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Jan 16 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
The Honorable Roger L. Couch, Circuit Court Judge

Appellate Case No. 2019-000334
Opinion No. 2023-UP-406

CARNIE NORRIS,

Petitioner,

v.

THE STATE,

Respondent.

RETURN TO PETITION FOR REHEARING

Respondent Carnie Norris petitions for rehearing from this Court's December 20, 2023, opinion reversing the PCR court's grant of relief. Norris v. State, No. 2023-UP-406 (S.C. Ct.App. filed Dec. 20, 2023). Norris claims this court did not show appropriate deference to the PCR court's factual findings on the prejudice prong of the Strickland analysis for ineffective assistance of counsel. However, this Court's decision was based on the PCR court's errors of law, not its factual findings. This Court correctly determined the PCR court misapplied applicable law resulting in an erroneous grant of relief. The petition should be denied.

In its opinion, this Court correctly explained the numerous errors of law affecting the PCR court's ruling. An error of law is an abuse of discretion, and this

Court does not show deference to erroneous legal rulings. Norris refuses to accept this Court's opinion, and most of his petition essentially asks this Court to reconsider its ruling without identifying any true misapprehension of law.

Norris seeks to portray the PCR court's ruling as factual in nature. He alleges this Court did not apply the correct standard of review because it did not show deference to the PCR court's "finding of fact concerning prejudice." Petition at 5. However, the prejudice analysis in this case is a question of law. This Court is not required to defer to the PCR court's prejudice finding when the finding is based on a question of law.

The trial court's admission of impeachment evidence was an evidentiary ruling reviewed under an "abuse of discretion" standard. As Norris notes, this ruling is subject to a deferential standard of review on direct appeal. But this deference does not work in Norris's favor in PCR, where an applicant has the burden of showing a reasonable probability of a different result. See Strickland v. Washington, 466 U.S. 668, 696 (1984); Terry v. State, 394 S.C. 62, 66, 714 S.E.2d 326, 329 (2011). To show prejudice, Norris was required to show the trial abused its discretion by allowing impeachment. See Wolfe v. State, 326 S.C. 158, 163, 485 S.E.2d 367, 370 (1997) (in context of plea counsel's failure to move for continuance, applicant was required to demonstrate the trial court "would have abused its discretion in refusing to grant a continuance motion"). If the trial court did not abuse its discretion by allowing impeachment, Norris cannot show prejudice.


This Court correctly analyzed the admissibility of Norris's prior convictions and correctly found impeachment was proper. Norris failed to show the trial court would have abused its discretion by allowing impeachment if counsel had objected. This is a question of law, and an objective standard applies. This Court is not required to show deference to the PCR court on this question, particularly when the PCR court's analysis was infected with so many legal errors.

Finally, this Court correctly found the evidence of Norris's guilt was overwhelming. Again, this is a legal question based on an objective standard, much like the harmless error analysis in a direct appeal case. The petition should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Petitioner for Writ of Certiorari on Gary Johnson, Esquire, counsel of record for the Petitioner, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 16th day of January 2024.



Anne A. Mueller
Legal Assistant

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Subject: Carnie Norris v. State, 2019-000334
Date: Tuesday, January 16, 2024 3:45:00 PM
Attachments: [image001.png](#)
[Norris Carnie - 2019-000334 - Return To Petition For Rehearing.pdf](#)

Good afternoon, Mr. Johnson.

Attached to this email is the State's Return To Petition For Rehearing. We will be filing it with the Court electronically this afternoon.

Sincerely,

Anne Mueller

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