood and considered that fact when revoking Young's probation in full. However, even assuming probation counsel could or should have done something more to clarify for Judge John what the impact of a full revocation of Young's probation would be, the record—contrary to the PCR judge's conclusion—conclusively and unambiguously demonstrated Judge John was indeed fully aware he was imposing an aggregate fifteen-year sentence by revoking Young's probation in full on the grand larceny and armed robbery charges.

Demonstrating that fact, Judge John—after orally revoking Young's probation during the probation revocation hearing—issued on the same day four written orders confirming his announced decision. (App'x pp. 36-39). And, in those written orders, Judge John specifically identified the number of years he intended Young to “be required to serve” as fifteen years for each of the armed robbery convictions and ten years for the grand larceny conviction. (App'x pp. 36-39). Furthermore, in those same orders, Judge John explicitly did *not* check the box for Young to receive any credit for “initial SCDC time.”<sup>3</sup> (App'x pp. 36-39).

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<sup>3</sup> Notably, Judge John's decision not to check that box was unquestionably a correct one because Young had not yet actually served any time on the suspended sentences prior to his probation being revoked based on the plain mandates of South Carolina law. See S.C. Code Ann. § 24-13-40 (“The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. *However*, when (a) a prisoner shall have given notice of intention to appeal, (b) *the commencement of the service of the sentence follows the revocation of probation*, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served *must be calculated from the date of the commencement of the service of the sentence.*” (emphasis added)); see also *Gates v. Wallace*, 278 S.C. 214, 216, 294 S.E.2d 41, 42 (1982) (“[W]e hold that the trial court correctly interpreted Section 24-13-40 of the Code by ruling that appellant is not entitled to credit toward computation of parole eligibility for time served prior to the revocation of the suspended sentence.”).

Since Judge John was, in fact, fully aware of the number of years Young would be required to serve as a result of his decision to revoke Young’s probation in full at the time he issued that decision, Young could not have suffered—and could not prove he suffered—any prejudice sufficient to warrant a grant of relief even assuming Young’s probation counsel’s performance was somehow constitutionally deficient.<sup>4</sup> See Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel’s representation fell below an objective standard of reasonableness *and, but for counsel’s errors, there is a reasonable probability the result at trial would have been different.*” (emphasis added)); cf. Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (instructing an applicant is not entitled to a grant of PCR based on erroneous advice provided by counsel when any possible misconceptions that occurred as a result of that advice were subsequently corrected and cured by what occurred during the colloquy with the judge); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994) (reversing a grant of relief where the record “clearly establishes that Rayford could not have had any misconceptions regarding sentencing”). Simply put, there was not—and could not logically have been—a reasonable likelihood of a different outcome in Young’s case had probation counsel advised Judge John of something Judge John already expressly knew when he revoked Young’s probation and intentionally imposed the fifteen-year term of imprisonment he believed was warranted under the circumstances involved. See Strickland, 466 U.S. at 700 (“Failure to make

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<sup>4</sup> It remains unclear how probation counsel could have been deficient for failing to clarify to Judge John something Judge John already clearly knew and understood, which may be why the PCR judge’s single-page order granting relief contains only a one-sentence statement concerning deficiency that lacks any real specifics about what more probation counsel should have done along with a conclusory one-sentence statement concerning prejudice that simply and confusingly indicates Young was prejudiced by the purported deficiency because his “legal representation was ineffective.” (App’x p. 94).

the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.”); cf. United States v. Wilson, 245 F. App’x 10, 12 (11th Cir. 2007) (concluding the prejudice necessary to prove an ineffective assistance of counsel claim could not be established in a case where “any failure on the part of Wilson’s counsel to clearly explain the possible punishment was cured by the district court[,]” which was aware of and explained in detail the possible sentencing implications prior to accepting Wilson’s guilty plea).

For all those reasons, Young should not have been granted relief as he did not meet his requisite burden of proof, and the PCR judge erred by granting relief on a basis that was directly contrary to and refuted by the evidence before him. See Holland v. State, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996) (“[T]his Court will not uphold the findings of a PCR court if no probative evidence supports those findings.”); cf. Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1998) (concluding “there is no evidence to support the PCR judge’s finding that respondent received ineffective assistance of counsel” when any possible misconception caused by counsel’s actions was demonstrated to have been cured by the record). Accordingly, the PCR judge’s ruling granting relief must be reversed as it was legally and factually erroneous. See Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (recognizing a PCR judge’s decision will be reversed when it is controlled by an error of law). The State’s petition for a writ of certiorari should be granted, and the PCR judge’s ruling should be reversed.

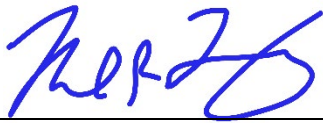
**CONCLUSION**

For all the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be granted and the PCR judge's grant of relief should be reversed.

Respectfully submitted,

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